

**Decision Maker:** DEVELOPMENT CONTROL COMMITTEE

**Date:** Thursday 10th April 2014

**Decision Type:** Non-Urgent                      Non-Executive                      Non-Key

**Title:** COMMUNITY INFRASTRUCTURE LEVY (CIL) REGULATION  
2014; UPDATE AND IMPACTS

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**Chief Officer:** Jim Kehoe, Chief Planner

**Ward:** (All Wards);

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1. Reason for report

To update Members on the latest changes to the Community Infrastructure Levy (CIL) Regulation which came into effect on 24<sup>th</sup> February 2014.

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2. **RECOMMENDATION(S)**

Members note the report.

### Corporate Policy

1. Policy Status: Statutory
  2. BBB Priority: Excellent Council
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### Financial

1. Cost of proposal: N/A
  2. Ongoing costs: N/A
  3. Budget head/performance centre: N/A
  4. Total current budget for this head: N/A
  5. Source of funding: N/A
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### 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, Community Infrastructure Levy England and Wales (Amendment) Regulation 2014
  2. Call-in: Not Applicable:
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### Customer Impact

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

### Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: N/A

### 3. COMMENTARY

#### Background

**3.1** The Community Infrastructure Levy (CIL) is a tool for local authorities to help deliver infrastructure to support the development of the area. Local Authorities have been able to introduce a CIL since 2010, however there has followed a series of amendments to the regulation and the latest of these came into force on 24<sup>th</sup> February 2014.

**3.2** The Council has been responsible for collecting the Mayor's CIL on qualifying development, since its introduction in April 2012 at a rate of £35 per square metre. Bromley plans to introduce a local CIL to aid the delivery of infrastructure identified through the emerging Local Plan process. The Local Development Scheme which shows the timetable for the Levy and the Local Plan programme was approved by Executive in October 2013. This report outlines the changes to the regulation that will impact on collection of the levy for the Mayor and in the future for the Borough CIL.

#### Context

**3.3** The levy may be payable on development which creates net additional floor space, where the gross internal area of new build exceeds 100 square metres. A charge can be levied on a single house or flat of any size, unless it is built by a 'self builder' (under the new regulation). The definition of 'self-builder' is given in new DCLG CIL Guidance (paras 2.7.5 and 2.7.6) as anybody who is building their own home or has commissioned a home from a contractor, housebuilder or sub-contractor, and people who extend their own homes or erect residential annexes within the grounds of their own homes.

Therefore the list of the types of build that are exempt, and do not pay the levy is now:-

- development of less than 100 square metres (Regulation 42 on Minor Development Exemptions) - unless this is a whole house, in which case the levy is payable
- ***houses, flats, residential annexes and residential extensions which are built by 'self-builders' (new Regulations 42A, 42B, 54A and 54B)***
- ***social housing that meets the relief criteria set out in Regulation 49 or new regs 49A, 49c -to ensure that rental housing provided at no more than 80% of market rent will be eligible for social housing relief, and provides for social housing communal areas (stairs/parking) to benefit from relief***
- charitable development that meets the relief criteria set out in Regulations 43 to 48
- buildings into which people do not normally go (see Regulation 5(2))
- buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery (see Regulation 5(2))
- structures which are not buildings, such as pylons and wind turbines
- specified types of development which local authorities have decided should be subject to a 'zero' rate and specified as such in their charging schedules
- ***vacant buildings brought back into the same use (Regulation 40 as amended by the 2014 Regulations)***

#### Other key changes to the regulation affect infrastructure planning.

**3.4** ***Authorities are now required to strike an appropriate balance between the desirability of funding infrastructure through CIL and impacting development viability.*** This is much more specific as the previous regulations had said only that Councils "must aim" to strike this balance.

**3.5 The implementation of the s106 pooling deadline (previously April 2014) has been pushed back.** Now the regulations will delay until April 2015 the introduction of restrictions on councils' ability to rely on section 106 agreements to fund infrastructure. However, Affordable housing will remain under the s106 system.

**3.6 There are new rate setting freedoms as Councils can now set levy rates** "by reference to either floor area or the number of units or dwellings in a development". Previously, councils were able to set different rates by reference to geographic zones and for different use of development, but not in relation to the size of a development. This enables refinement for Councils.

**3.7 Phasing provisions has been expanded.** Under previous regulations, each phase of an outline permission triggered a CIL payment. This now applies also to full permissions.

**3.8 Payable in kind provisions have been overhauled.** Charging authorities can now accept payments in kind through the provision of on-site or off-site infrastructure for the whole or part of the levy payable on a development. However, this can only happen if the infrastructure to be provided is identified on the regulation 123 list of types of infrastructure to be funded through CIL. Previously only land could be provided in lieu of a CIL payment. As an example, the regulation 123 list would typically include Education, Healthcare and Community facilities.

### **How does the levy charge relate to infrastructure planning?**

**3.9** Information on the Council's infrastructure needs would be drawn from the infrastructure assessment that is undertaken as part of preparing the Local Plan. This is because the plan identifies the scale and type of infrastructure needed to deliver the area's local development and growth needs (National Planning Policy Framework (NPPF) paras 162 and 177), "sites and the scale of development identified in the plan should not be subject to such a scale of obligations and policy burdens that their ability to be developed viably is threatened".

**3.10** The Council must identify the total cost of infrastructure it wishes to fund wholly or partly through the levy. Consideration is made about what additional infrastructure is needed to support development, and what other sources of funding are available, based on appropriate evidence.

**3.11** Then having determined the size of its infrastructure funding gap, the Council will consider known and expected infrastructure costs and the other possible sources of funding to meet those costs. This process will help to identify a levy funding target and focus on providing evidence of an aggregate funding gap that demonstrates the need to put in place the levy.

**3.12** New regulation 5(3)(a) **provides for the draft list of infrastructure the Council intends to fund in whole or part through the levy (reg 123 list) to be used to inform the drafting of the charging schedule.** Therefore at examination, the Council will set out the list of the projects or types of infrastructure. Importantly new regulation 12(a) and (b) **restricts the use of highway agreements under section 278 of the Highways Act 1980**, thereby planning powers cannot be used to require a developer to enter into a s278 agreement in relation to highways infrastructure that the authority intends to fund through the levy and has been listed on the regulation 123 list. At examination the Council will also set out any known site-specific matters for which s106 contributions may continue to be sought and as background evidence, and the Council will provide information about the amount of funding collected in recent years through s106 agreements.

## In summary developing a CIL charging schedule through to adoption.

### 3.13 Summary

- Preparation of a sound viability evidence base in order to prepare draft levy rates, and collaboration with neighbouring/overlapping authorities (and other stakeholders) - *as part of the duty to co-operate*
- the local authority prepares a preliminary draft charging schedule (based on evidence about the infrastructure needs of the area and the ability of development in that area to fund that infrastructure in whole or in part) and publishes this for consultation –*the authority ‘must now strike an appropriate balance’ and if there is any doubt as to viability to deliver development, this would affect the soundness of the local plan, and delay both the local plan and levy process*
- consultation process takes place
- the charging authority prepares and publishes a draft charging schedule
- period of further representations based on the published draft
- an independent person (the “examiner”) examines the charging schedule in public (*eip*)
- the examiner’s recommendations are published
- the charging authority considers the examiner’s recommendations
- the charging authority approves and adopts the charging schedule

### Potential Financial impact of the new regulation 2014.

**3.14** The changes to the regulations will now mean a reduction in monies generated by CIL, which are currently only collected for the Mayor. This will be because a large proportion of CIL liable cases in Bromley, that in the past had attracted a payment, are now those categorised as ‘self-build’ and these along with granny annexes and extensions will no longer be charged the levy.

**3.15** For 2013/14 current data shows that in Bromley self build applicants, either through new build or replacement dwelling and extensions, represent some 49% of cases. This is where a demand notice has been issued in Bromley on behalf of the Mayor for Crossrail. This represents over 27% of income received. Whilst developer- led cases (which remain as CIL liable) represent over 38% of cases and over 69% of income received.

**3.16** To pay for the costs of collection, administration and monitoring, Bromley receives 4% of the amount collected on behalf of the Mayor. In 2012/13, the 4% amounted to £5,452 and in 2013/14 the 4% is expected to amount to around £33,000. Software used to collect the levy and the arrangement to send invoices and accept payment with Liberata represent two fixed costs, totalling £11,000.

**3.17** It is not possible to accurately predict the income in 2014/15 because CIL demand notices are sent out following the start of building work rather than with planning permission, but before the new regulation came into being, a rise in the income derived from the 4% collection fee would have reasonably been expected to be between £33,000 and £50,000. However, as self-building has become exempt and the ‘vacancy test’ (*revised reg 40*) has become more lenient, an income of between £24,000 and £36,000 could be estimated based on the 27.8% of payments so far coming from self-build projects and change of use applications.

**3.18** Finally the self-build, extensions, and annex cases, though exempt from the levy, and therefore not bringing in monies, and consequently no 4%, at the same time will increase responsibilities on the Council as the new regulations require the Council to monitor each case **for three years after completion**, in a revision of the clawback period **reg 2 (1)**, to ensure the applicants are genuine self-builders, and for extensions/annexes, that the use is not changed, sold or let.

#### 4. POLICY IMPLICATIONS

4.1 Statutory policy in compliance with the Planning Act 2008 and Community Infrastructure Levy Regulations (amendment) 2014.

#### 5. FINANCIAL IMPLICATIONS

5.1 The potential financial impact of the changes to the CIL Regulations are included in the paragraphs 3.14 to 3.18

#### 6 LEGAL IMPLICATIONS

6.1 Compliance with the Planning Act 2008, and Community Infrastructure Levy England and Wales (Amendment) Regulation 2014.

<b>Non-Applicable Sections:</b>	<b>PERSONNEL IMPLICATIONS</b>
Background Documents: (Access via Contact Officer)	Development Control Committee 12 Sept2013, and Executive 16 <sup>th</sup> Oct 2013: Local Development Scheme October 2013 Executive 14 <sup>th</sup> Feb 2011; Consultation on Mayoral Community Infrastructure Levy. Executive 14 <sup>th</sup> Dec 2011 Community Infrastructure Levy