

Committee: Borough Plan Advisory Committee

Date: 25 June 2014

Wards: all

Subject: Public consultation on Merton's draft project lists for CIL funding (Reg 123) from September 2014

Lead officer: Director for Environment and Regeneration, Chris Lee

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

Contact officer: Future Merton strategic policy manager, Tara Butler

Recommendations: That the Borough Plan Advisory Committee advises Cabinet of the following:

- A. That Cabinet approves six weeks of public consultation on Merton's Community Infrastructure Levy (CIL) strategic infrastructure project list (Reg 123 List) and neighbourhood project lists to start in September 2014.
 - B. That approval of the consultation documents and other matters be delegated to the Director of Environment and Regeneration in consultation with the Cabinet member.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 Government has changed the way developments contribute towards local schools, health centres, parks, roads and other necessary local infrastructure by introducing the Community Infrastructure Levy (CIL). CIL largely replaces the previous legal mechanism, known as Section 106 agreements (S.106), in helping to fund infrastructure necessary to support new development.
- 1.2 "Infrastructure" is defined in the Localism Act 2011 and 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 Section 106 agreements.
- 1.3 CIL is a non-negotiable charge, calculated on the floorspace (per square metre) of new development, usually as part of the planning application process. Since 01 April 2014, Merton's CIL charge has been applied to planning permissions for new residential developments, retail superstores and retail warehouses.
- 1.4 All councils must have two project lists to indicate what infrastructure the funds collected via their CIL Charge might be spent on. On 10 March 2014, Council adopted an initial strategic projects list on the understanding that public consultation on the list of projects would take place later in 2014.

- 1.5 As 15% of CIL funding should be spent in the local area where the development is, local communities will now have the opportunity to propose projects to be put on their local neighbourhood list.
- 1.6 This report recommends that cabinet approve six weeks of consultation on two lists of projects: a draft strategic projects list and a draft neighbourhoods list. Consultation would start in September 2014 and it is recommended that approval of the consultation documents be delegated to the Director of Environment and Regeneration in consultation with the Cabinet Member.

2 DETAILS

- 2.1 CIL is a charge that can be levied on development under the CIL Regulations 2010 (as amended) and government guidance.
- 2.2 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 and public realm improvements etc).
- 2.3 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. private finance, government borrowing, grants etc. should make up around 70% of the costs of what is needed.
- 2.4 It is expected that Merton's CIL will generate approximately £1million a year in total to help fund healthcare, education, open spaces and all other forms of infrastructure. As with most London boroughs, Merton's infrastructure funding requirement is approx. £150million between 2011 and 2026.
- 2.5 Merton's CIL charge was adopted on 20 November 2013 and applies to new developments in Merton that are granted planning permission from 01 April 2014. For the most part, CIL will replace S.106 agreements for securing funding for infrastructure. S.106 agreements will remain for affordable housing, non-infrastructure measures and the occasional site specific infrastructure requirement like a site access road/crossover.
- 2.6 As set out in the reports to council in March 2014, lists of projects that may receive CIL funding should be consulted on. This allows residents, businesses and other key stakeholders to suggest projects to be considered for some CIL funding. All projects put on these lists would have to be in accordance with government regulations and statutory guidance.

Strategic infrastructure projects

- 2.7 The strategic infrastructure project list is also often known as the “Regulation 123 list” after the regulation it is based on. Most CIL should be spent on projects on this list. Government guidance and best practice can be summarised as follows:
- approximately 85% of CIL should be spent on strategic infrastructure projects.
 - projects on this list should be based on strategic infrastructure already identified in Merton’s Core Planning Strategy 2011. Table 27.2 of Merton’s Core Planning Strategy sets out the key infrastructure projects that are needed to support the planned development of the borough up to 2026
 - the council must publish the full list on the website for as long as Merton’s CIL charge applies to new development. This is to provide clarity to developers seeking planning permission as to what infrastructure the council might spend their CIL payments on and what infrastructure they may still have to pay for through other obligations required in association with planning permissions. (for example Section 106 agreements or Section 278 agreements for highways)
 - Not all of the projects on Merton’s Strategic Infrastructure List will secure funding in any given year as Merton’s CIL is likely to be small relative to demand for funding.
 - Where a list has been published (as in Merton’s case) it can be amended via community consultation.
 - Projects on this list should be specific (for example, improving the public realm between Morden Hall Road and Aberconway Road) rather than too broad (for example, improving the public realm in the whole of Morden town centre). This is to ensure that landowners, developers are clear what the council will spend its CIL strategic fund on and what they may be expected to contribute to via other planning obligations.
- 2.8 On 10 March 2014 council adopted Merton’s initial strategic infrastructure list in the awareness that consultation would take place later in 2014.

Next steps - Strategic infrastructure projects list (Regulation 123)

- Use the adopted initial strategic infrastructure project list to start consultation in September 2014 and encourage the submission of strategic infrastructure projects.
- After consultation, check all projects are allowed to receive CIL strategic infrastructure funding (i.e. in line with government regulations)
- Publish a final list of strategic infrastructure projects
- Resolve to adopt the list via Cabinet and Council

Local neighbourhood projects

- 2.9 The government also requires that the allocation of 15% of CIL funding from each site is agreed with the neighbourhood where the development occurs. In Merton’s case this is likely to amount to about £150,000 to be shared across the wards where development takes place.
- 2.10 Government guidance does not define the extent of a “neighbourhood” so it is proposed that in Merton’s case, ward boundaries are used as a proxy for

neighbourhood as wards are an existing administrative boundary and there is democratic accountability via the elected councillors.

2.11 Government guidance shows that there are some small differences between the strategic infrastructure fund and the local neighbourhood fund projects.

- the local neighbourhood fund should be spent in areas where development has taken place.
- Government says that the local neighbourhood fund should be spent on projects that “*address the demands that development places on an area*”. In practice, this means that a local fund could be spent on holding a local summer festival (for example, to improve community cohesion between existing and new residents), whereas the strategic fund must be spent on physical infrastructure.
- The neighbourhood funding list will be separate to the Strategic Infrastructure List, although both could be used to fund the same project. For example, if a local health centre was identified as the most important project in an area, it may be that decision-makers for both the strategic fund and the local fund would both contribute to the project
- Unlike the strategic list, it would still be possible to secure developer contributions (via Section 106 or Section 278) towards projects on the neighbourhood funding list.
- unlike the strategic fund projects on the neighbourhood funding list don't have to be “infrastructure” but they do need to support “*the demands that development places on an area*”. For example, the neighbourhood fund could help pay for a summer fair (to improve community cohesion between new and existing residents) but the strategic infrastructure fund would have to pay only for physical infrastructure as defined in the Localism Act 2011

2.12 In summer 2014, in consultation with councillors, residents, businesses and others, the council will be preparing a draft **Neighbourhood Funding List** and a draft neighbourhood funding allocation process.

Next steps – neighbourhood funding list

- Gather local projects with local councillors and communities via consultation starting in September 2014
- After consultation, check all projects are allowed to receive CIL neighbourhood funding (i.e. in line with government regulations)
- Publish a list of projects per ward
- If there are lots of projects in any given ward, ask ward councillors in each ward to prioritise which project should receive funds first

3 ALTERNATIVE OPTIONS

3.1 If the council chooses not to consult on and subsequently publish a strategic infrastructure list, landowners and developers cannot be asked to use S.106 or

S.278 for infrastructure projects as part of their planning permissions, resulting in lost funding for local areas and it would be at considerable risk of:

- maladministration by the Local Government Ombudsman for failing to facilitate the granting of planning permission for development that would otherwise be acceptable with a S.106 or S.278 agreement for site specific infrastructure or
- judicial review for unlawful use of S.106 or S.278 agreements under Regulation 123 of the Community Infrastructure Regulations 2010 (as amended).

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1 Consultation is proposed to take place from September 2014 for six weeks on each list.
- 4.2 For the strategic infrastructure (85% of CIL), the initial list adopted by council on 10 March 2014 will be the basis of the consultation, with people and organisations able to suggest new projects. Cabinet and council will determine the final list.
- 4.3 For the neighbourhood funding list (15% of CIL locally), the starting point will be projects that have already been suggested to the council and that comply with government guidance for that list. During the consultation, people can add projects to the lists for each area or ward. For wards, local councillors will be involved in
- 4.4 The consultation documents will make clear that Merton's CIL is likely to be £1million per year for the whole borough, that government only expects CIL funding to cover between 10% and 30% of any project, therefore funds will only cover a few projects on each list.
- 4.5 Ongoing engagement on the lists will be proportionate to the amount of funding received.

5 TIMETABLE

- 5.1. September-November 2014 – six weeks public consultation on the strategic and local infrastructure project lists.
- 5.2. December-January 2015: consider consultation results and finalise lists with councillors.
- 5.3. February-March 2015: adopt new lists

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. As set out in reports to Cabinet (04 July 2013) and council (10 July 2013; 10 March 2014), Merton's proposed CIL charge is forecast to generate

approximately £1million per year to help support infrastructure necessary for development, against an infrastructure funding requirement of c£150million.

- 6.2. The average total S106 received by the council per year is £960,000 (averaging the 11 years 2000-2011). As s106 will largely be replaced by CIL, it is clear that Merton's CIL is unlikely to generate significantly more funding than the council has previously received for infrastructure.
- 6.3. The publication of a final strategic infrastructure list will not preclude spending CIL funding on measures that are not on the list.
- 6.4. As CIL is only paid to the council once a development has started to be built, there is a time delay of at least nine months between a CIL charge being applied to planning applications and the funds arriving at the council. Merton's CIL charge started in April 2014 and it is expected that only very small amounts of Merton's CIL will be received until after December 2014
- 6.5. As set out in the body of this report, if the council did not approve the initial Strategic Infrastructure List, the council could be subject to a successful judicial review or maladministration should it chose to secure S106 and S278 as well as CIL from landowners from 01 April 2014. This would incur council resources (finance and staff time).
- 6.6. If the council does not approve the initial Strategic Infrastructure List and collected CIL but not S106 or S278 from planning permissions, local residents and business communities might expect the council to fund the necessary site-specific infrastructure associated with development that would normally have been sought through S106 or S278 for highways. Such infrastructure could include affordable housing, junction improvements, pavement and cycle lanes, landscaping and other site-specific matters. The costs to the council for funding these measures for each planning application would be considerable.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. Contained within the body of the report.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. None for the purposes of this report.

9 CRIME AND DISORDER IMPLICATIONS

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

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. As set out under Section 3 of this report "alternative options"

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

None