

Background paper on revised CIL and interim s106 guidance for Old Kent Road

Southwark Council

January 2017

1. Introduction

- 1.1.1 This document provides background information on the Southwark Community Infrastructure Levy (CIL) Draft Charging Schedule (the charging schedule) and the interim section 106 guidance on contributions to transport infrastructure in the Old Kent Road opportunity area.
- 1.1.2 With regard to CIL it sets out the general principles and the methods used to arrive at the amended CIL charging schedule.
- 1.1.3 This is the second stage of consultation on the new CIL charging schedule. We will consider all comments made on the draft charging schedule before submitting it to an independent planning inspector for an examination-in-public in summer 2017. It is anticipated that the CIL will be brought into effect by the end of 2017.
- 1.1.4 In the interim before the revised CIL is introduced the council will seek to negotiate section 106 planning obligations in the opportunity area to contribute towards transport infrastructure, including two new Bakerloo Line extension stations. Interim guidance on section 106 contributions for transport infrastructure in the Old Kent Road opportunity area has been consulted on as an addendum to the adopted Section 106 Planning Obligations and CIL Supplementary Planning Document (2015). The addendum will be reported back to cabinet for adoption in early 2017.

1.2 About CIL

- 1.2.1 The Community Infrastructure Levy (CIL) is a levy that local authorities can choose to charge on new developments in their area. The money can be used to support development by funding infrastructure that the council, local community and neighbourhoods need. Infrastructure is defined in the CIL Regulations to include: roads and other transport facilities, flood defences, schools and other educational facilities, medical facilities, sporting and recreational facilities and open spaces. The benefits are increased certainty for the funding and delivery of infrastructure, increased certainty for developers and increased transparency for local people.
- 1.2.2 If intending to apply the levy, councils (which are designated as “charging authorities”) must produce a document called a charging schedule which sets out the rate for their levy. Southwark already has a charging schedule in place setting out CIL rates for the borough. This sits alongside the Local Plan and was adopted in 2015 following examination in public by an independent inspector. It was prepared in the context of the policies, standards and proposed levels of growth set out in the Core Strategy, which was adopted in 2011.
- 1.2.3 Within the context of the emerging Old Kent Road Area Action Plan and New Southwark Plan, this consultation is proposing some amendments to the existing charging schedule relating to the Old Kent Road Opportunity Area.

1.3 The reasons for implementing the revised charging schedule

- 1.3.1 The ambition and vision in the emerging Old Kent Road Area Action Plan - including plans for 20,000 new homes and 5,000 additional jobs - is changing land values in the opportunity area. The council is therefore revising its CIL charging schedule to reflect current land values. The council is also changing the boundary of CIL zone 2 so that developments in the southern part of the Opportunity Area pay the same rate as those in the north in order to maximise the funding which can be generated for new infrastructure (while also ensuring that other policies objectives, such as provision of affordable housing, can continue to be met). Increased CIL rates in the Old Kent Road Opportunity Area are critical to helping fund the infrastructure needed (including the Bakerloo Line extension) to achieve the level of growth envisaged in the area over the next 20 years as reflected in the council's Old Kent Road Area Action Plan and updated Infrastructure Plan (further details are provided in section 2 on evidence). Over time it will assist sustainable development and growth.
- 1.3.2 A meaningful proportion of CIL (25%) will be passed down to local communities to help make sure that they benefit from development in the area.

1.4 How CIL is calculated and charged

- 1.4.1 CIL is a mandatory charge levied on most new developments that involve an increase of 100sqm or more of additional floorspace, or that involve the creation of a new residential unit.
- 1.4.2 A standard rate can be set or specific rates for different areas and types of development can be set. In setting rates the charging authority must strike a balance between the need for CIL to fund the infrastructure necessary to support the development of its area, and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.
- 1.4.3 The levy rate must be expressed as £ per m², imposed upon the granting of planning permission, and paid from when development commences.
- 1.4.4 Some developments are exempt from paying the levy. These are developments of affordable housing and developments by charities of buildings used for charitable purposes.
- 1.4.5 It should be noted that in London's case, the Mayor of London (Greater London Authority) is also a charging authority. The Mayor introduced a CIL to fund Crossrail. The Mayor's levy is £35 per square metre, with a limited number of exceptions. Southwark collects this levy on behalf of the Mayor.

2. Evidence for CIL revision

- 2.1.1 The CIL Regulations 2010 (as amended) require that to set a CIL charging schedule, charging authorities must have an appropriate evidence base to support the proposed levy. The National Planning Practice Guidance (NPPG) states that the evidence base should include:
- The infrastructure needs to support growth (based on the infrastructure assessment undertaken for the Local Plan)

- An overall assessment of the economic viability of new development (showing the effect of the proposed levy rate on viability).

2.2 The area's infrastructure needs

- 2.2.1 Preparation of the revised draft CIL charging schedule has been undertaken in the context of the policies and proposed levels of growth and development set out in the Core Strategy (April 2011), emerging New Southwark Plan and particularly the Draft Old Kent Road Area Action Plan (AAP) and Opportunity Area Planning Framework (June 2016), prepared with the GLA.
- 2.2.2 The draft AAP is planning for significant growth of 20,000 new homes and 5,000 additional jobs in the Old Kent Road opportunity area. Key growth drivers include delivery of the Bakerloo Line extension and wider transport improvements. Developments will be expected to contribute to funding this infrastructure through CIL and section 106 planning obligations.
- 2.2.3 Southwark produced an infrastructure plan in 2013 to support the introduction of CIL and in the context of the Core Strategy (2011). This infrastructure plan has now been updated to identify the strategic infrastructure needed to support growth and development in the borough, including in the Old Kent Road Opportunity Area, over the Old Kent Road Area Action Plan period (2016-2036).
- 2.2.4 The updated infrastructure plan identifies the types and range of projects which could receive CIL funding. It is not a definitive programme of the council's planned capital expenditure as this will evolve over time. It is a 'living' document which will continue to be updated regularly to account for the changing circumstances of infrastructure requirements to support growth.
- 2.2.5 Steps taken to produce the revised infrastructure plan included:
- a) A review of the council's plans and strategies and the lists of infrastructure projects contained in these. These include the New Southwark Plan Preferred Option (2015), Core Strategy (2011), Aylesbury Area Action Plan (2010), Canada Water Area Action Plan (2015), Peckham and Nunhead Area Action Plan (2014), Elephant and Castle Opportunity Area Supplementary Planning Document (2012), emerging Old Kent Road Area Action Plan Preferred Option, Transport Plan (2011), Cycling Strategy (2015). Open Spaces Strategy (2013), Primary School Place Update Strategy 2015, Secondary School Places Strategy (2015), Primary and Community Care Strategy 2013/14 – 2017/18, NHS Southwark Estates Strategy (2011), Economic Well-being Strategy (2012-2020), Children and Young People's Plan (2013-2016), Cemetery Strategy (2012), Draft Playing Pitch Strategy (2009), Local Flood Risk Management Strategy (2015).
 - b) Review of development partner's plans and projects: Wherever possible, information was taken from published reports or strategies. As a starting point, a thorough review of partners' websites, business plans etc was undertaken and the results are summarised and included in the infrastructure plan.
 - c) Information gathering direct from partners: To fill gaps in information, internal and external partners were contacted to ascertain their plans and their assessments of what infrastructure requirements arise from future development proposals.

- 2.2.6 The infrastructure plan identifies the following:
- a) The borough's current and future need for infrastructure based upon the latest information on planned/projected development, including new development planned for the Old Kent Road opportunity area;
 - b) The costs of infrastructure provision and the current and known future sources of funding;
 - c) The residual funding requirement after making allowance for committed sources of funding. This funding gap is estimated to be circa £1.8 billion.
- 2.2.7 The infrastructure plan identifies the strategic infrastructure needed to support growth in the fields of:
- Transport
 - Open space, public realm and biodiversity
 - Education
 - Primary health care
 - Arts and cultural facilities
 - Sport and leisure
 - Socio-economic infrastructure
 - Sustainability infrastructure
 - Secondary infrastructure
 - Emergency services

2.3 An overall assessment of the economic viability of new development: CIL Viability Study (June 2016)

- 2.3.1 The CIL Regulations and the National Planning Practice Guidance (NPPG) specify that in setting their levies charging authorities should **strike a balance** between the need to fund infrastructure and the potential effects of the imposition of CIL on the economic viability of development across their areas. The overarching aim of CIL is to enable the delivery of growth. It is therefore important to avoid risking too much development at the margins of economic viability by setting CIL too high. .
- 2.3.2 Levies must also take into account the requirement to pay the Mayoral CIL (£35 sqm in Southwark, subject to inflation) and should also consider impacts on the strategic development context set out in planning policies, including the requirement to provide affordable housing.
- 2.3.3 We have prepared a CIL viability study to assess the viability of an increased CIL rate in the southern part of the Old Kent Road Opportunity Area, as described below.
- 2.3.4 Having regard to the NPPG's focus on using 'appropriate available evidence', a pragmatic approach has been adopted to sourcing inputs for the viability appraisals and using the viability evidence and market intelligence to inform the revised CIL rates set out in the charging schedule. The methodology is summarised below.

3. Establishing potential CIL rates

3.1 Overview of findings of the CIL Viability Study (June 2016)

Methodology

- 3.1.1 To assist in establishing the revised CIL rates, we commissioned a series of development viability appraisals of schemes in the Old Kent Road opportunity area to

consider the impact of the imposition of CIL at various rates in addition to the cumulative burden of all development plan policy requirements (including affordable housing, sustainability, section 106, etc).

- 3.1.2 The study compares the residual land values¹ of a range of developments on sites throughout the opportunity area to their value in their existing use. If a development incorporating a given level of CIL generates a sufficiently positive land value higher than the existing benchmark land value, then it can be judged that the proposal could be implemented and is viable as it would provide a “competitive returns to a willing land owner and willing developer” (NPPF paragraph 173).
- 3.1.3 The NPPG (paragraph 019) states that a charging authority should use an area-based approach, involving a broad test of viability across their area, to demonstrate that the proposed levy rate or rates set an appropriate balance between the need to fund infrastructure and the potential implications for the economic viability of development across their area. It further states that there are a number of valuation models and methodologies available to charging authorities to help them in preparing this evidence. It advises that there is no requirement to use one of these models, but charging authorities may find it helpful in defending their levy rates if they do.
- 3.1.4 The methodology employed in the CIL study follows that described in the guidance published by the Local Housing Delivery Group, chaired by Sir John Harman, ‘Viability Testing of Local Plan: advice for planning practitioners’ (2012). The methodology used is consistent with the methodologies used in preparing the viability evidence underpinning the original CIL charging schedule as well as the Core Strategy, Canada water AAP and Aylesbury AAP which have all been found “sound” and adopted. It is also consistent with the methodology used to prepared the evidence base for the Mayoral CIL.

Appraisal inputs

- 3.1.5 The NPPG (paragraph 020) emphasises the need to take into account development costs (including costs arising from existing regulatory requirements) when setting a levy rate or rates, particularly those likely to be incurred on strategic sites or brownfield land. Accordingly, the viability appraisals have taken into account a range of development assumptions and inputs. These include the following planning related requirements:
- Delivery of a minimum of 35% affordable housing, subject to viability (as required by the Core Strategy) – therefore the study tests a range between 10% to 50% affordable housing
 - BREEAM Excellent for non-residential development – extra over cost of 2% on base build costs
 - Mayoral CIL (£35 sqm in Southwark; note that the Mayor’s Crossrail section 106 is not applicable in the Old Kent Road opportunity area)
 - Costs of meeting London zero carbon homes requirements as clarified in the GLA’s Housing SPG (March 2016) – extra over cost of 1.1 to 1.3%.
 - Drainage requirement to achieve a greenfield runoff rate where feasible - extra over cost of 0.03% of base build costs
 - Site specific mitigation through section 106 and section 278 agreements. The appraisals have been updated to include assumed s106 planning

¹ This method is used by developers when determining how much to bid for land and involves calculating the value of the completed scheme and deducting all development costs (construction, fees, finance charges, CIL and section 106, etc) and developer’s profit.

obligations/section 278 costs of £2,000 per residential unit and £30 per sqm for commercial schemes. The evidence base which justifies this figure is set out in Appendix 1.

- 3.1.6 The approach taken in the study towards the viability benchmarks is set out in paragraphs 3.7 to 3.18 of the study. A premium has been applied to each existing use value of 20% (paragraph 4.47). This is the amount over and above the existing value of the site that reflects an incentive for a landowner to sell their site i.e. a 'competitive return' (Para 173 NPPF).
- 3.1.7 The various other inputs to the appraisals, such as sales values, rents and yields and build costs, are based on research on the local market and are explained in section 4 of the CIL Viability Study. With regard to profit, a 18% profit on GDV has been factored into the appraisals (paragraphs 4.33 to 4.39 of the CIL Viability Study).
- 3.1.8 Exceptional costs have not been factored into the appraisals. An 'average' level of costs for decontamination, flood risk mitigation and other 'abnormal' costs is already reflected in BCIS data, as such costs are frequently encountered on sites that form the basis of the BCIS data sample.

Sampling of development sites

- 3.1.9 The NPPG states that a charging authority should directly sample an appropriate range of types of sites across its area, in order to supplement existing data. The exercise should focus on strategic sites on which the relevant Plan relies, and those sites (such as brownfield sites) where the impact of the levy on economic viability is likely to be most significant.
- 3.1.10 The study includes 9 notional development schemes and 10 real sites (5 large and 5 small). Details of the site areas and proposed uses for each site are provided in tables 3.1 and 3.2 below. The real sites generally have existing development on them and therefore may have existing floorspace that can be used to offset against CIL payments.

Table 3.1: Notional development schemes

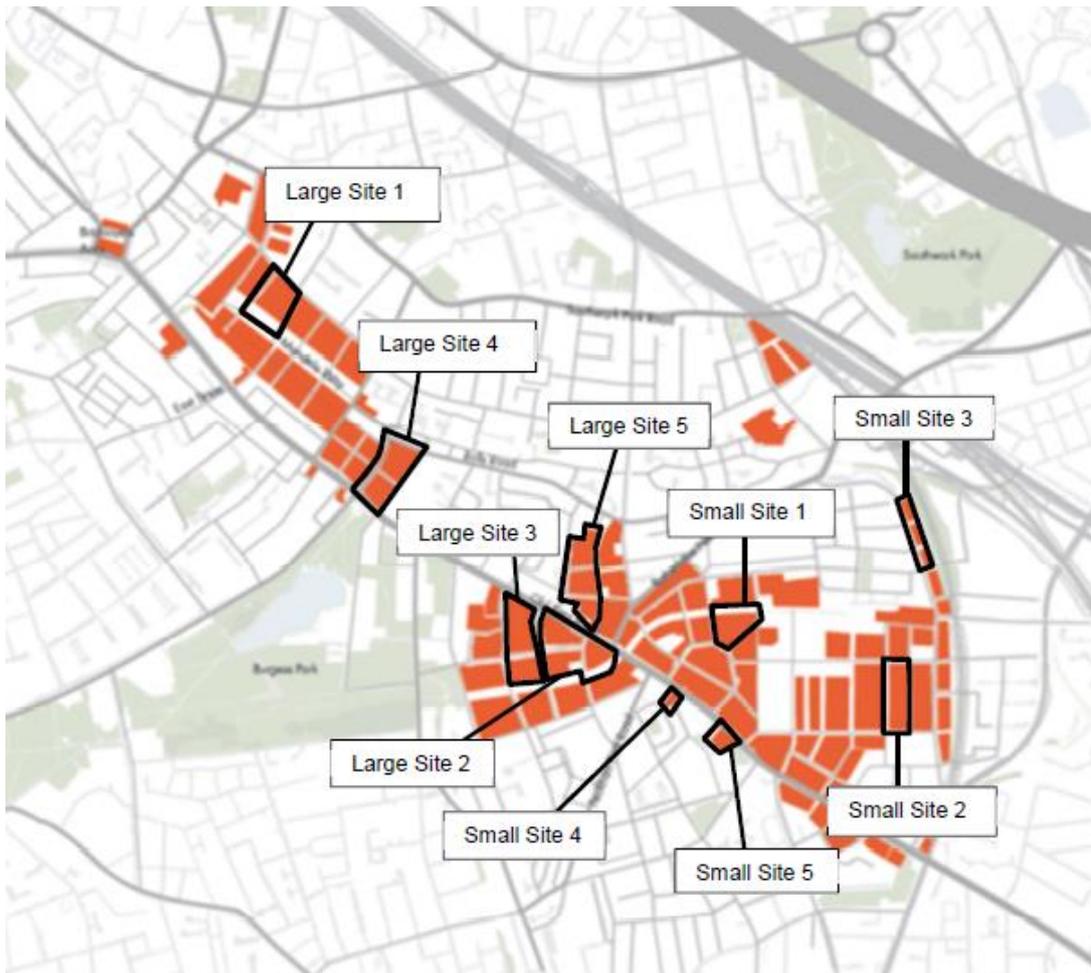
No.	Proposed uses and height	Gross site area (Ha)
1	11 homes and 500 sq m of retail - up to 6 storeys	0.06
2	30 homes - up to 6 storeys	0.15
3	65 homes - 7 to 13 storeys	0.30
4	100 homes and 2,000 sq m of retail - 7 to 13 storeys	0.5
5	180 homes and 2,000 sq m of employment space - 7 to 13 storeys	0.7
6	300 homes and 3,000 sq m of employment space - 7 to 13 storeys	1.1
7	450 homes, 1,000 sq m of retail use, 5,000 sq m of employment space and open space - 14 to 35 storeys	1.2
8	650 homes, 3,000 sq m of retail use, 4,000 sq m of hotel space and open space - 14 to 35 storeys	1.7
9	6,850 sq m of student housing - 7 to 13 storeys	0.32

Table 3.2: Real development schemes

No.	Address	Proposed uses and height	Site area (Ha)
Large Site 1	Block 2 (Unit 4 Mandela Way)	Housing Business (B1a) Hotel Retail Health centre 7 storeys/30 storeys	0.83
Large Site 2	Blocks 24, 25 and 96 (Cantium Retail Park, Old Kent Road)	Housing Business (B1c) Leisure Retail Up to 24 storeys	1.92
Large Site 3	Blocks 60 and 26 (Asda, Old Kent Road)	Housing Retail Business (B1c) 7-13 storeys	1.89
Large Site 4	Blocks 14 and 15 (Southernwood Retail Park, Humphrey Street)	Housing Retail School 8-20 storeys	1.21
Large Site 5	Blocks 88, 21 and 121 (Six Bridges Industrial Estate, Marlborough Grove)	Housing Business (B1c) Retail 7-20 storeys	1.51
Small Site 1	Block 136 (Sandgate Industrial Estate, 57 Sandgate Street and 16 Verney Road)	Housing Business (B1c) 6/7 storeys	0.73
Small Site 2	Block 115 (Sites bounded by Hatcham Road, Penarth Street, Ormside Street and Manor Grove)	Housing Business (B1c) 7 storeys	0.92
Small Site 3	Blocks 92, 106 and 107 (Joyner Truck depot, Ilderton Road)	Housing 7-13 storeys	0.46
Small Site 4	Block 135 (636 Old Kent Road)	Housing Retail 4 storeys	0.09
Small Site 5	Block 129 (Kwikfit, 684,698 Old Kent Road)	Student housing 6 storeys	0.22

3.1.11 The locations of the real development sites appraised are shown on the map overleaf.

Map of real sites in Old Kent Road Opportunity Area



3.1.12 The schemes appraised in the study represent the range of sales values/capital values and also sizes/types of development and densities of development expected to come forward across the opportunity area. The sample includes residential schemes (including a student housing scheme) and mixed use schemes (including retail, business, leisure, school, health and/or hotel space), as indicated in the tables above. The sites appraised also include schemes with varying capacity from 11 homes and 500sqm retail (up to 6 storeys) to a mixed use residential-led development up to 35 storeys providing 650 homes in addition to significant retail and employment space.

3.1.13 The council considers that these sites are representative of sites which will be needed to deliver the growth in housing and jobs set out in the Old Kent Road Area Action Plan.

Appraisal outputs

3.1.14 In assessing the results of the viability testing, it is important to clearly distinguish between two scenarios; namely, schemes that are unviable regardless of the level of CIL (including a nil rate) and schemes that are viable prior to the imposition of CIL at certain levels. If a scheme is unviable before CIL is levied, it is unlikely to come forward and CIL would not be a factor that comes into play in the developer's/landowner's decision making.

3.1.15 The following paragraphs provide an overview of the viability findings and how these

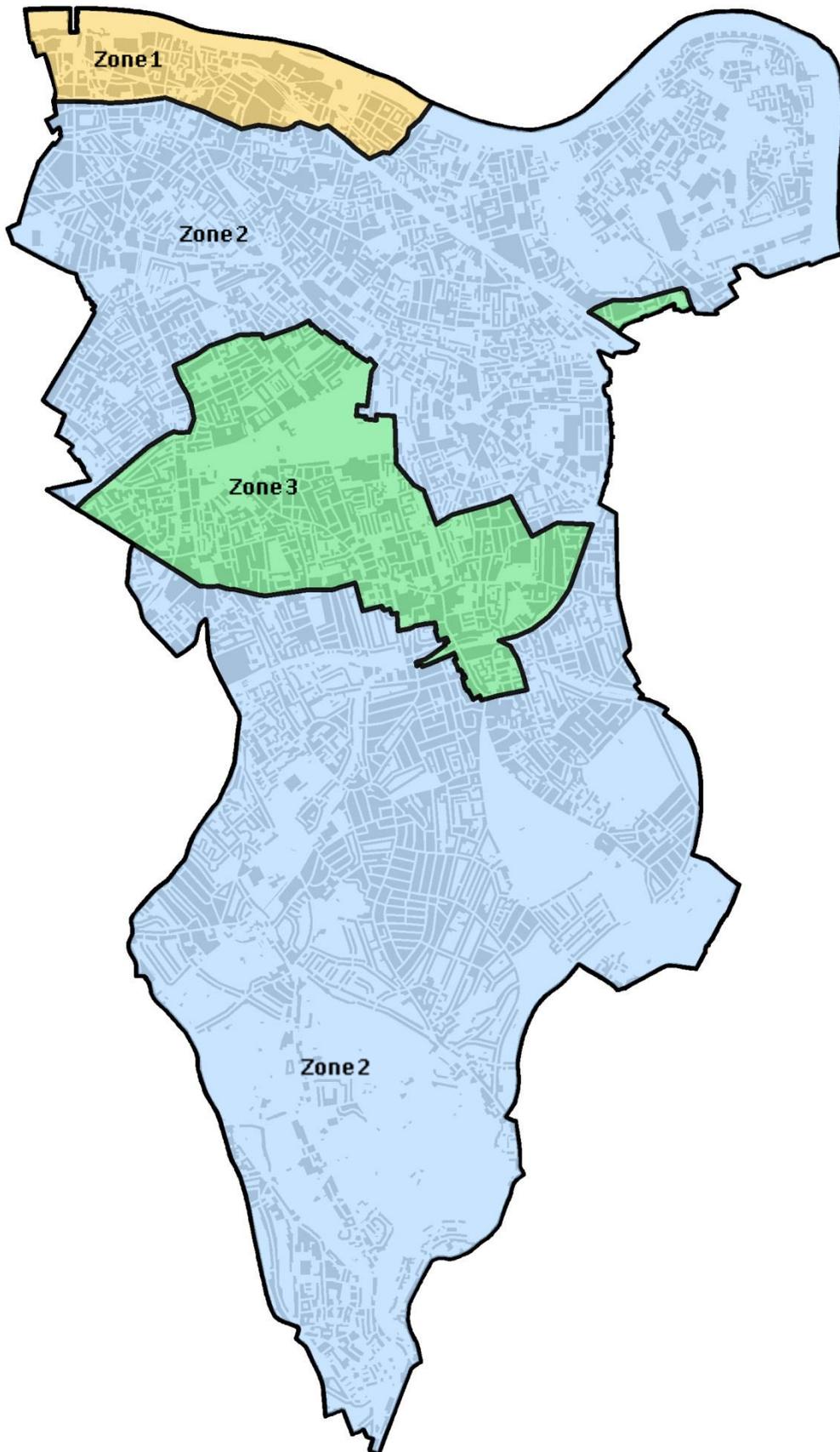
have been taken into account by the council.

- 3.1.16 Some development schemes tested (particularly those with higher benchmark land values) were unviable in certain circumstances due to market factors, rather than the impact of the Council's proposed CIL rates and policy requirements. These schemes are identified in the appraisals as being unviable at 0% affordable housing. These schemes will not come forward until changes in market conditions i.e. an improvement in sales values by comparison to build costs and the development value versus the existing use and competing uses for the site. In this regard their current unviable status should not be taken as an indication that the Council's requirements (including the proposed CIL rates) cannot be accommodated.
- 3.1.17 It is also likely that the wider regeneration of the Opportunity Area and arrival of the Bakerloo line extension will drive values beyond the forecasted growth of London residential values, which will assist with viability.
- 3.1.18 The testing demonstrated that the Council's policy requirement of 35% affordable housing remains a reasonable requirement. Some schemes (subject to their benchmark land values and the availability of grant) are able to achieve higher amounts of affordable housing (45% affordable housing). As can be expected however some schemes are also identified as having challenging viability. The Council's flexible approach to the application of its affordable housing targets will ensure the viability of developments is not adversely affected over the economic cycle whilst still delivering the maximum quantum of viable affordable housing.
- 3.1.19 The appraisals indicate that the Council's proposed approach to adopting a flat rate of CIL for residential development at the higher Zone 2 charge as at 2017 in the Opportunity Area could be implemented without adversely impacting on the viability of developments. This has been identified as an increase in scheme costs by no more than 2.35% and an average of 1.57%, resulting in CIL being no more than 3% of the gross development cost. Thus the change to CIL does not have a significant influence on making a scheme viable or unviable, or on the level of affordable housing that can be provided. The viability testing suggests that where the quantum of affordable housing is affected, the increase in the CIL rate from zone 3 to zone 2 results in a 5% difference in affordable housing at most.
- 3.1.20 However modelling of income from CIL indicates that the proposed change to CIL will have a significant impact on the ability to fund infrastructure, increasing CIL revenue by over 50%. This is particularly important as the delivery of the Bakerloo line extension is a key requirement to unlock delivery of the quantum of growth envisaged in the OKR AAP. Therefore the cost to benefit ratio of this change is significantly in favour of the increase in the CIL charge.
- 3.1.21 In summary, the viability appraisal evidence indicates that the proposed increase to the residential CIL charge in the southern part of the OKR OA and the Council's flexible approach to applying its policy requirements represents an appropriate balance between delivering affordable housing, sustainability objectives, necessary infrastructure and the need for landowners and developers to achieve competitive returns, as required by the NPPF. Maintaining this approach will ensure the 'scale of obligations and policy burdens' (Para 174 of the NPPF) are appropriate in all instances to ensure that sites are, as far as possible, able to be viably developed throughout the economic cycle. This in turn will ensure the delivery of the aspirations of the London Plan, New Southwark Plan and Old Kent Road Area Action Plan.

3.2 Proposed CIL rate and charging area

- 3.2.1 CIL Regulation 13 allows the charging authority to introduce charge variations by area, by different use and by area and use, if this is supported by development viability evidence. Where adopting charge variations by area, it is crucial to ensure that charge variation boundaries are drawn on viability evidence and not policy or administrative boundaries.
- 3.2.2 Southwark's existing CIL charging schedule has three separate charging zones. A deliberate effort was made keep the charging schedule simple and transparent and the number of proposed zones and their locations reflected broad value ranges.
- 3.2.3 The 2015 CIL charging schedule sets CIL rates of £200 per sqm and £50 per sqm for residential developments in CIL charging zones 2 and 3 respectively. The CIL Regulations establish a mechanism for inflating CIL using the All-in-Tender Price Index. By 2017 Southwark's residential CIL charges are forecast to be £218 per sqm in zone 2 and £54 in zone 3 (please see Appendix 2 for further details).
- 3.2.4 The Old Kent Road Opportunity Area falls across CIL zones 2 and 3. This consultation proposes an amendment to CIL zone 3 so that the area within the southern part of the Old Kent Road Opportunity Area which currently falls with zone 3 is brought into zone 2 (see map overleaf). This will mean that residential development across the Old Kent Road opportunity area pays the higher rate of £218 per sqm. This will be important to help to fund the transport infrastructure required to support growth.
- 3.2.5 The consultation also proposed increasing the existing CIL rates in line with the Building Cost Information Service (BCIS) All-in-Tender Price Index, as provided for in the CIL Regulations. For example, by 2017 Southwark's residential CIL charges are forecast to be £218 p/sqm in zone 2 (up from £200 currently) and £54 in zone 3 (up from £50 currently) (based on BCIS February 2016 update).
- 3.2.6 No other changes to the CIL charging schedule are proposed.

Map of CIL Charging Zones



4. Calculating and paying the chargeable amount

4.1.1 The formula for calculating the chargeable amount is set out in full in Part 5 of the CIL Regulations.

4.1.2 The CIL Regulations set out clear timescales for payment of CIL, which varies according to the size of the payment, which by implication is linked to the size of the scheme.

5. Chargeable development, exemptions and relief

5.5.1 CIL will be applied on the chargeable floor space of all new development apart from that exempt under Part 2 and Part 6 of the CIL Regulations. The exemptions from the CIL rates are:

- The gross internal area of a new buildings or extensions to buildings will be less than 100 sqm (other than where the development will comprise one or more dwelling);
- A building into which people do not normally go;
- A building into which people go only intermittently for the purpose of maintaining or inspecting machinery; or
- A building for which planning permission was granted for a limited period;
- Development by charities of their own land to be used wholly or mainly for their charitable purposes;
- Social Housing.

6. Spending CIL

6.1 A CIL income model has been prepared utilising information on development phasing from the Old Kent Road place making study and the CIL rates set out in the revised draft charging schedule.

6.2 On this basis it is estimated that CIL could generate around circa £10M per year (averaged over the whole plan period) from residential development, equating to a total of circa £208M. The infrastructure plan sets out the infrastructure required to support growth over the Old Kent Road Area Action Plan period (2016-2036). Sources of committed funding to support infrastructure have also been identified. Inevitably, there is more certainty over funding sources for projects to be delivered in the short term and much less certainty over mid and longer term projects.

6.3 The infrastructure plan (a living document which can be updated regularly) currently indicates an overall funding shortfall of circa £1.8 billion over the period. CIL will play an important role in contributing to this infrastructure requirement to support growth, although it will clearly not be sufficient to cover the cost entirely and the council will continue to explore other sources of funding to deliver all of the infrastructure set out in the infrastructure plan. Overall it is considered that the proposed levies represent an appropriate balance between generating funding to secure provision of infrastructure and ensuring that CIL does not put development and regeneration in the borough at risk.

6.4 The CIL Regulations also allow up to 5% of CIL generated will be used to monitor and administer the charge. The council will continue to monitor funding generated through CIL and publish regular monitoring reports on our website.

- 6.5 The Localism Act (2011) requires charging authorities to identify a 'meaningful proportion' of CIL that will be spent in the local area to ensure that those people affected by development see some of the benefit. The council spends at least 25% of CIL on projects in the local area, whether there is an adopted neighborhood plan or not. We consult local communities and community councils on priorities for their areas and regularly revise the lists as projects are delivered and/or priorities change.

7. Impacts on planning obligations and affordable housing

Relationship between CIL and section 106 planning obligations

- 7.1 Since the introduction of CIL, section 106 planning obligations continue to be used, including to fund affordable housing, but they have a more restricted role. Local authorities are now not able to pool more than 5 separate planning obligations to pay for one item of infrastructure. The intention of the CIL Regulations is that section 106 planning obligations should mainly be used to secure site specific infrastructure which is needed to directly mitigate the impact of development.
- 7.2 The Section 106 Planning Obligations and CIL SPD (2015) provides detailed guidance on the use of planning obligations alongside CIL. The SPD and the Regulation 123 List together make clear what is secured by Section 106 planning obligations and what CIL covers to avoid any actual or perceived 'double-dipping'.
- 7.3 The CIL regulations also allow relief from CIL in exceptional circumstances, but only where a Charging Authority has made such relief available in its area and specific regulatory requirements are met. No such relief has been offered previously. In proposing the CIL rates, we have had regard to the CIL Viability Study, which has examined the potential to set a CIL rate whilst still delivering site specific mitigation measures (under section 106 and section 278), meeting Development Plan requirements for affordable housing, and paying Mayoral CIL. This evidence, together with the regulatory limitation, set out above, has led to the conclusion that it is not necessary to offer exceptional circumstances relief at this time. However, we will keep this situation under review and may consider offering such relief in the event of a significant change in the economic viability of development or in response to future regulatory change.
- 7.4 The NPPG states that as background evidence, the charging authority should provide information about the amount of funding collected in recent years through section 106 agreements. This should include information on the extent to which affordable housing and other targets have been met. Appendix 1 sets out an overview of s106 funding secured and affordable housing delivery. Since the adoption of CIL in April 2015 we have been seeking planning obligations only in those cases where there is a direct requirement for site specific mitigation from a development scheme. Seven major developments with s106 agreements had been approved since that date up to the time of analysis (April 2016), equating to a total level of funding secured through planning obligations over this 11 month period of ~£1.7M.
- 7.5 In addition, the NPPG states that when proposing CIL rates, charging authorities should take into account other development costs arising from existing regulatory requirements, including taking account of any policies on planning obligations in the relevant Plan, such as for affordable housing and strategic sites. We have reviewed the site specific section 106 planning obligations secured since the adoption of CIL in April 2015 and the average sum negotiated was £1811 per residential unit and £21.7

per sqm of commercial floorspace. An assumption of £2,000 per residential unit and £30 per sqm for commercial schemes has been factored into the CIL viability study appraisals, along with other costs such as Mayoral CIL. For further details see Appendix 1.

Impact on affordable housing

- 7.6 In accordance with paragraph 173 of the NPPF and the NPPG, the CIL Viability Study sample site appraisals have factored in the costs associated with meeting the policies and standards required in new development, as set out in the London Plan, Core Strategy and saved Southwark Plan. As CIL will operate as a fixed charge, the need to strike a balance between maximising revenue to invest in infrastructure on the one hand and the need to minimise the impact upon development viability must be considered in the CIL rate setting process. Charging authorities must demonstrate that the proposed CIL rates will not threaten the delivery of the Plan as a whole. Therefore, all of the site appraisals have included the Core Strategy policy minimum requirement of 35% affordable housing.
- 7.7 Appendix 1 sets out an overview of s106 funding secured and affordable housing delivery. In summary between the financial years 2011-12 and 2015-16 36% of housing units completed comprised affordable housing. The percentage of affordable housing secured on approved schemes has consistently improved over this five year period from 18% in 2011-12 to 40% in 2015-16, indicating that in the last year we have been exceeding our overall strategic target for affordable housing. This demonstrates that the introduction of CIL in April 2015 has not undermined affordable housing delivery.
- 7.8 As highlighted in paragraphs 3.1.16 to 3.1.19 the testing demonstrated that the impact of policy requirements, including 35% affordable housing, on development viability is minimal and that the Council's affordable housing policy requirement remains a reasonable requirement. Some development schemes tested were unviable in certain circumstances due to market factors, rather than the impact of the Council's proposed CIL rates and policy requirements. These schemes are identified in the appraisals as being unviable at 0% affordable housing and will not come forward until market conditions change. In this regard their current unviable status should not be taken as an indication that the Council's requirements cannot be accommodated.
- 7.9 Some schemes were able to achieve higher amounts of affordable housing while others were identified as having challenging viability. The Council's flexible approach to the application of its affordable housing targets will ensure the viability of developments is not adversely affected over the economic cycle whilst still delivering the maximum quantum of viable affordable housing.

Addendum to s106 and CIL SPD

- 7.10 The council proposes to introduce an addendum to the Section 106 Planning Obligations and CIL SPD (2015) setting out interim guidance on the approach to negotiating section 106 planning obligations to contribute towards funding the two new Bakerloo Line extension stations planned to serve the opportunity area. The proposal is that residential developments providing 100 or more homes will make a contribution of £164 per square metre, with affordable housing being exempt. This value has been informed by the viability testing which has underpinned the Area Action Plan and CIL charging schedule (see above) and also takes into account the cost of the Bakerloo Line extension stations. Contributions from large scale non-

residential development of over 10,000sqm floorspace will be negotiated on a case by case basis.

- 7.11 A key consideration is the pooling restriction, referred to above, which prevents local authorities from pooling more than five separate planning obligations to pay for one item of infrastructure. The council could negotiate this planning obligation from up to 10 developments i.e. five obligations per Bakerloo Line extension station.
- 7.12 This interim approach will apply in the period while the CIL revision is prepared, ensuring that the council can secure funding for this infrastructure while the revision of the CIL charging schedule is taking place. Following the adoption of a revised CIL in 2017, the s106 addendum will no longer apply and a revised Regulation 123 list will be adopted. CIL could then contribute to both the stations and the tunnel itself. In addition to contributing towards the stations, planning obligations will also be sought to mitigate site specific impacts of development including improvements to bus capacity and improvements for people walking and cycling.
- 7.13 The SPD draft addendum was consulted on alongside the CIL preliminary draft charging schedule and Old Kent Road Area Action Plan. The addendum was reported back to cabinet on 24th January 2017 and approved for adoption. The addendum has now been adopted and is available on the council's website.

8. Regulation 123 List

- 8.1.1 A key principle of CIL is that after CIL is adopted authorities should not be spending both CIL and section 106 planning obligations on the same item of infrastructure. Government guidance requires authorities to be clear about those items which will not be funded by section 106 planning obligations and set these out in a list. This is called a Regulation 123 list (which refers to Regulation 123 of the CIL Regulations 2010). The items on this list can be funded or part funded through CIL.
- 8.1.2 The council proposes to amend the Regulation 123 List for the period in which the council is revising the CIL charging schedule to clarify that contributions towards construction of the Bakerloo Line extension (BLE) will be generated through CIL, but that this excludes contributions towards the two new BLE stations in the opportunity area. These can be part funded through section 106 planning obligations.
- 8.1.3 The NPPG advises that authorities should ensure they are clear about what infrastructure is needed and what will be paid for via CIL and via section 106 planning obligations. There should be no actual or perceived 'double dipping' with developers paying twice for the same item of infrastructure through CIL and section 106 planning obligations. By amending the regulation 123 list the council will further clarify which infrastructure will be funded by which route.
- 8.1.4 The council has also proposed two minor amendments to the Regulation 123 List relating to education and cycle infrastructure to further clarify what will not be funded through section 106 planning obligations.
- 8.1.5 The revised Regulation 123 was consulted on alongside the SPD draft addendum and was approved for adoption by the council on 24th January 2017. The Regulation 123 list will be updated again following the adoption of the revised CIL charging schedule to enable CIL to contribute towards all elements of the BLE.

9. Monitoring

- 9.1 The CIL Regulations are clear that a review of CIL is appropriately undertaken when circumstances have changed. This could be change in costs or values, or potentially a change in priorities by the council. In particular, the viability assessments have shown that some uses are not viable or at the margins of viability. As such, if there is a general view at any point in time that the market for these uses is improving, then their viability should be reassessed.
- 9.2 It will be important for the council to monitor the key input assumptions and come to a view as to whether these could possibly have changed sufficiently to warrant a fuller review. For commercial uses, this is most appropriately undertaken using the simple approach of monitoring planning applications and, more specifically, starts on site. As the current market changes, it is expected that there will be more starts on site as developers are able to deliver schemes they had already received planning permission for. This should be supplemented by regular consultations with local commercial agents to understand what is happening in the market, even if this is not showing in the planning application pipeline.
- 9.3 The CIL Regulations (62) require a charging authority to prepare a report for any financial year it collects CIL and publish the report on its website no later than 31 December following the end of the reported year. The report must include the total amount of CIL collected and spent and a summary of what CIL was spent on.

10. Next steps for CIL

- 10.1 In accordance with the CIL Regulations the council is undertaking two rounds of consultation on the proposed charging schedule.
- 10.2 The first is the preliminary draft CIL charging schedule consultation, which was completed between June and November 2016. Having considered the comments made on the preliminary draft the council we will now be consulting again on a draft charging schedule.
- 10.3 The council will consider the comments made on the draft charging schedule. In accordance with CIL Regulations, the council has then a further opportunity to modify the draft schedule (which would lead to a further four weeks of consultation on a 'statement of modifications').
- 10.4 Following all consultations an independent examiner will be appointed and will conduct a public examination. If the representations are few or of a nature not requiring a hearing, the examiner may handle representations by written submissions. The examiner will consider whether the charging schedule meets the requirements of the Planning Act (2008) and the CIL Regulations, in that it is supported by appropriate evidence, and that the rate would not put at serious risk economic viability across the area as a whole.
- 10.5 Once complete the examiner will issue a non-binding report to the council. The council will then take the final decision on the rate to be charged in light of any recommendations the examiner may make. The council will subsequently approve the new charging schedule and begin the charging and reinvestment process in 2017.

Step	When
Draft CIL charging schedule	Spring 2017 (formal consultation)
Independent examination of the draft charging schedule	Summer 2017
Adopt CIL charging schedule	By end of 2017

11. Next steps for the SPD addendum

11.1.1 Following the consultation on the SPD draft addendum alongside the CIL charging schedule and Old Kent Road Area Action Plan, the addendum was reported back to cabinet and approved for adoption on 24th January 2017. As noted above the proposed arrangement for funding the Bakerloo Line extension stations via section 106 is an interim arrangement. When the revised CIL charging schedule is adopted (which we anticipate will be in 2017) this particular obligation will no longer be sought.

Appendix 1: Affordable housing delivery and section 106 funds raised

As background evidence, this section provides information about the amounts raised in recent years through section 106 agreements and examines the extent to which affordable housing and other targets have been met (NPPF paragraph 018).

Affordable housing

Policy

The housing delivery target for Southwark from 2015/16 to 2024/25 is 27,362 (2,736 units per year), as set by the London Plan (2015). Southwark's Core Strategy sets an 'overall strategic target' for 35% of all new homes delivered to be affordable homes. These affordable homes are secured through planning obligations in section 106 agreements and through residential development schemes led by registered social housing providers or similar bodies.

Core Strategy (2011) Policy 6 'Homes for people on different incomes' states that all residential schemes providing 10 or more units are required to provide as much affordable housing as is financially viable, with a minimum of 35% of affordable housing. Our saved Southwark Plan policy 4.4 also requires an overall strategic tenure split for affordable homes from new development based upon local area distinctions in affordable housing tenure.

The council has an adopted Affordable Housing SPD (2008) and draft SPD (2011) which set out the detailed provision at the local level.

Approvals

The London Development Database shows that between the financial years 2011-12 and 2015-16² 19,812 homes were granted planning permission (gross figures). Of these 4990, or 25%, were affordable housing, including shared ownership, affordable rent and social rented.

Whilst this percentage is below the 35% target it indicates our flexibility in applying this policy where justified by financial viability. The percentage of affordable housing secured on approved schemes has consistently improved over this five year period from 18% in 2011-12 to 40% in 2015-16, indicating that in the last year we have been exceeding our overall strategic target for affordable housing. This indicates the introduction of CIL in April 2015 has not undermined affordable housing delivery.

Delivered

The London Development Database shows that between the financial years 2011-12 and 2015-16³ 6966 homes were delivered in Southwark (gross figures). Of these 2529, or 36%, were affordable housing, including shared ownership, affordable rent and social rented.

The number of affordable homes delivered varies year to year from a high of 632 in 2011-12 to a low of 375 in 2014-15. Similarly the percentage of affordable housing delivered varies from a high of 53% in 2011-12 to a low of 24% in 2014-15.

Financial Receipts - Planning obligations

Policy

² The figures for 2015-16 are provisional; the percentage cited may increase but will not decrease.

³ The figures for 2015-16 are provisional; the percentage cited may increase but will not decrease.

The London Plan (2015) establishes priorities for planning obligation in Policy 8.2 which states: “Affordable housing; supporting the funding of Crossrail where this is appropriate (see Policy 6.5); and other public transport improvements should be given the highest importance...” The policy also requires that importance is given to “tackling climate change and air quality, social infrastructure and the provision of small shops”.

Southwark Council Section 106 Planning Obligations and Community Infrastructure Levy Supplementary Planning Document (SPD) was adopted in April 2015. The SPD provides guidance that expands on policies and guidance on planning obligations set out in a number of planning documents including London Plan policy 8.2 (see above), Policy 14 (Implementation and Delivery) in the Core Strategy (2011) and guidance in the adopted Affordable Housing SPD (2008) and draft Affordable Housing SPD (2011). The SPD advises on how and when we will seek these obligations from developers and sets out a range of standard charges for affordable housing, carbon offsetting, employment, play space, outdoor amenity space, public realm measures, transport measures, etc. It also clarifies the relationship between planning obligations and CIL. The provisions in the SPD relate to major commercial (1,000 sq. m or more) or residential development (10 or more units). Developments that are below this threshold are not typically subject to planning obligations.

The Section 106 Planning Obligations and CIL SPD operates alongside the Mayor of London’s SPG on the ‘Use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy (2013).

The charges in the SPD are index linked and have been raised annually in line with inflation. The SPD is a material consideration in deciding major planning applications.

Financial contributions received

In the background paper to the original CIL charging schedule we provided figures for the financial contributions received by Southwark between 2007 and 2012 (not including payments in lieu of affordable housing). These grew from £3.5M in 2007-08 to ~£7M in 2009-10 and ~£18M in 2011-12.

Since the adoption of CIL in April 2015 we now seek planning obligations only in those cases where there is a direct requirement for site specific mitigation from a development scheme. Therefore we have updated the evidence base by focusing on the planning obligations secured for CIL-liable schemes since April 2015. Seven major developments⁴ with s106 agreements had been approved since that date up to the time of analysis (April 2016). Data on these applications is provided in the table below. As anticipated the total level of funding secured through planning obligations over this 11 month period (~£1.7M) is significantly down on the annual figures quoted above (which relate to years prior to the introduction of CIL).

⁴ The relatively low number of schemes probably reflects the fact that developers sought to get developments approved ahead of the introduction of CIL and hence there has been a drop of in approvals in the period after its introduction. Also note that not all schemes have s106 agreements and some schemes (e.g. prior approvals) are not s106 liable or CIL liable (e.g. schools).

Table A1.1: Section 106 planning obligations per unit for site specific mitigation

Application no	Date s106 signed	Address	Summary of proposal	Total contribution	Site specific per unit
13-AP-1122	21/12/15	CHATELAIN HOUSE, 182-202 WALWORTH ROAD, LONDON, SE17 1JJ	4945sqm commercial (A1/A3/D2/B1) and 54 residential units	£123,121	On pro rata basis, £1047 per residential unit plus £13.5 per sqm commercial
14-AP-3104	9/10/15	Rear od 25 Dulwich Village, London, SE21 7BW	12 dwellings	£23,680 (excluding AH)	Excluding AH payment, £1973 per residential unit.
14-AP-3842	12/2/16	185 Park Street, SE1 9DY	163 residential units, office (8090sqm), retail (777sqm), cultural (1711sqm)	£570,413 (excluding AH and employment payments only payable on non-delivery)	On pro rata basis, £2294 per dwelling plus £18.6 per sqm commercial
14-AP-4640	24/11/15	Capital House, 40-46 Weston Street, SE1 3QD	119 residential units (12,983sqm); 286sqm commercial space	£298,032	On pro rata basis, £2453 per dwelling plus £21.5 per sqm commercial.
15-AP-0237	26/8/15	Wedge House, 32-40 Blackfriars Road, SE1 8PB	Office (B1, 5848sqm), hotel (c1, 8277sqm), UKPN substation (36sqm)	£572,240	£40.4 per sqm commercial
15-AP-0627	7/7/15	67-71 Tanner Street	9 residential units, 400sqm commercial space (A1/A2/B1)	£19,911 (excluding AH)	On pro rata basis, £1572 per dwelling plus £14.4 per sqm.
15-AP-1330	19/10/15	8-24 Sylvan Grove, SE15 1PE	80 residential units	£122,356	£1529 per dwelling

Since the adoption of CIL the average site specific contribution has been £1811 per residential unit (this average is highly sensitive to individual sites given the small sample size) and £21.7 per sqm of commercial floorspace. The CIL Viability Study appraisals have therefore included the following conservative assumptions: £2,000 per residential unit and £30 per sqm for commercial schemes. These figures are considered sufficient to allow for future site specific Section 106 where it does arise. Other Section 106 contributions will only be sought where there is an under provision of the policy requirements and further mitigation is required. This additional contribution will not impact the viability appraisals undertaken, which support the proposed CIL Charging Schedule, which are based upon policy compliant developments.

Conclusion

The London Development Database identifies the delivery of 36% affordable housing between the financial years 2011-12 and 2015-16. Since the adoption of CIL in April 2015 we have been seeking planning obligations only in those cases where there is a direct requirement for site specific mitigation from a development scheme. Seven major developments with s106 agreements had been approved since that date up to the time of analysis (April 2016), securing funding of ~£1.7M over this 11 month period. These figures demonstrate our success in securing affordable housing and the required mitigation.

Appendix 2: BCIS All-in-Tender Price Index inflation assumptions

The 2015 CIL charging schedule sets out CIL rates for different uses and different zones in the borough. The CIL Regulations establish a mechanism for inflating CIL using the All-in-Tender Price Index. Having regard to the method for calculating the amount of CIL chargeable specified in the CIL Regulations (which states that the index figure for a given year is the figure for 1st November for the preceding year in the national All-in Tender Price Index), for this study the following index figures were used:

Borough inflations:

2016: (Q4 2014 – Q4 2015) - 5.4%

2017: (Q4 2014 – Q4 2016) – 8.9%

Mayoral inflations :

2016: (Q4 2011 – Q4 2015) – 22.9%

2017: (Q4 2011 – Q4 2016) – 26.9%

These figures were based on the All -n TPI dated 8th February 2016.

BCIS®		RICS®			
BCIS All-in TPI #101					
Base date: 1985 mean = 100 Updated: 08-Feb-2016 #101					
Date	Index	Sample	Percentage change		
			On year	On quarter	On month
4Q 2011	223	38	1.4%	1.4%	
1Q 2012	215	42	-1.8%	-3.6%	
2Q 2012	230	30	3.1%	7.0%	
3Q 2012	223	33	1.4%	-3.0%	
4Q 2012	224	36	0.4%	0.4%	
1Q 2013	234	36	8.8%	4.5%	
2Q 2013	236	31	2.6%	0.9%	
3Q 2013	234	32	4.9%	-0.8%	
4Q 2013	239	37	6.7%	2.1%	
1Q 2014	247	37	5.6%	3.3%	
2Q 2014	259	39	9.7%	4.9%	
3Q 2014	259	32	10.7%	0.0%	
4Q 2014	260	30	8.8%	0.4%	
1Q 2015	270	24	9.3%	3.8%	
2Q 2015	273	Forecast 13	5.4%	1.1%	
3Q 2015	273	Forecast 5	5.4%	0.0%	
4Q 2015	274	Forecast	5.4%	0.4%	
1Q 2016	276	Forecast	2.2%	0.7%	
2Q 2016	280	Forecast	2.6%	1.4%	
3Q 2016	282	Forecast	3.3%	0.7%	
4Q 2016	283	Forecast	3.3%	0.4%	