




<b>Report to:</b>	Strategy and Resources Committee	<b>Date:</b>	29 October 2018
<b>Report title:</b>	Community Infrastructure Levy: Review of Charging Schedule, Revision of Regulation 123 List and options for Neighbourhood CIL.		
<b>Report from:</b>	Mary Morrissey, Strategic Director, Environment, Housing and Regeneration		
<b>Ward/Areas affected:</b>	Borough Wide		
<b>Chair of Committee/Lead Member:</b>	Councillor Ruth Dombey Councillor Jayne McCoy		
<b>Author(s)/Contact Number(s):</b>	Collette Willis, Planning Officer, 020 8770 5377		
<b>Corporate Plan Priorities:</b>	<ul style="list-style-type: none"> <li>• Making informed choices</li> <li>• Smarter ways of working</li> </ul>		
<b>Open/Exempt:</b>	Open		
<b>Signed:</b>		<b>Date:</b>	17 October 2018

## 1. Summary

- 1.1 This report sets out recommendations with regard to the review of the Council's Community Infrastructure Levy (CIL) Charging Schedule and the Regulation 123 List, and proposals for the governance of CIL receipts to be spent in consultation with the local community.

## 2. Recommendations

The Strategy and Resources Committee is recommended to:

- 2.1 Agree that the council continues with its current CIL Charging Schedule (index-linked) rather than produce a new Charging Schedule.
- 2.2 Agree to review the CIL Charging Schedule with the Local Plan review due in 2023.
- 2.3 Agree to public consultation on a draft revised Regulation 123 List (see Appendix B).
- 2.4 Agree to review the Regulation 123 List on a regular basis to ensure it remains aligned with the council's wider priorities.



- 2.5 Agree to allocate 15% of CIL receipts to the neighbourhood portion where that CIL is generated by new development, except in areas with an adopted neighbourhood plan where the allocation will be 25% of CIL receipts.
- 2.6 Task the Strategic Director of Environment, Housing and Regeneration, in consultation with the Strategic Director of Resources and the Chair of the Housing, Economy and Business Committee and Lead Member for Finance to (a) review and consider the governance arrangements for allocating and spending the neighbourhood portion of CIL receipts; and (b) report back to the Strategy and Resources Committee with a preferred option.

### **3. The Community Infrastructure Levy**

- 3.1 The Community Infrastructure Levy (CIL) was introduced in April 2011 as a tool to deliver infrastructure to support the development of a Local Authority area, and can fund a wide range of infrastructure including transport, flood defences, schools, hospitals and other health and social care facilities. The Strategy & Resources Committee agreed the Borough-wide list of strategic infrastructure projects "the Regulation 123 List" to support development in May 2013. Full Council agreed an adopted charging schedule of £125 per square metre for convenience retail and £100 per square metre for market housing on 3 March 2014, which came into effect from 1 April 2014. CIL is payable on commencement of development which meant that the first receipts were only received from late 2016, with a total of £4.2m received to date.

#### **3.2 The CIL charging schedule**

##### **Background**

- 3.3 The council's current CIL Charging Schedule is based on evidence prepared in 2012 (the Sutton Community Infrastructure Plan and CIL Viability Assessment). Government guidance advises charging authorities keep their charging schedules under review to ensure they remain appropriate and respond to evolving economic conditions. Following the adoption of Sutton's Local Plan in February 2018, it is considered appropriate to review the CIL charging schedule (and Regulation 123 list) as the Local Plan has been through independent examination which found the policies concerning the Borough's infrastructure needs to support growth over the Plan period (to 2031) to be sound, as they were supported by an updated Infrastructure Study (2017). The financial viability consultants, Aspinall Verdi, were appointed to undertake an assessment of whether charging more and/or charging for additional development types would have positive or negative impact on the viability of development coming forward in Sutton.

##### **Issues**

- 3.4 As required by the CIL Regulations, the council applies an indexation rate (linked to the all-in tender price cost from the RICS's Building Cost Information Service and updated every quarter) to CIL charges which captures price increases to build costs between the time when the charging schedule came into force and when planning permission is granted. At the time of writing indexing has effectively raised the current CIL charges referred to in para 3.1 to £156 per square metre (convenience retail) and £130 per square metre (market housing).



- 3.5 Aspinall Verdi considered the impact of changing the CIL charging schedule across a range of development types (including care homes and retirement housing, storage and distribution warehouses and research and development facilities to potentially capture the London Cancer Hub developments), which took into account:
- current policy requirements set out in the Local Plan, including requirement for 35% affordable housing in private residential development schemes
  - development costs
  - uplift in land values
  - the index-linked Mayoral CIL, currently £28.88 per sqm on all uses except health and social infrastructure
- 3.6 The results of the viability assessment are set out in Table 1 below:

**Table 1: Viability Assessment Findings**

<b>Council's Question</b>	<b>Aspinall Verdi Assessment</b>
<b>For residential (C3 - for planning use classes, see Appendix D), will the council get more income from using the current indexing or revising the charging schedule?</b>	The viability testing shows that the bulk of development is coming forward as mixed-use development and not stand alone residential. The stand alone residential scenarios are showing to be more viable than mixed-use, but even then, in some scenarios, development is on the margins of viability with the current CIL charge index linked. The mixed-use scenarios are less viable because of higher BCIS build costs compared to stand alone residential and the drag on viability having ground floor commercial. There is less scope to charge more on brownfield sites as they already have a favourable value, but with a relatively lower return from development than a greenfield site which means that raising CIL charges may negatively affect viability. Current indexing will produce more income.
<b>For elderly accommodation (C3), will the council get more income from using the current indexing or revising the charging schedule?</b>	Elderly accommodation is marginally viable and any increase in the existing use value would make it unviable. Due to the marginal nature of viability, there is no clear justification to increase the C3 charge further than that being achieved through indexation.
<b>For convenience retail (A1), will the council get more income from using the current indexing or revising the charging schedule?</b>	Current indexing will produce more income. The convenience sector has been in decline over the last few years; rents and yields have fallen whereas build cost continues to rise.
<b>Are developments for comparison retail (A1) viable if CIL is charged?</b>	Larger format and smaller format stores in Sutton town centre are viable with the Mayoral CIL but this assumes the redevelopment of office or industrial premises. If the redevelopment occurs on a retail site, development is unviable. Small format development is currently unviable in other centres. It is recommended that seeking CIL is not appropriate.

<b>Are developments for care homes and retirement homes (C2) viable if CIL is charged?</b>	There is no scope for any CIL charge as build costs are much higher than C3.
<b>Are developments for offices (B1a) viable if CIL are charged?</b>	We have carried out Employment Studies for LB Lewisham and LB Bromley and offices in these areas are not viable by a large margin. Build costs in these areas are comparable to LB Sutton and rents are even lower. Office development in LB Sutton is not viable and there is no scope to collect CIL
<b>Are developments for research and development (B1c) viable if CIL is charged?</b>	There is no scope for CIL. Build costs in the R&D sector are significant, around 40% higher than B1a offices. General development is unviable. Development would only come in very special circumstance with an end user in place on onerous terms. In addition, the issue with brownfield development remains, with regards to the inherent value in the land.
<b>Are developments for general industry (B2) viable if CIL is charged?</b>	Our viability testing shows that general industrial development in unviable with the Mayoral CIL and therefore there is no scope for an additional Sutton CIL charge.
<b>Are developments for storage and distribution (B8) viable if CIL is charged?</b>	Our viability testing shows that general industrial development in unviable with the Mayoral CIL and therefore there is no scope for an additional Sutton CIL charge.

- 3.7 These findings are in line with a number of other London boroughs which have investigated revising their charging schedule and found that their existing CIL Charging Schedule with index-linking would generate more income than a revised Charging Schedule. Therefore, it is recommended that there is no change to the council's current charging schedule as this would negatively impact on the viability of schemes, in favour of continued indexation, to ensure that Sutton remains attractive to developers.
- 3.8 In order to ensure the Charging Schedule continues to be set at an appropriate level, it is recommended that a further review is undertaken concurrently with the next Local Plan review in 2023, where decisions on the appropriateness of the council's growth strategy can take account of changing economic conditions, the position on housing delivery and how that impacts on Sutton's infrastructure needs.

### Options Considered

- 3.9 The Viability Assessment undertaken by Aspinall Verdi modelled the impact of revising the charging schedule on the viability of development in Sutton. The modelling showed that both increases to the charging rate, and applying a charging rate to a wider range of development types would make development in the borough less viable, which would have a significant detrimental impact on housing delivery, the economy and employment.

#### 4. Revision of Regulation 123 List

##### Background

- 4.1 The 2013 Regulation 123 List expired in April 2016 during the Local Plan preparation, and has been reviewed in light of current infrastructure needs and best practice.

##### Issues

- 4.2 The principal purpose of the list is to clarify the type of Borough-wide infrastructure that can be funded by CIL as distinct from the planning obligations secured through Section 106 agreements, which can still be sought to make a development acceptable that otherwise might be unacceptable, and can include both monetary and non-monetary contributions. The CIL Regulations ensure that developers are not charged twice for the same item of infrastructure through CIL and s106. Officers have reviewed the current Regulation 123 List against the borough's identified infrastructure needs as set out in the Infrastructure Study (2017) and in the Infrastructure Schedule in the Local Plan (Appendix C). A draft revised Regulation 123 List based on the evidence for Borough-wide infrastructure needs is attached at Appendix B.
- 4.3 The collection of Borough-wide CIL is linked to the capital programme as CIL is proposed to partly fund items of infrastructure through each four-year cycle. The current Regulation 123 list needs to align with the current capital programme to ensure that commitments against infrastructure spending can be met. The CIL Regulations do not stipulate a process for revising a Regulation 123 List but states that changes should be clearly explained and subject to appropriate local consultation. Officers propose to publish a draft revised Regulation 123 List on the council's website and to notify those who have opted to be registered on the planning policy consultation database. Subject to the Strategy and Resources Committee approving the draft revised Regulation 123 List (Appendix B), officers will undertake public consultation in November and report the results in early 2019 with a view to agreeing the list at that time.
- 4.4 In order to ensure the schemes and type of development identified in the Regulation 123 List remain aligned with the council's wider priorities, it is also recommended that the list is reviewed on a regular basis. The recommended format of the revised Regulation 123 list updates the approach from the current list to include infrastructure that has already been identified through previous consultation on the Local Plan and includes some flexibility in being able to revise the list according to changing priorities.

##### Options considered

- 4.5 The council's published Regulation 123 List identifies priorities up to 2016, and is now out of date. Should the council's Regulation 123 List not be amended, the council would not be able to spend CIL monies on revised priorities, such as the Tramlink Extension as this is not identified as a project in the current list.

#### 5. Governance of Neighbourhood CIL

##### Background

- 5.1 CIL Regulations allow for local authorities to spend a portion of CIL receipts for administrative purposes and to spend CIL receipts on Borough-wide infrastructure identified in the the



Regulation 123 List. The Regulations also require that a portion of CIL receipts should be spent in consultation with the local community, i.e. the ‘neighbourhood’ portion, see Table 2 below. Officers recommend how the neighbourhood CIL is allocated and set out possible options for how it could be spent to meet locally identified priorities.

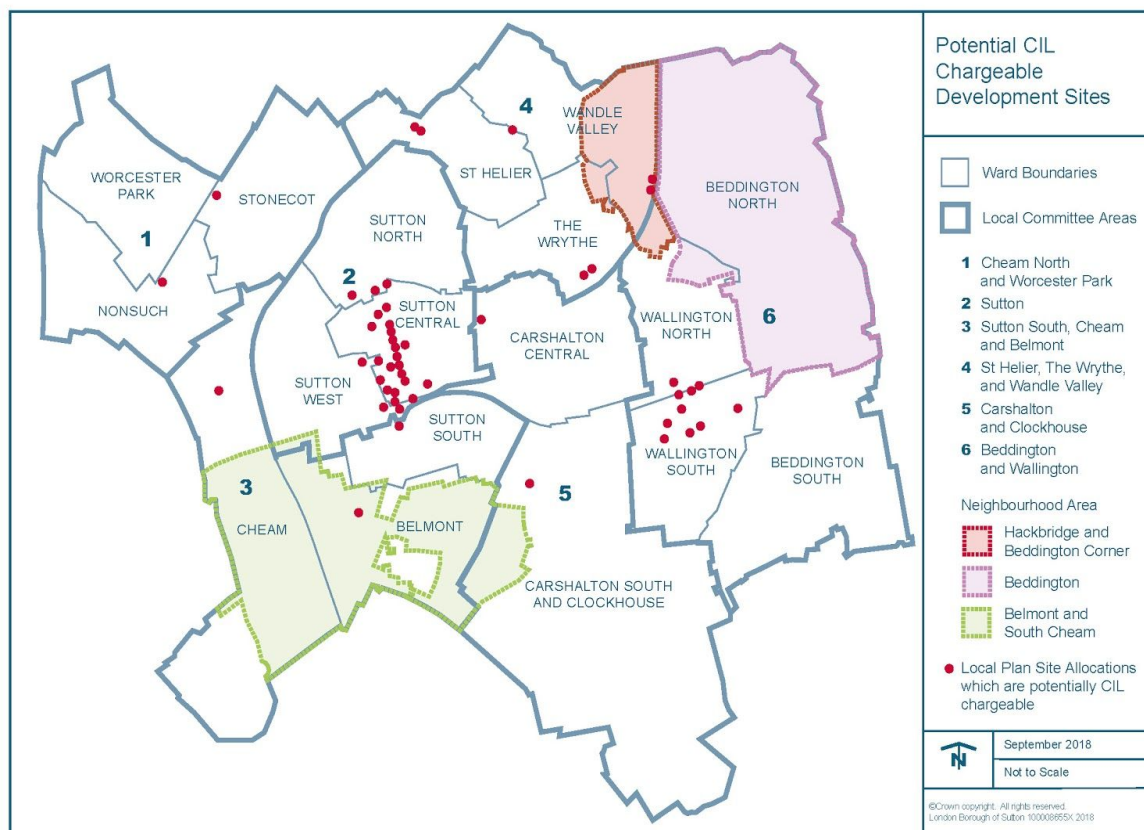
**Table 2: Apportionment of CIL receipts (CIL Regulations 2011)**

Portion	Receipts		Process
<b>Administrative portion</b>	5%		For costs including setting a charging schedule, collection and enforcement
<b>Neighbourhood portion</b>	15% (capped at £100 per dwelling per annum - but index linked from 2014)	no neighbourhood plan in place	Funding retained by council and spent <b>in consultation with local communities</b> .  Can be spent on a wider range of infrastructure than the borough portion
	25% (no cap)	neighbourhood plan adopted	
<b>Borough portion</b>	70- 80 %		Funding spent on infrastructure identified in Regulation 123 List.

**Issues**

5.3 CIL Regulations require that 15% of CIL receipts be spent in consultation with the local community, rising to 25% of CIL receipts in areas with an adopted neighbourhood plan in place. The Government has emphasised that one of the key benefits of CIL is that by accepting development, people will benefit directly from improvements to local infrastructure associated with that growth. Map 1 below shows the designated neighbourhood areas in Sutton and also identifies areas where most development is likely occur, which identifies where the majority of CIL receipts will be raised. Of the three neighbourhood areas designated in Sutton, Beddington North, Belmont and South Cheam and Hackbridge & Beddington Corner, only Hackbridge and Beddington Corner have submitted a Neighbourhood Plan, which has been subject to an independent examination. The Housing, Economy and Business Committee agreed on the 25 September 2018 to make the modifications to the Neighbourhood Plan as recommended by the Examiner and to proceed to a referendum on whether to adopt the plan.

**Map 1: Local Committee Areas, Neighbourhood Areas and Potential CIL Chargeable sites based on Local Plan Site Allocations**



- 5.4 The CIL Regulations do not stipulate how the neighbourhood portion of CIL is allocated but recommends the use of existing community consultation and engagement processes to inform this. In Sutton, Local Committees provide an existing structure through which the distribution of CIL could be managed. It is officers' recommendation that the neighbourhood portion of CIL receipts will influence decisions on needs-based proposals brought forward through Local Committees for local infrastructure. The amount a Local Committee could spend will be influenced by how much CIL is raised in that area, but, in some circumstances, it could benefit areas near the development but across a Local Committee boundary. It is noted that current (and future) Neighbourhood Plans do not cover the entire area designated by Local Committee boundaries and could potentially cross the boundaries of more than one Local Committee area.
- 5.5 The neighbourhood portion of CIL can be spent on anything which addresses the 'demand that development places on an area'. Further work is required to develop a process to agree how community priorities are determined, the assessment criteria for prioritisation to ensure a fair and transparent process for assessment and funding of individual schemes. Any assessment criteria should reflect corporate priorities established through the council's Outcome Based Commissioning approach based on need. Table 3 sets out how potential neighbourhood CIL schemes could be incorporated with this approach.



**Table 3: Outcome Based Priorities - indicative Neighbourhood CIL schemes**

<b>Outcome Based Priorities</b> • Indicative Neighbourhood CIL projects	
<b>Being Active:</b> <ul style="list-style-type: none"> <li>• Improvements to / provision of open spaces / sports facilities</li> <li>• Improvements to / provision of play areas / equipment</li> </ul>	<b>Making Informed Choices:</b> <ul style="list-style-type: none"> <li>• Improvements to / provision for facilities to promote cycling and walking, enabling people to choose sustainable travel options</li> <li>• Supporting local people into jobs and training through employment and training support initiatives</li> </ul>
<b>Living Well Independently:</b> <ul style="list-style-type: none"> <li>• Providing safe and accessible entrances to buildings / facilities to enable access for all</li> <li>• Improvements / repairs to community facilities (eg community halls)</li> </ul>	<b>Keeping People Safe:</b> <ul style="list-style-type: none"> <li>• Lighting schemes</li> <li>• Decluttering public realm to make more accessible and safe</li> </ul>

5.6 The Strategy and Resources Committee is recommended to delegate authority to the Strategic Director of Environment, Housing and Regeneration, in consultation with the Strategic Director of Resources and Lead Members for Planning and Finance, to agree the future governance arrangements for allocating and spending the neighbourhood portion of CIL receipts.

**Options Considered**

5.7 CIL Regulations require the council to fund the ‘Neighbourhood portion’ of CIL in consultation with the local community. The Government does not prescribe a specific process for agreeing how the neighbourhood portion should be spent, but recommends use of existing community consultation and engagement processes. Failure to adequately address the allocation and governance of the neighbourhood portion could lead to legal challenge and reputational damage to the council.

5.8 Other options for allocating neighbourhood CIL included distribution of 25% of CIL receipts borough-wide. This would not disadvantage areas without an adopted neighbourhood plan and would simplify the administration of this spending, but it would also be a disincentive for local communities to prepare neighbourhood plans and could cause a shortfall in funding for schemes in the capital programme. Further options considered were to allocate neighbourhood CIL receipts to Local Committees based on where CIL receipts were raised. However, it was considered that this could disadvantage areas where the impacts of development was felt but funding would not be allocated to those areas.

**6. Impacts and Implications**

**6.1 Financial**

6.2 Table 4 shows the council’s accumulated and projected CIL receipts up to the end of 2021/22 and spending so far against these sums. As explained in the report the total CIL received will need to be split across the admin, neighbourhood and borough portions and then applied



accordingly. To date £753k has been applied from the borough portion against capital expenditure which complies with the existing Regulation 123 list.

**Table 4: CIL Income and Expenditure**

<b>CIL Income and Expenditure</b>	<b>Value</b>
CIL Receipts 2014 to date	£4.231m
CIL Projected 2018-22	£2.442m
2016-17 CIL spend on capital schemes (To nearest 000s: Area Wide Parking Scheme £70k; SDEN - £56k; Beddington Park HLF £38k; Park Improvements 38k; Cheam & Belmont Public Realm £17k; Worcester Park Public Realm 9k; Beddington and Wallington Public Realm £7k)	(£235k)
2017-18 CIL spend on capital schemes (To nearest 000s: Beddington Park HLF £240k; Area Wide Parking Scheme £206k; Park Improvements 28k; Sutton Area Public Realm 19k; Cheam & Belmont Public Realm 18k; Worcester Park Public Realm £6k; Beddington & Wallington Public Realm 1k)	(£518k)
<b>CIL BALANCE UP TO 2022 TO BE APPLIED</b>	<b>£5.920m</b>

- 6.3 Currently capital expenditure priorities for the council are identified as part of the capital programme planning process. As part of the 2018/19 to 2021/22 programme, projected resources from CIL were taken into account and used to partially fund the capital programme. The total level of current and projected future CIL receipts being applied to the programme is £5.920m. This assumed that the Regulation 123 list would be revised to reflect the capital expenditure priorities identified through the capital programme.
- 6.4 The CIL projections are based on known CIL agreements where monies are yet to be received. This is due to the delay between granting permission for development and when work commences, which means that permissions recently granted may only be honouring their CIL obligations two or three years down the line.

#### Legal

- 6.4 The legislation governing the revision, adoption, administration and spending of CIL is contained within the Planning Act 2008 (as amended) and the Community Infrastructure Levy Regulations 2010 (as amended). Government Planning Policy Guidance also provides key guidance to the process of revising levies and Regulation 123 lists, and administering CIL.
- 6.5 The Government consulted on reforms to developer contributions '*Supporting Housing Delivery through Developer Contributions*' in March 2018. This included proposals to remove the requirement for a Regulation 123 List and replace with an annual Infrastructure Funding Statement which would set out how authorities anticipate using funds and how the contributions have been used. Officers will monitor the outcome of the Government consultation and will take into account the implications of any proposals on the work streams noted above.



### Equalities Impact Assessment

- 6.6 The current CIL Charging Schedule and the draft Revised Regulation 123 List are based on evidence for, and information within, the adopted Local Plan which has been subject to a detailed Equalities Impact Assessment (within the Sustainability Appraisal). The conclusions of the EqlA on the Local Plan show that most of the council's planning policies are predicted to have long-term beneficial impacts on one or more of the target equalities groups within the borough.
- 6.7 It is recognised that impact on equalities will continue to be assessed when developing any proposed governance arrangement for the allocation and spending of CIL monies, to ensure the council's public sector equality duty under the Equalities Act 2010 is met.



## 7. Appendices and Background Documents

Appendix letter	Title
A	Regulation 123 List (current)
B	Draft Revised Regulation 123 List
C	Infrastructure Schedule from the Adopted Local Plan (2018)
D	Planning Use Classes Order

Background documents
CIL Review - London Borough of Sutton, Aspinall Verdi (September 2018)
Sutton Local Plan (2018) London Borough of Sutton
Infrastructure Study (2017)
Sutton CIL Charging Schedule (2014) London Borough of Sutton

Audit Trail		
Version	Final	Date: 17 October 2018
Consultation with other officers		
Finance	Yes	Lyndsey Gamble
Legal	Yes	David Fellows
Equality Impact Assessment required	No	N/A

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