

Decision Maker: **Executive Committee**

Date: **14th December 2011**

Decision Type: Non-Urgent Executive Non-Key

Title: **COMMUNITY INFRASTRUCTURE LEVY - DCLG
CONSULTATION ON DETAILED PROPOSALS AND DRAFT
REGULATIONS FOR REFORM**

Contact Officer: Terri Holding, Planning Officer
Tel: 020 8 313 4344 E-mail: terri.holding@bromley.gov.uk

Chief Officer: Chief Planner Bob McQuillan

Ward: All

1. Reason for report

1.1 This report seeks Members agreement to a Council response to the Government's consultation on the detailed proposals and draft regulations for reforms to the Community Infrastructure Levy (CIL). The consultation began on the 10th October and closes on the 30th December 2011. The proposed reforms are the result of changes to the levy proposed by the Localism Bill, now the Localism Act following Royal Assent in November. The issues covered by the consultation are broader than just planning and they open up a discussion on the possible inclusion of affordable housing within CIL.

2. **RECOMMENDATION(S)**

2.1 That the Executive:

- 1) Agree the response to the current consultation as outlined in Appendix 1.
- 2) Note that the preparation of a Bromley CIL is linked to the plan making process and will be brought to the Executive in due course.

Corporate Policy

1. Policy Status: N/A.
 2. BBB Priority: Excellent Council. Quality Environment, Vibrant Thriving Town Centres
-

Financial

1. Cost of proposal: N/A
 2. Ongoing costs: N/A.
 3. Budget head/performance centre:
 4. Total current budget for this head: £
 5. Source of funding:
-

Staff

1. Number of staff (current and additional):
 2. If from existing staff resources, number of staff hours:
-

Legal

1. Legal Requirement: Statutory requirement. Planning Act 2008 Part11
 2. Call-in: Call-in is not applicable. information item
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? No.
2. Summary of Ward Councillors comments:

3. COMMENTARY

3.1 Background.

The Planning Act 2008 (Dec) enabled a planning charge to be collected locally, known as the Community Infrastructure Levy (CIL). Local Authorities have been empowered since April 2010, to levy this charge on most types of residential, commercial and industrial development that involve an increase in floor space. Residential developments under 100 square metres in area will not pay the levy (small domestic extensions). But development that involves the creation of a new residential unit will pay the charge, even if it is below 100 square metres in area.

3.2 Local Authorities, as 'charging' authorities, will need to utilise CIL if they choose, alongside other funding streams to deliver infrastructure plans locally but it cannot be used to remedy existing deficiencies locally. CIL is designed to help fund gaps that are identified when compiling an Infrastructure Delivery Plan (IDP) which is fundamental to the delivery of a vision for the area, required by PPS12 as part of the Local Plan/Core Strategy process. Any authority wishing to charge a CIL must produce a charging schedule setting out the levy rates; the rate should be set at a level that ensures the viability of development in an area is not put at risk. Therefore the introduction of a Bromley CIL requires the preparation of an Infrastructure Delivery Plan (IDP) and a CIL viability assessment. Preparatory work on the IDP is underway, however detail can only be developed as the Core Strategy or Local Plan (as envisaged under the government's proposed planning reforms) emerges. The LDF Advisory Panel is overseeing this process.

3.3 Pooling contributions for infrastructure under section 106 agreements will be significantly restricted after April 2014 or earlier if CIL is adopted locally. For contributions for anything that is not considered to be infrastructure, charging authorities are not restricted, but must have regard to the wider policies set out in Circular 5/05 Planning Obligations and legal tests in the Community Infrastructure Levy Regulations (Reg 122 April 2010).

3.4 Development Control Committee has previously had reports outlining the Government's CIL proposals as they relate to planning. An information item regarding the current consultation was considered by DCC 17th November advising of the Executive report seeking agreement to a Council response. The Executive has been kept advised of the Mayor's CIL proposals. Most recently DCC confirmed continuing objection to the Mayoral CIL and the Chief Planner will be expressing these objections again at the Mayoral CIL Examination in Public which is currently taking place.

3.5 Current Consultation

The Government set out proposals to reform the Community Infrastructure Levy regulations in the 2010 Localism Bill, now the Localism Act. The aim of the consultation is to seek views on matters relating to the detailed implementation of the Government's proposals.

These include:

- The implementation of neighbourhood funds – to give local authorities and their communities the means and flexibility to manage the impacts of development; the local authority will retain the CIL funds and engage with communities in determining how to spend those receipts. Neighbourhoods will be able to spend the funds on the infrastructure that they want, for example open space provision, playgrounds and cycle paths, or by contributing to larger projects funded by other bodies e.g. the Council. Neighbourhood spending cannot be used to remedy pre-existing deficiencies in infrastructure provision, except to the extent that they will be aggravated by new development, as with the Council CIL spending.

- Allowing receipts to be used to provide affordable housing -the Planning Act 2008 allows for affordable housing to be included as a type of infrastructure, but the current CIL regulations prevent receipts being used for this purpose. The Government seeks views on providing local authorities with an option to use the CIL to deliver affordable housing (alongside other forms of infrastructure) where there is robust evidence that doing so would demonstrably better support its provision and offer better value for money. The purpose of the consultation is to consider whether allowing this flexibility would allow for not only more efficient provision of affordable housing but better support delivery of local policies, including off-site provision.
- Requiring charging authorities to report more openly and regularly on receipts and expenditure to improve transparency and understanding of the contribution that developers are making and how those funds are used the Levy reporting requirements are set out in current levy regulation where the levy receipts and expenditure in relation to the previous financial year are reported through the Planning Annual Monitoring Report. The Government want charging authorities to be required to make information on levy receipts and expenditure available to communities in 'real time'.
- Adding new Development Orders to the list of developments that may be liable to a CIL charge – the Localism Bill introduces new provision to allow for planning permission to be granted through Neighbourhood Development Orders, including Community Right to Build Orders.
- Providing transitional provisions to allow fair operation of the levy in Mayoral Development Corporation (MDC) areas. The Government's Localism Bill includes proposed provisions for the designation of Mayoral development areas, and the creation of Mayoral development corporations (MDCs) to drive regeneration in those areas. To assist them in pursuing this purpose, all MDCs would have powers relating to: infrastructure; regeneration, development and other land-related activities; acquisition of land, including by compulsory purchase; streets; the creation of businesses, subsidiaries and other companies; and offering financial assistance. For example in the Mayor is developing an MDC known as Olympic Park Legacy Corporation in East London and the Mayor proposes that, in order to meet his objectives, the Corporation should assume the full range of planning powers and responsibilities permitted by the Localism Bill, and therefore become the planning authority for that specific regeneration area (in collaboration with the four neighbouring boroughs who will be represented on the Corporations planning committee) for the purposes of both plan-making and development control, and for setting and collecting the Community Infrastructure Levy for that regeneration area.

3.6 DCLG has also published draft regulations alongside the consultation document. The consultation explains the effect of the draft regulations and the key questions where consultees' views will help to shape the policy as it is finalised. Views were requested corporately before the questionnaire at Appendix 1 was compiled.

3.7 The suggested response to the questionnaire emphasises that local authorities as locally elected bodies have both the accountability, detailed knowledge and understanding of an area to be best placed to decide how our CIL is spent locally, including the type of infrastructure. The response therefore seeks maximum decision making and discretion at local level. The Council is not yet in a position to make decisions regarding how it might apply the CIL regulations locally and this will be for the Executive to decide in due course.

3.8 Following the closure of the consultation at the end of December, and the passage of the Localism Bill through its final stages, the Government will consider responses to this consultation before finalising the CIL regulations, which will then be laid before Parliament.

4. POLICY IMPLICATIONS

The Community Infrastructure Levy is designed to be a charge to help fund infrastructure which is fundamental to the delivery of a vision for the area, as identified through the Infrastructure Delivery Plan (IDP) which is part of the Core Strategy/Local Plan process. Council's have a choice to develop a CIL in their area at a level that will not effect the economic viability of development.

5. FINANCIAL IMPLICATIONS

Any financial implications arising from this consultation, will be reported to committee at a later date.

Non-Applicable Sections:	Legal and Personnel at this stage.
Background Documents: (Access via Contact Officer)	Planning Act 2008 DCC report 20 th October 2009 -Community Infrastructure Levy (CIL). SPD Planning Obligations December 2010 DCC and Executive report 8 th & 14 th Feb 2011- Consultation on Mayoral Community Infrastructure Levy. CLG - Community Infrastructure Levy Regulation- April 2010 CLG - Community Infrastructure Levy Regulation- April 2011 DC report 17 th November 2011

DCLG Questionnaire

Chapter 1: Neighbourhood funds

1. Should the duty to pass on a meaningful proportion of levy receipts only apply where there is a parish or community council for the area where those receipts were raised?

Yes- for London Boroughs, where there is no lower elected, responsible body, the duty should not apply.

2. Do you agree that, for areas not covered by a parish or community council, statutory guidance should set out that charging authorities should engage with their residents and businesses in determining how to spend a meaningful proportion of the funds?

Yes – set out that they should but not how. It is for the charging authority to decide the best way to engage with the community given its local knowledge and expertise. Any statutory guidance should be limited to the requirement for engagement. Details of how engage how to spend a meaningful proportion of funds should not be the subject of statutory guidance/

3. What proportion of receipts should be passed to parish or community councils?

As this is not currently relevant to this Borough there is no comment.

4. At what level should the cap be set, per council tax dwelling?

As this is not currently relevant to this Borough there is no comment.

5. Do you agree that the proposed reporting requirements on parish or community councils strike the right balance between transparency and administrative burden?

As this is not currently relevant to this Borough there is no comment.

6. Draft regulation 19 (new regulation 62A(3)(a)) requires that the report is to be published on the councils website, however we recognise that not all parish or community councils will have a website and we would welcome views on appropriate alternatives.

As this is not currently relevant to this Borough there is no comment.

7. Do you agree with our proposals to exclude parish or community councils' expenditure from limiting the matters that may be funded through planning obligations?

As this is not currently relevant to this Borough there is no comment.

8. Do you agree with our proposals to remove the cap on the amount of levy funding that charging authorities may apply to administrative expenses?

Yes – Costs of administration are difficult to estimate in advance of introduction and if 4 of the 5% is to be spent on collection 1% would not be sufficient. Charging authorities should be able to recoup all relevant administration charges.

Chapter 2: Affordable housing

9. Do you consider that local authorities should be given the choice to be able if they wish to use levy receipts for affordable housing?

Yes – this should be a local matter.

10. Do you consider that local authorities should be given the choice to be able if they wish to use both the levy and planning obligations to deliver local affordable housing priorities?

Yes there should be a local choice –inevitably using both would mean affordable housing benefiting from CIL whilst its development is exempt from paying CIL. Having affordable housing on the local CIL infrastructure list to be funded locally would potentially mean more funding towards affordable housing from market residential, commercial and industrial build, however depending on local priorities against other types of infrastructure to be provided by CIL in any one year, there could be a risk to affordable housing delivery because of that reliance on that expected income stream. Additionally developers may feel they are funding affordable housing twice.

11. If local authorities are to be permitted to use both instruments, what should they be required to do to ensure that the choices being made are transparent and fair?

Local authorities should provide detail as part of the published CIL annual reporting arrangements but would also have to have levy details available (open book) for developers to access when submitting a proposal to avoid the risk of appeals if developers felt they are being double –charged.

12. If the levy can be used for affordable housing, should affordable housing be excluded from the regulation that limits pooling of planning obligations, or should the same limits apply?

Yes- affordable housing should be excluded from the current regulation limiting pooling, the current operation of affordable housing and expenditure of Payment in lieu (PiL) through s106, contributes towards housing need in the Borough and any limitation or inhibiting of the process only acts as a brake thus preventing the delivery of affordable housing priorities. It is unclear how, if at all, the CIL proposals as set out will improve upon the existing planning policy approach.

Chapter 3: Mayoral Development Corporations

13. Do the proposed changes represent fair operation of the levy in Mayoral Development Corporation areas?

It remains to be seen how this will operate in practice.