

Borough Plan Advisory Committee

Date: 01 July 2013

Agenda item: 05

Subject: Merton's Community Infrastructure Levy – submission to the Secretary of State

Lead officer: Director for Environment and Regeneration, Chris Lee

Lead member: Cabinet Member for Environmental Sustainability and Regeneration, Councillor Andrew Judge

Forward Plan reference number: 1252

Contact officer: Strategic Policy and Research Manager, Tara Butler

Recommendations:

That the Borough Plan Advisory Committee recommends to Cabinet (01 July 2013) and full Council (10 July 2013) that

1. Merton's Community Infrastructure Levy Charging Schedule is submitted to the Secretary of State for examination by a Planning Inspector.
 2. That any changes to Merton's CIL charging schedule that arise between 11 July 2013 and the receipt of the Inspector's final report are delegated to the Director of Environment and Regeneration, Chris Lee, in consultation with the Cabinet Member for Environmental Sustainability and Regeneration, Councillor Andrew Judge.
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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 By April 2014, the Community Infrastructure Levy (CIL) will largely replace Section 106 agreements in helping to fund infrastructure necessary to support new development. "Infrastructure" can include education, health, community facilities, public realm initiatives, parks and other open spaces, sports facilities, walking and cycling routes, nature conservation and other matters. Affordable housing will still be secured through S106 obligations.
- 1.2 Local Authorities who wish to charge the levy must produce a CIL charging schedule setting out CIL rates for their area, which are expressed as pounds sterling per square metre (e.g. £100 per square metre).
- 1.3 In accordance with the regulations, Merton's CIL Charging Schedule has been presented for public consultation twice (January-March 2012 (with responses accepted into May 2012) and January-February 2013).
- 1.4 The purpose of this report is to recommend that the Borough Plan Advisory Committee recommends that Cabinet and full Council resolve that Merton's CIL

Charging Schedule be submitted to the Secretary of State for examination by an independent planning inspector.

- 1.5 In order to ensure that effective and timely decisions are made to help progress CIL through the examination, it is also recommended that the Borough Planning Advisory Committee recommends the delegation of any changes to Merton's CIL charging schedule that arise between 11 July 2013 and the receipt of the Inspector's final report to the Director of Environment and Regeneration, Chris Lee, in consultation with the Cabinet Member for Environmental Sustainability and Regeneration, Councillor Andrew Judge.

2. DETAILS

- 2.1 CIL is a charge per square metre of additional floorspace. The funds raised can be used by the local authority to help pay for local infrastructure necessary to support development (e.g. parks and open spaces, school places, healthcare, public realm improvements etc).
- 2.2 Government is clear that CIL should only be used to part fund infrastructure, usually between 10% and 30% of the total cost. Other sources of funding, e.g. government borrowing, grants etc should make up around 70% of the costs of what is needed.
- 2.3 Once the CIL charge is adopted, it is a mandatory land charge and therefore is non-negotiable unless exempt through the CIL Regulations from paying CIL. It is payable once construction has started, not when planning permission is granted.
- 2.4 The CIL charge cannot be set so high that it blights the area or makes development unviable; such charges would not pass the Planning Inspector's independent examination. The CIL regulations and guidance makes clear that a CIL charge must be informed by and consistent with local viability evidence. The charge must be set so that most (not all) development in the borough will still be viable, and therefore able to be built once the charge is imposed. Merton's CIL Charge meets these requirements, and all other requirements of government's regulations.
- 2.5 Under government's CIL regulations, only additional floorspace can be charged CIL. In Merton, as in most urban locations, most sites have existing buildings on them. In most cases, the total floorspace of the existing buildings has to be subtracted from the total floorspace of the new buildings and only the remainder liable for CIL. In practice, this is likely to mean less funding for local infrastructure.

Merton's CIL Charges



- 2.6 Merton's proposed charge for **residential development**: two zones, based on assessment of viability by postcode:
- £220 per square metre in Colliers Wood, Raynes Park and Wimbledon;
 - £115 per square metre in Mitcham, Morden and West Barnes; and,
 - £100 square metre proposed for retail superstores and warehouses.
- 2.7 The map on the next page illustrates Merton's proposed charge for new residential development, and also the adopted or proposed CIL charges for additional residential floorspace in neighbouring boroughs.
- 2.8 The recommended charge for **retail superstore/ warehouses** across Merton is £100 per square metre. It is not recommended that a CIL charge is levied on other forms of retail development in Merton (e.g. smaller shops, cafes, restaurants).
- 2.9 Superstores/ supermarkets are defined as shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit. Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers. Charging CIL on all other retail premises, such as smaller shops, was not found to be viable.

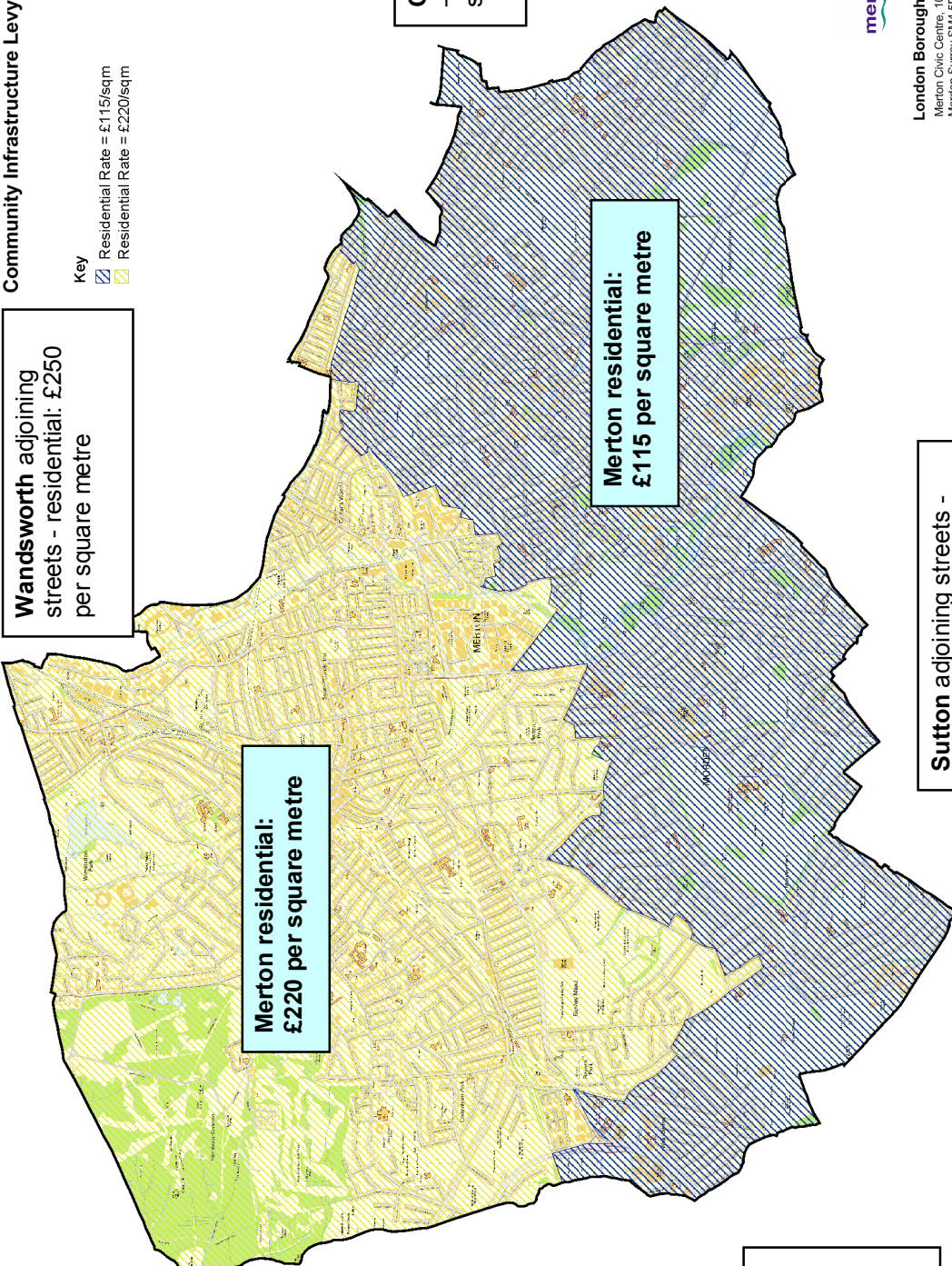
Development other than residential or retail superstores

- 2.10 Viability research demonstrates that additional new retail floorspace in Wimbledon town centre would be viable for a CIL levy of £100 per square metre. However other evidence demonstrates that very little new retail development is expected to come forward in Wimbledon town centre that will actually be liable for CIL. Analysis of historic planning permissions for developments in Wimbledon town centre shows that there have been no new retail developments over the last few years that did not replace existing retail floorspace. Analysis of schemes that are expected to come forward demonstrates that there is limited scope for new retail floorspace on sites in Wimbledon town centre that does not replace existing floorspace. The number of CIL-liable developments that could come forward in Wimbledon town centre over the next decade will not make a significant contribution to delivering Merton's Core Planning Strategy. To keep Merton's initial charge simple and straightforward, Merton is not proposing a CIL charge for Wimbledon town centre.
- 2.11 The viability reports found that no other types of development in Merton (e.g. offices, industrial buildings etc) are currently likely to be viable enough to support

Merton proposed Community Infrastructure Levy charge – comparison with the adjoining zones of neighbouring boroughs for residential floorspace (June 2013)

Community Infrastructure Levy Zones

- Key
-  Residential Rate = £115/sqrm
 -  Residential Rate = £220/sqrm



Wandsworth adjoining streets - residential: £250 per square metre

Croydon adjoining streets -residential: £120 per square metre

Merton residential: £115 per square metre

Merton residential: £220 per square metre

Sutton adjoining streets - residential: £100 per square metre

Kingston adjoining streets: residential: £210 per square metre (five different zones across the borough)

Kingston adjoining streets: residential: £85 per square metre (five different zones across the borough)

Kingston adjoining streets: residential: £50 per square metre (five different zones across the borough)



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a CIL charge, in addition to the £35 per square metre already levied by the Mayor of London. Therefore the recommended charge for other forms of development in Merton is zero.

Allocating CIL to projects in Merton (from April 2014 – assuming it passes examination)

- 2.12 By far the greatest concern expressed by local groups at CIL consultation is how CIL receipts will be allocated to local projects. Although this is not an issue that the council has to decide on before Merton's CIL is implemented (circa April 2014), it is advisable to show how the council is thinking about distributing CIL receipts as part of the CIL examination.
- 2.13 15% of all CIL receipts must be spent on projects the allocation to which must be advised by Merton's communities. Section 5 of this report *Financial and property implications* shows that Merton's annual CIL receipts are estimated to be c £1million per annum, which would mean £150,000 for all local communities in Merton to share in helping to fund their priority infrastructure projects. Many boroughs are using their neighbourhood forums to advise on the allocation of this percentage. It is proposed that local communities submit projects to be added to a list, known as **neighbourhood infrastructure list** and that community will be consulted again on before it is adopted. This process is to ensure that all views are captured, that proposed projects accord with the CIL Regulations, and that there are other available funding sources to support the proposed project. The list will have to help prioritise which projects are part-funded by CIL.
- 2.14 The remaining 85% of Merton's CIL receipts are for the council (in Merton's case) to allocate for strategic infrastructure. According to the CIL Regulations, council's can't "double count" by asking for both Section 106 and CIL funding from the same development to help fund the same infrastructure. Therefore anything that the council wants to spend CIL on must be part of a published list known as the **strategic infrastructure (Regulation 123) list**. It is proposed to start with the same process as is already set up for the allocation of Section 106 funding.
- 2.15 Although the Planning Inspector won't be judging how councils' allocate their CIL receipts, councils should demonstrate that they are exploring the options to allocate CIL while they are preparing their CIL charging schedules, and how CIL and Section 106 will work together.
- 2.16 To do this, officers are drafting a revised *Planning Obligations* supplementary planning document to illustrate Merton's early thoughts on CIL and Section 106. This first officers' draft will be submitted to the Secretary of State for information (not for decision). Once the results of Merton's CIL examination is known (likely in December 2013) it is proposed to update the draft, recommend it to councillors

for six weeks of public consultation in early 2014, progressing to adoption by April 2014.

Merton's CIL Charging Schedule – what's happened so far

2.17 **January - March in 2012:** Consultation on Merton's *Preliminary Draft CIL Charging Schedule* (the first phase of creating Merton's CIL charge). Based on viability evidence published with the schedule, it proposed charging three zones for new residential development:

- £385 per square metre in north Wimbledon;
- £140 per square metre for Colliers Wood to Raynes Park (including Wimbledon Park and Merton Park) and
- £42 per square metre for Mitcham and Morden
- £100 per square metre was proposed for new retail development in Merton

2.18 **April 2012.** Since 01 April 2012 Merton has been collecting the Mayor of London's CIL charge on behalf of the Mayor, which contributes to funding Crossrail. This CIL charge of £35 per sqm in Merton is levied on most developments except for affordable housing, education, health uses and developments used for charitable purposes. Merton has to take the Mayor's pre-existing CIL charge into account when setting its own CIL charge.

2.19 **May 2012** The responses to this consultation were reported to the Borough Plan Advisory Committee.

2.20 June-December 2012

- Additional viability evidence was undertaken following the responses received from this consultation, (including those submitted from the Mayor of London), and,
- A new charge was proposed based on responses from the previous consultation, government's publication of new CIL Regulations in October 2012 and December 2012, the additional viability evidence and best practice from other councils.

2.21 January-March 2013

- Merton's draft CIL Charging Schedule finalised (the second phase of creating Merton's CIL) and reported to Cabinet. Consultation started on 25th March 2013 and will run until 10 May 2013. Merton's draft CIL charge is summarised below:

Next steps:

2.22 Officers' recommend that the following information is submitted to the Secretary of State:

- Merton's CIL Charging Schedule showing how much the council is proposing to charge, and a map illustrating where these charges will apply
- Viability evidence supporting Merton's CIL Charging Schedule
- What people and organisations said at the two consultation stages, how the council considered and actioned their comments (known as a "statement of consultation")
- Illustration of how Merton's CIL receipts might be allocated and how Merton Council might use CIL and Section 106 together, without double counting (in the form of draft *Planning Obligations guidance*) and,
- *Other documents that may be required for the examination.*

2.23 The proposed timetable is as follows:

Target Milestones	Timescale
Recommend final CIL Charge to Merton's Borough Plan Advisory Committee	26 June 2013
Recommend final CIL Charge to Merton's Cabinet	01 July 2013
Recommend final CIL Charge to Merton's Council	10 July 2013
Submission to Secretary of State	17 July 2013
EiP Hearing (<i>timetable depends on Planning Inspector</i>)	Autumn 2013
Adoption	Winter 2013
Implementation	Spring 2014

Delegated authority for changes to Merton's CIL

2.24 CIL is still a new concept and less than 20% of councils in England and Wales have adopted it. Government has published five changes to CIL Regulations and guidance in the last nine months; the most recent government consultation only closed on 28 May 2013

2.25 As it is likely that CIL Regulations and guidance will change during the course of the independent examination, and that the Planning Inspector may require swift decisions to be made on Merton's CIL during the course of this process, it is recommended that approval for any changes to the CIL Charging Schedule that

is presented to council in July 2013, be delegated to the Director for Environment and Regeneration in consultation with the Cabinet Member for Environmental Sustainability and Regeneration. Assuming it passes the public examination, Merton's final CIL Charging Schedule would be recommended to councillors for adoption.

3. ALTERNATIVE OPTIONS

- 3.1 Since 01 April 2012, London boroughs have been levying and collecting CIL on behalf of the Mayor of London. Boroughs should set their own CIL before April 2015. Without a CIL, boroughs will have very limited ability to pool funding secured through s.106 contributions.
- 3.2 Several viable alternative options were explored and rejected in recommending the CIL charge set out in this report.
- 3.3 One option was to continue to apply the proposed changes as set out in the Preliminary Draft CIL Charging Schedule (January 2012). This option was rejected as the proposed charges did not reflect up-to-date viability evidence available to the council (November 2012), or best practice advice from other councils on keeping CIL simple and straightforward for the initial charge.
- 3.4 Another option was to recommend that Merton's draft CIL charge be applied to residential development exactly as set out in the latest viability report (November 2012), with five different charges applied to five different zones in Merton. This approach was viewed as unduly complex to take forward for Merton's first CIL, contrary to best practice guidance which strongly advises that CIL charges are kept simple so as not to put development delivery or implementation at risk.
- 3.5 Another option was to apply the maximum level of charges set out in BNP Paribas report as financially viable. This option was considered to be inappropriate as Government Guidance advises against setting rates at the margin of viability. Officers are recommending more conservative rates that would help mitigate against changing market conditions and ensure that development can still progress in Merton while paying CIL.
- 3.6 Another option was to apply one CIL charge for residential development to the whole borough, reflecting the lowest level of viability in the borough. CIL will be used to fund infrastructure (such as healthcare, school places, open spaces, biodiversity) essential to supporting new homes in the borough. Merton has a wide variation in sales prices across the borough. Applying one CIL charge for residential development to the whole borough would keep CIL simple but would reduce the amount of funding for infrastructure necessary to support new development, and potentially put the delivery of Merton's Core Planning

Strategy at risk if infrastructure couldn't keep pace with new residential development.

4. CONSULTATION UNDERTAKEN OR PROPOSED

4.1 As set out in section 2 of this report, Merton's CIL Charging schedule has been consulted on twice: the first time between January and March 2012 (responses were accepted into May 2012) and the second time between March and May 2013.

4.2 The responses received covered a number of issues including:

- The type of development that is CIL liable, for instance large extensions and basements.
- The methodology of the viability report and the relationship with the Mayor's CIL (response from the Mayor of London).
- Questions on the assumptions on the costs of development in Merton which had been incorporated into the viability work which informed Merton's CIL (e.g. the costs of the Mayor's CIL, affordable rent, affordable housing Section 106 charges).
- Concerns with the proposed charge for retail warehouses/ superstores and evidence used to support this charge.
- Concerns with the impact of the proposed CIL charges on development in Merton.
- Questions relating to the government's CIL Regulations and how CIL will be allocated for spending in Merton.

4.3 Responses to these consultations have been considered in preparing Merton's final CIL. Responses and the council's actions from these responses are set out on Merton Council's website: www.merton.gov.uk/CIL

5. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

Financial, Resource and Property implications of moving from S106 to CIL

6.1 Government guidance is clear that CIL should be used as part of infrastructure funding, usually between 10% and 30% of the funding needed. (For example, the Mayor of London is using the Mayoral CIL, levied on all London boroughs, to pay for £300million for Crossrail. However this is less than 5% of the total funding necessary to deliver Crossrail, currently forecast as £15.9 billion.)

6.2 The total funding needed to support local infrastructure (e.g. education, healthcare, transport, open spaces etc) throughout the 15-year lifetime of the Core Planning Strategy excluding funding from other sources is circa £154million. This is very similar to other London boroughs.

- 6.3 Under CIL Regulations, 15% of all CIL raised should be allocated by local community groups to help fund projects that they see as important to them.
- 6.4 In the 11 years between 2000 and 2011, Merton received on average £960,000 per year in Section 106 receipts. However across each of the 11 years this varied from circa £400k in one year to circa £3million in another year, depending on what developments were built that year.
- 6.5 Like most outer London boroughs, many of Merton's development sites are not vacant land but have existing buildings on them. Under Government Regulations, CIL can generally only be levied on the net additional floorspace (i.e. not including the existing floorspace on the site) therefore this reduces the CIL liable for redevelopment of sites that already have buildings on them.
- 6.6 Not all developments will be charged CIL (e.g. affordable housing, charitable institutions, healthcare, community, education, office, industrial are either exempt in the Regulations or unviable for CIL in Merton).
- 6.7 Therefore, Merton's CIL revenue could average circa £1,000,000 in CIL receipts per annum, very similar to what Merton already receives in Section 106. This estimate is based on:
- development trends in Merton since 1999,
 - development forecast by use and area for the next five years,
 - consideration of CIL exemptions,
 - the potential CIL charges proposed in this report, and
 - the example of collection the Mayor of London's CIL in Merton over the nine months since April 2012.
- 6.8 It is difficult to accurately forecast CIL receipts due to the complicated nature of levying the new charge, the uncertainty surrounding proposed further government amendments to the CIL regulations, when and whether development will start construction and how often landowners will pursue CIL exemptions. CIL is payable once construction has started on site. Once planning permission is granted developers have up to three years to start construction and may apply for an extension to this.
- 6.9 The Planning Inspector will be examining Merton's CIL charge to ensure that it allows development to remain viable in Merton and will not blight an area by requiring an unreasonable contribution towards local infrastructure.

6. LEGAL AND STATUTORY IMPLICATIONS

- 7.1 Part 11 of the Planning Act 2008 introduces CIL. CIL is also provided for by the Localism Act 2011. Government have prepared CIL Regulations 2010; CIL (amendment) Regulations 2011 and 2012.

- 7.2 As the CIL draft Regulations 2012 relate mainly to how CIL is spent, Merton's CIL Charging Schedule is being prepared in line with the provisions of the CIL Regulations 2010 (as amended).
- 7.3 There have been five different sets of CIL Regulations and guidance published since September 2012, all of which have some bearing on how CIL is prepared (though generally a greater focus on how CIL is spent). Public consultation on the most recent draft CIL Regulations ended on 28 May 2013. Merton's CIL Charge illustrates where matters might change, were the provisions of this consultation to be adopted by government.
- 7.4 Section 106 will be largely replaced by CIL from April 2015. Planning Inspectors are already closely examining Section 106 agreements at planning appeals to ensure that each agreement meets the terms of the CIL Regulations, and striking out those that are deemed not to comply. Therefore it is important that Merton's CIL charge is adopted in a timely manner in order to help fund local infrastructure projects.

7. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 7.1 None for the purposes of this report. If Merton's CIL passes its independent examination, it is proposed to redraft Merton's *planning obligations guidance* to set out how Section 106 and CIL will be allocated. This would be recommended to councillors for six weeks of public consultation, and would be accompanied by an equalities impact assessment.

8. CRIME AND DISORDER IMPLICATIONS

- 8.1 Planning obligations are used to fund infrastructure to reduce crime and disorder, including CCTV. As infrastructure providers, the Met Police may apply to local authorities for CIL funding.

9. RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 9.1 It is considered that starting to prepare for CIL implementation at this stage is essential to reducing the risks of losing out on infrastructure funding, where Section 106 agreements do not meet the terms of the CIL Regulations 2010. It would also reduce the risks of not being ready to charge CIL by April 2014.

10. APPENDICES – the following documents are to be published with this report and form part of the report

Appendix 1: A CIL charging schedule for Merton

11. BACKGROUND PAPERS

Merton-specific (in reverse date order)

- Merton CIL draft charging schedule (consultation 25 March to 10 May 2013)
<http://www.merton.gov.uk/environment/planning/cil.htm>
- Merton's Statement of Consultation for Merton's CIL Preliminary Draft Charging Schedule:
http://www.merton.gov.uk/environment/planning/merton_preliminary_draft_cil_consultation_statemtn_2012-2.pdf.
- Merton's CIL Preliminary Draft Charging Schedule 2011:
http://www.merton.gov.uk/enivronment/planning/merton_cil_prelim_draft_charging_schedule_jan2012_final.pdf.

Mayor of London

- Use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy –draft SPG (November 2012):
<http://www.london.gov.uk/sites/default/files/SPG-planning-obligations-Crossrail-CIL-draft.pdf>
- Mayor of London Community Infrastructure Levy (April 2012)
<http://www.tfl.gov.uk/businessandpartners/23188.aspx>

Government Regulations and guidance

- April – May 2013 CIL further reforms (consultation) (DCLG) (proposes amendments to the existing Regulations)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/190882/Consultation_on_Community_Infrastructure_Levy_further_reforms.pdf
- December 2012 - CIL Statutory Guidance (DCLG) (replaces and amends December 2010 statutory guidance)
- November 2012 - Amendments to the CIL Regulations (DCLG)
- October 2011 - "Community infrastructure levy – collection and enforcement", information document DCLG
<http://www.communities.gov.uk/publications/planningandbuilding/cilcollectionenforcement>
- October-December 2011 Community Infrastructure Levy: detailed proposals and draft regulations for reform: consultation (CLG)
<http://www.communities.gov.uk/publications/planningandbuilding/cilreformconsultation>

- May 2011 “Community Infrastructure Levy Relief”, Information document, DCLG
- May 2011 “Community infrastructure levy – an overview”, May 2011 DCLG
- April 2011 The Community Infrastructure Levy (Amendment) Regulations
- November 2010 “The Community infrastructure levy summary”, DCLG
- March 2010 “Community infrastructure levy guidance – charge setting and charging schedule procedures”, DCLG
- 2010The Community Infrastructure Levy Regulations

Useful guidance

Planning Advisory Service – CIL frequently asked questions

<http://www.pas.gov.uk/pas/core/page.do?pageld=1242969>

Planning Officers Society CIL advice note (October 2011):

http://www.planningofficers.org.uk/downloads/pdf/POS%20advice%20note_CIL%20and%20Infrastructure%20Planning_October%202011_V2.pdf