

# **Borough Plan Advisory Committee**

**Date: 06 March 2014**

**Agenda item: 6**

## **Subject: Adoption of Merton's Community Infrastructure Levy (CIL) Initial Strategic Infrastructure List**

Lead officer: Director for Environment and Regeneration, Chris Lee

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

Contact officer: Strategic Policy and Research Manager, Tara Butler; S.106 Monitoring Officer Tim Catley

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### **Recommendations:**

That the Borough Plan Advisory Committee recommends that Cabinet (10 March 2014) and full Council (2 April 2014) adopts Merton's Community Infrastructure Levy initial Strategic Infrastructure List (Reg 123 List) in order to continue to secure developer contributions once Merton's CIL is in place.

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### **1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1 Following adoption of the Merton Community Infrastructure Levy (CIL) Charging Schedule by Council in November 2013, CIL (CIL) will largely replace Section 106 agreements (S.106) in helping to fund infrastructure necessary to support new development.
- 1.2 "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.
- 1.3 Under the CIL Regulations 2010 (as amended) councils that are charging CIL are required to publish a list of strategic infrastructure that they intend to spend CIL funding on. This list is called a Regulation 123 list or the CIL Strategic Infrastructure List.
- 1.4 If Merton chose not to publish such a list, then securing S.106 or S.278 agreements (for highways) for infrastructure would be unlawful once Merton's CIL charge starts on 01 April 2014. While most S.106 contributions for infrastructure will discontinue after Merton's CIL comes into effect, the council will still need to secure site-specific S106 agreements (and/or S278 highways

agreements) for measures such as the provision of vehicular access to new development.

- 1.5 The purpose of this report is to recommend that full Council (2 April 2014) adopts Merton's CIL Initial Strategic Infrastructure List (Reg 123 List) in order to continue to secure S.106 and S.278 agreements for site-specific infrastructure once Merton's CIL charge starts on 01 April 2014.
- 1.6 The list (attached as appendix 1 to this report) is a short initial list based on the infrastructure identified in Merton's Core Planning Strategy as necessary to support future development in Merton.
- 1.7 From summer 2014, it is proposed that public consultation with residents, businesses and other stakeholders takes place to update the list, after which a report containing the final list will be taken to the Borough Plan Advisory Committee, Cabinet and Council for adoption.

## **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. 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 and for the most part will replace S.106 agreements 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 the Borough Plan Advisory Committee, Cabinet and full Council in June and July and November 2013, lists of projects that may receive CIL funding would be subject to public consultation. This would allow

residents, businesses and other key stakeholders to suggest projects to be put on these lists for to consider for funding. However all projects put on these lists would have to be in accordance with government regulations and statutory guidance.

- 2.7 As CIL funds are payable when the development starts, and not when planning permission is granted, there is usually a time lag of more than nine months between CIL being applied to the first developments and CIL funds being received in significant amounts by the council. In Merton's case, this means we expect CIL funds to effectively start accruing by about December 2014 (from an April 2014 start)
- 2.8 The council proposes to use the initial months where the CIL pot is still small to consult on two lists of items that Merton's CIL might be spent on: Merton's Strategic Infrastructure List and Merton's Neighbourhood Funding List.
- 2.9 As legally required, one of these lists will include a set of strategic infrastructure projects based on the infrastructure table set out in Table 27.2: "Infrastructure Projects" of Merton's Core Planning Strategy (2011). Table 27.2 sets out the key infrastructure projects that are needed to support the planned development of the borough up to 2026. This list will be called the Regulation 123 list or **Merton's Strategic Infrastructure List**.
- 2.10 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. However, under the CIL Regulations and government guidance, the council is required to publish the full list on the website for as long as Merton's CIL is in effect. 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 may still be subject to S.106 or S.278 obligations required in association with planning permissions. Where a list has been published, it can be amended after proportionate community consultation although the scale and duration of the consultation is at the council's discretion.
- 2.11 Given the introduction of the Merton CIL on 1 April 2014 and the timescales intended for consultation, the publication of a initial strategic infrastructure list is required so as to allow the council to still seek S.106 or S278 agreements for site-specific infrastructure needed for planning permission. If the council choses not to publish a initial strategic infrastructure list, landowners and developers cannot be asked to contribute S.106 or S.278 as part of their planning permissions, resulting in lost funding for local areas.
- 2.12 In October 2013, government published the results of its most recent consultation on how CIL is applied and what it can be spent on. Further amendments to the CIL Regulations and guidance came into effect in February 2014.

- 2.13 The timing of these government amendments have resulted in the delays to some of the preparations for the implementation of the Merton CIL and have necessitated the publication of a initial strategic infrastructure funding list.
- 2.14 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 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. The neighbourhood funding list will be separate to the Strategic Infrastructure List. Identification of an infrastructure project or type of infrastructure on the neighbourhood funding list will not affect the ability to secure S.106 or S278 agreements for those infrastructure projects.
- 2.15 As CIL will replace some Section 106 (such as most contributions for open space or school places) it is proposed that Merton's Planning Obligations supplementary planning document be revised later in 2014, based on the most up-to-date CIL Regulations. We will report on the progress of these documents to councillors later in 2014. Guidance on the collection of CIL and S.106 for planning officers and planning applicants will be published on the council's website for 1 April 2014.

### **3. ALTERNATIVE OPTIONS**

- 3.1 If the council chooses not to publish a initial strategic infrastructure list from 01 April 2014, 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 Table 27.2: Infrastructure Projects Merton's Core Planning Strategy (2011) is the basis for Merton's initial Strategic Infrastructure List. Its contents have been heavily consulted on with local communities during the preparation of Merton's Core Planning Strategy (between 2006-2011) before it was examined by an independent Planning Inspector, found 'sound' and thereafter adopted in 2011.
- 4.2 Merton's CIL Charging Schedule has been consulted on for a total of more than six months: the first time between January and March 2012 (responses were

accepted into May 2012) and the second time between March and May 2013. 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](http://www.merton.gov.uk/cil)

- 4.3 As set out earlier in this report, the council proposes to commence consultation associated with the allocation of Merton CIL in summer 2014.

## **5. FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 5.1 As set out in reports to Cabinet (04 July 2013) and council (10 July 2013), 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.
- 5.2 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 that the council has previously received for infrastructure.
- 5.3 The publication of an initial strategic infrastructure list will not preclude the expenditure of CIL monies on measures that are not on the list.
- 5.4 It will enable the use of S.106 and S.278 agreements to continue for site-specific infrastructure contributions from 1 April 2014.
- 5.5 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).
- 5.6 It 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.

## **6. LEGAL AND STATUTORY IMPLICATIONS**

- 6.1 Contained within the body of the report.

## **7. HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

7.1 None for the purposes of this report.

## **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 As set out under Section 3 of this report “alternative options”

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

Appendix 1: Merton’s Initial Strategic Infrastructure List

## **11. BACKGROUND PAPERS**

- Merton CIL Charging Schedule (adopted November 2013 to start 01 April 2014 [www.merton.gov.uk/planning/cil](http://www.merton.gov.uk/planning/cil))

### **Government Regulations and guidance**

- February 2014 – Amended government guidance on CIL (DCLG)
- February 2014 – Amendments to the CIL Regulations (DCLG)
- April – May 2013 CIL further reforms (consultation) (DCLG) (proposes amendments to the existing Regulations)
- April 2013 – Amendments to the CIL Regulations (DCLG)
- November 2012 - Amendments to the CIL Regulations (DCLG)
- April 2011 - Amendments to the CIL Regulations (DCLG)
- 2010 Community Infrastructure Levy Regulations

## **Appendix 1 – Merton’s Initial Strategic Community Infrastructure List (Regulation 123)**

Regulation 123 of the Community Infrastructure Regulations 2010 (as amended) restricts the use of planning obligations for infrastructure that will be funded in whole or in part by Merton’s Community Infrastructure Levy. Infrastructure projects that are listed in Table 1 below will not be secured through planning obligations (such as Section 106 agreements).

The purpose of this Regulation 123 list is to ensure clarity on what CIL might be spent on and that there is no duplication (‘double dipping’) between CIL and s106 agreements in funding the same infrastructure projects.

The provisional Regulation 123 list provides initial projects that could be funded through CIL in Merton. This list is based on Merton’s Core Planning Strategy Table 27.2 Infrastructure Projects and the example provided at the CIL examination (September 2013). During the summer of 2014, the council will work with residents, businesses, infrastructure providers, landowners and other organisations in further developing the Regulation 123 list for Merton.

Merton’s CIL charge is forecast to total £1million a year from 2015-16, considerably less than the total infrastructure funding required. Government is clear that CIL should be expected to fund 10%-30% of infrastructure projects. The publication of a Regulation 123 list does not signify a commitment from the council to fund all the projects listed, or the entirety of any one project through CIL – it just signifies projects that will be considered by the council in its decision as to what might receive CIL funding.

The order in Table 1 is alphabetical and does not imply any order of preference. The council will review this list annually, as part of its monitoring of CIL collection and spend.

### **Merton’s Initial Strategic Community Infrastructure List – April 2014**

<i>Regulation 123 of the Community Infrastructure Regulations 2010 (as amended)</i>	
Cemetery – Merton-Sutton	Provision of additional graveyard space to support both Merton and Sutton.
Education and School Provision	Primary and Secondary Schools: 2014 – 2026 to meet extensions to existing school buildings and maintenance of those new buildings
Emergency Services	Refurbishment and maintenance of: a) New Malden Fire Station, 180 Burlington Road, KT3 4RW b) Wimbledon Fire Station, 87 Kingston Road, SW19 1JN.
Employment	a) Investment in business premises to support creative industries.
Green Infrastructure and Open Spaces	a) Renewal of Wimbledon Watersports and Outdoor Adventure Centre. b) Upgrade pavilions and buildings sited in green space across the borough.
Health	Provision of Mitcham local care centre (replacing existing services currently served by Wilson Hospital)
Libraries	a) Towards the provision and maintenance of library facilities
Transport Infrastructure; facilities and services	a) Station Improvements at Wimbledon and Raynes Park town centres. b) Tramlink Improvements and extensions to Mitcham and Morden.