

Community Infrastructure Levy Draft Charging Schedule (DCS)



Compliance statement

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Statement of compliance with provisions of legislation and the Bromley Statement of Community Involvement

Introduction

1. The Council is required to adhere to the provisions of Part 11 of the Planning Act 2008¹ (“the Act”) when introducing a Community Infrastructure Levy in its local area. Section 211 of the Act sets out the governing provisions for determining the amount of CIL to be charged, through the production of a ‘Charging Schedule’ in accordance with further regulations published by the Secretary of State. This document summarises the key requirements for the publication of a Charging Schedule under the Community Infrastructure Levy Regulations 2010² (as amended, herein referred to as ‘the Regulations’).
2. The document also details how the relevant requirements of the Council’s Statement of Community Involvement (SCI) (document reference; SD-002) have been addressed.

The Community Infrastructure Levy Regulations 2010 (as amended), Part 3 – Charging Schedules

Format and content of charging schedules

- 12.(1) Subject to the provisions of this Part a charging authority may determine the format and content of a charging schedule.*
- (2) A draft charging schedule submitted for examination in accordance with section 212 of PA 2008 must contain—*
 - (a) the name of the charging authority;*
 - (b) the rates (set at pounds per square metre) at which CIL is to be chargeable in the authority’s area;*
 - (c) where a charging authority sets differential rates in accordance with regulation 13(1)(a), a map which—*
 - d) an explanation of how the chargeable amount will be calculated.*
- (3) A charging schedule approved by a charging authority must, in addition to the contents mentioned in paragraph (2), contain—*
 - (a) the date on which the charging schedule was approved;*
 - (b) the date on which the charging schedule takes effect; and*
 - (c) a statement that it has been issued, approved and published in accordance with these Regulations and Part 11 of PA 2008.*

Comment

3. The Draft Charging Schedule (DCS) put forward for consultation and submitted for examination (‘Draft Charging Schedule – September 2020, document reference:

¹ Part 11 of the Planning Act 2008 - <https://www.legislation.gov.uk/ukpga/2008/29/part/11>

² Community Infrastructure Regulations 2010 -

<https://www.legislation.gov.uk/primary+secondary?title=The%20Community%20Infrastructure%20Levy>

LBB-001) is consistent with the above requirements. As the Council do not propose any geographical differential rates under regulation 13 (1) (a), no map is required. The Council has included reference and overview to the parts of the regulations which determine liability and calculation of chargeable amounts in the schedule, and propose a further document (CIL Operational Guidance, document reference: LBB-005) which will contain further detail on the calculation of CIL incorporating any future changes to regulations. The DCS also includes within its format provision for matters required under paragraph 3 in respect of date of future approval / publication, and a statement of compliance with the Regulations and the Act.

Differential rates

- 13.(1) A charging authority may set differential rates—**
- (a) for different zones in which development would be situated;*
 - (b) by reference to different intended uses of development;*
 - (c) by reference to the intended gross internal area of development;*
 - (d) by reference to the intended number of dwellings or units to be constructed or provided under a planning permission.*
- (2) In setting differential rates, a charging authority may set supplementary charges, nil rates, increased rates or reductions.**

Comment

4. Based on the findings of the Viability Assessment (Dixon Searle Partnership, CIL Viability Assessment – Update Review, July 2020, document reference: LBB-002) the Council has proposed that, on balance, a flat CIL rate on most forms of residential development across the borough is the most appropriate way forward; however, those with additional care and support services which are deemed less viable are to be considered as part of the nil-rated ‘other forms of development’.
5. Furthermore, residential development of large-scale purpose-built shared living and purpose-built student accommodation have been determined through the Viability Assessment to be able to support a higher CIL rate and have been placed in a higher band.
6. The Viability Appraisal determined that smaller forms of retail were not able to consistently support a CIL charge, and as such those forms determined to be able to support a charge (retail warehousing and supermarkets) have been identified within their own CIL rate, with all others falling under the ‘nil-rated ‘other forms of development’.
7. The Viability Appraisal also determined that other forms of development (such as offices and industrial uses) were not able to consistently support a CIL charge, and as such have been nil-rated.

Setting rates

- 14.(1) In setting rates (including differential rates) in a charging schedule, a charging authority must strike an appropriate balance between—**

- (a) *the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and*
- (b) *the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.*
- (2) *In setting rates in a charging schedule, a charging authority may also have regard to actual and expected administrative expenses in connection with CIL to the extent that those expenses can be funded from CIL in accordance with regulation 61.*
- (3) *In having regard to the potential effects of the imposition of CIL on the economic viability of development (in accordance with paragraph (1)(b)), a London borough Council or MDC must take into account the rates set by the Mayor.*
- (4) *For the purposes of paragraph (3), the rates set by the Mayor are the rates in the most recent charging schedule approved by the Mayor before the London borough Council or MDC begins consultation on its Draft charging schedule in accordance with regulation 16.*
- (5) *For the purposes of section 211(7A) of PA 2008, a charging authority's Draft infrastructure list is appropriate evidence to inform the preparation of their charging schedule.*

Comment

8. The Infrastructure Delivery Plan (IDP) September 2020 (document reference: LBB-003) highlights a list of infrastructure priorities with an identified funding gap of approximately £93 million after taking into consideration other forms of funding potentially available to the Council. A further £2 billion is required for major strategic improvements to rail services, to which some contribution via CIL may be expected. Of the £93 million, £26 Million is identified as being required in the next 5 years. The IDP was prepared during Summer 2020, using information sourced from services in the Council and from external infrastructure providers. The CIL Viability Assessment has considered the implication of the proposed CIL rates and determines that the charges will be able to be generally accommodated by new development in the borough. It is considered that the proposed CIL rates strike an appropriate balance as required by the Regulations.
9. The Council has collected the Mayor of London CIL since 1 April 2012, and has determined the administrative expenses on additionally charging, collecting and spending local CIL can be accommodated within the proportion retained under regulation 61. The latest Mayor of London CIL rates ('MCIL2') have been accommodated in the Viability Appraisal, which TfL have confirmed as appropriate in their response to the DCS consultation (see Schedule of Representations on the CIL Draft Charging Schedule Consultation, document reference: LBB-009).

Publication of a Draft Charging Schedule

- 16.(1)** *Before submitting a Draft charging schedule for examination in accordance with section 212 of PA 2008, the charging authority must—*

- (a) make a copy of the Draft charging schedule, the relevant evidence and a statement of the representations procedure available for inspection—
 - (i) at its principal office, and
 - (ii) at such other places within its area as it considers appropriate;
 - (b) publish on its website—
 - (i) the Draft charging schedule,
 - (ii) the relevant evidence (to the extent that it is practicable to do so),
 - (iii) a statement of the representations procedure, and
 - (iv) a statement of the fact that the Draft charging schedule and relevant evidence are available for inspection and of the places at which they can be inspected;
 - (c) send to each of the consultation bodies—
 - (i) a copy of the Draft charging schedule, and
 - (ii) a statement of the representations procedure;
- (1A) The charging authority must invite representations on the Draft charging schedule from such of the following as the authority considers appropriate—
- (a) persons who are resident or carrying on business in its area;
 - (b) voluntary bodies some or all of whose activities benefit the charging authority's area; and
 - (c) bodies which represent the interests of persons carrying on business in the charging authority's area.

Comment

10. From 6 November to 20 December 2020 (a period of six weeks), the Council consulted on the Bromley CIL DCS. The following documents were published on the Bromley CIL website:

- the DCS (document reference: LBB-001);
- a summary of responses to the early 2018 consultation on the Preliminary Draft Charging Schedule (PDCS) (document reference: LBB-004);
- Relevant evidence in the form of:
 - the CIL Viability Assessment (document reference: LBB-002)
 - the Bromley Infrastructure Delivery Plan (document reference: LBB-003); and
 - data on previous S106 amounts collected (document reference: LBB-006);
- a document providing further guidance on how CIL operates – ‘CIL Operational Guidance (document reference: LBB-005); and
- a Statement of Representations procedure (document reference: LBB-007).

11. The page also included information on how to comment and contact the Council, Copies of the DCS and Statement of Representations procedure (with a cover letter / email) were sent to the following ‘consultation bodies’ in accordance with the definition set out in section 16 of the Regulations:

- London Borough of Lewisham
- Greater London Authority
- London Borough of Croydon
- Royal Borough of Greenwich

- London Borough of Bexley
- London Borough of Lambeth
- London Borough of Southwark
- Tandridge District Council
- Sevenoaks District Council
- Kent County Council
- Surrey County Council

12. Letters and emails were also sent to all those registered on the Council's Planning Policy notification database; those who responded to the PDCS consultation in 2018; and any other party or individual who requested to be notified of the progression of a local CIL in Bromley.

13. Due to the Covid-19 pandemic, the Council's principal office at Bromley Civic Centre was open on an appointment only basis. Therefore, standing paper copies of the DCS and supporting documents were not deposited at any Council building. Those consulted were invited to contact the Council should they wish to make an appointment to inspect the documents (see the statement of representations procedure, document reference: LBB-007). No such requests were received. The Council considers that this is a practical response in the current exceptional circumstances, which satisfactorily addresses the requirements of the Regulations.

14. Representations were invited in writing (sent to the Civic Centre), via an online survey or via email. Officers arranged for any written responses to be held in the Civic Centre post room so these could be easily collected following the end of the consultation. No written responses were received.

Representations relating to a Draft Charging Schedule

- 17.(1) Any person may make representations about a Draft charging schedule which a charging authority proposes to submit to the examiner.*
- (2) Any such representations must be—*
- (a) made within the period which the charging authority specifies for the purposes of this paragraph; and*
 - (b) sent to the address, and if the charging authority think it appropriate to specify a person, the person, which the charging authority specifies for the purposes of this paragraph.*
- (4) A person who has made representations about a Draft charging schedule may withdraw those representations at any time by giving notice in writing to the charging authority.*
- (5) The charging authority must take into account any representations made to it under this regulation before submitting a Draft charging schedule for examination in accordance with section 212 of PA 2008.*

Comment

15. The Council received 18 responses to the DCS consultation; these are summarised in the schedule of representations (document reference: LBB-009). The substantive representations requested a reduction (or nil-rate) to the residential rate in town centres and designated Renewal / Opportunity areas. The Council considers that

this matter was thoroughly assessed as part of the CIL Viability Assessment (document reference: LBB-002), and a single residential rate (other than for student or purpose-built shared living) is appropriate and strikes an appropriate balance between securing necessary infrastructure funding and ensuring that the economic viability of future development is not threatened. Most other matters raised in representations related to proposed expenditure of CIL, which are further matters to be considered upon adoption of CIL. A full response to matters raised can be found in the schedule of representations (document reference: LBB-009). Following consideration of the representations, the Council does not consider any changes to the DCS are required.

Submission of documents and information to the examiner

- 19.(1) *The charging authority must submit the following to the examiner —*
 - (a) *the Draft charging schedule;*
 - (b) *a statement setting out—*
 - (i) *if representations were made in accordance with regulation 17, the number of representations made and a summary of the main issues raised by the representations, and a summary of how the representations received were taken into account, or*
 - (ii) *that no such representations were made;*
 - (c) *copies of any representations made in accordance with regulation 17;*
 - (d) *where the charging authority modified the Draft charging schedule after it was published*
in accordance with regulation 16, a statement of modifications; and
 - (e) *copies of the relevant evidence.*
- (2) *Of the documents and statements mentioned in paragraph (1)—*
 - (a) *a copy of each must be sent in paper form; and*
 - (b) *a copy of those mentioned in paragraph (1)(a), (b) and (d) and, to the extent that it is practicable to do so, of those mentioned in paragraph (1)(c) and (e), must be sent electronically.*
- (3) *As soon as practicable after a charging authority submits a Draft charging schedule to the examiner it must—*
 - (a) *make available at the places where the documents mentioned in regulation 16(1)(a) were made available, a copy of the Draft charging schedule and of each of the documents mentioned in paragraph (1);*
 - (b) *publish on its website—*
 - (i) *the Draft charging schedule and the documents mentioned in paragraph (1)(a), (b) and (d),*
 - (ii) *any of the documents mentioned in paragraph (1)(c) and (e) which it is practicable to so publish, and*
 - (iii) *a statement of the fact that a copy of the Draft charging schedule and of each of the documents mentioned in paragraph (1) are available for inspection and of the places at which they can be inspected; and*
 - (c) *give notice to those persons who requested to be notified of the submission of the draft charging schedule to the examiner that the Draft has been so submitted.*
- (4) *Where the charging authority modified the Draft charging schedule after it was published in accordance with regulation 16, the charging authority must—*

- (a) send a copy of the statement of modifications to each of the consultation bodies invited to make representations under regulation 16; and*
- (b) publish the statement of modifications on its website.*
- (5) The charging authority must comply with paragraph (4) before submitting to the examiner the documents mentioned in paragraph (1).*

Comment

16. The Council has submitted to the Examiner a number of documents, including all those required by Regulation 19, and other supporting documents. These documents are detailed in a separate schedule.
17. These documents will be made available on the Council's website³ as soon as practicable after submission to the examiner, in line with Regulation 19(3). Although no respondent to the DCS consultation requested to be notified of the submission of the DCS to the examiner, the Council intends to provide notification of submission to all respondents who made representations on the DCS, including information detailing where they can view the submitted documents (where contact details have been provided).
18. As with the DCS consultation mentioned above, the COVID-19 pandemic affects the ability to inspect documents at the Council's principal office (the Civic Centre). Standing paper copies of the DCS and supporting documents will not be deposited at any Council building; instead, anyone who wishes to inspect the documents will be invited to arrange an appointment. In the event that further lockdown restrictions prevent access to the Civic Centre (even by appointment), the Council will provide hard copies of relevant documents where appropriate.
19. As the Council proposes no changes to the published DCS, Regulation 19 (4 and 5) do not apply.

CIL examination: right to be heard

- 21.(1) A person who makes representations about a Draft charging schedule in accordance with regulation 17 must (if the person so requests) be heard by the examiner.*
- (2) A request under paragraph (1) must be submitted to the charging authority in writing before the end of the period the charging authority specifies for the purposes of regulation 17(2).*
- (3) Where a charging authority modifies a Draft charging schedule after it is published in accordance with regulation 16, any person may request to be heard by the examiner in relation to those modifications.*
- (4) The right to be heard under paragraph (3) applies only in relation to the modifications made to the Draft charging schedule as set out in the statement of modifications.*
- (5) A request under paragraph (3) must—*

³https://www.bromley.gov.uk/info/1004/planning_policy/1179/bromleys_community_infrastructure_levy

- (a) be submitted to the charging authority in writing before the end of the period of four weeks beginning with the day on which the Draft charging schedule is submitted to the examiner in accordance with regulation 19(1); and*
- (b) include details of the modifications (by reference to the statement of modifications) on which the person wishes to be heard.*
- (6) The charging authority must submit a copy of each request it receives under paragraph (3) to the examiner as soon as practicable after the end of the period mentioned in paragraph (5)(a).*
- (7) A person who has made a request to be heard under paragraph (3) may withdraw that request at any time before the opening of the examination by giving notice in writing to the charging authority.*
- (8) Where a person has submitted a request to be heard by the examiner, the charging authority must—*
 - (a) publish the matters mentioned in paragraph (9) on its website;*
 - (b) notify the following of those matters—*
 - (i) any person who has made a representation in accordance with regulation 17, and not withdrawn that representation, of those matters,*
 - (ii) any person who has made a request to be heard under paragraph (3)*
- (9) The matters referred to in paragraph (8) are—*
 - (a) the time and place at which the examination is to be held; and*
 - (b) the name of the examiner.*
- (10) Subject to paragraph (11), the charging authority must comply with the requirements set out in paragraph (8) at least four weeks before the opening of the examination.*
- (11) Where a person has made a request to be heard by the examiner under paragraph (3), the charging authority must comply with the requirements in paragraph (8) at least two weeks before the opening of the examination.*
- (12) Without prejudice to section 212(9) of PA 2008—*
 - (a) it is for the examiner to decide how the hearing is to be conducted;*
 - (b) the examiner may, in particular, decide the amount of time to be allowed at an examination for the hearing of representations;*
 - (c) the examiner may refuse to allow representations to be made at the hearing if the examiner considers that the representations are irrelevant, frivolous, vexatious or repetitious.*

Comment

20. No request to be heard at Examination was received by the Council during the consultation on the DCS. As the Council is not proposing any changes to the DCS, there are no requests subsequent under Regulation 21(3)

The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019

Transitional and saving provisions

13.—(1) Part 3 of the 2010 Regulations continues to apply, in relation to a draft charging schedule which is published in accordance with regulation 16(1) of the 2010 Regulations before the commencement date, as if the amendments in regulation 3 had not been made.

(2) Where before the commencement date a charging authority has sent a preliminary charging schedule to consultation bodies in accordance with regulation 15 of the 2010 Regulations, the charging authority must take into account any representations made to it before it publishes a draft charging schedule in accordance with regulation 16(1) of the 2010 Regulations.

(3) For the purposes of this regulation—

“the 2010 Regulations” means the Community Infrastructure Levy Regulations 2010;

“commencement date” has the meaning given in regulation 1.

Comment

21. The 2019 update to the CIL Regulations put in place a saving provision which requires the charging authority to take into account any representations received during a PDCS consultation (where such a consultation was undertaken, prior to the requirement being removed). Bromley consulted on a PDCS in early 2018. As part of the DCS consultation in November and December 2020, the Council prepared a Schedule of Representations to the CIL Preliminary Draft Charging Schedule Consultation (document reference: LBB-004); this document summarised the responses and provided the Council’s response to these, including details of any changes made to the DCS as a result. This satisfies the saving provision requirement.

Statement of Community Involvement (document reference: SD-002)

22. The SCI details how the Council will undertake consultation activities for planning applications and documents. Paragraph 3.10 of the SCI provides broad details of CIL. Table 2 of the SCI sets out the consultation methods to be used to consult on the different stages (including the PDCS stage which was still a statutory requirement at the time of drafting of the SCI).

23. The table below identifies the consultation methods / techniques which the SCI notes will be used to consult on CIL; and details how these methods were reflected in the DCS consultation (November to December 2020).

SCI consultation method/technique	Comments
Council’s Website	DCS documents were published on the Council’s website, see paragraph 10 above.
Consultation Portal (Objective software)	The Council no longer subscribes to the Objective consultation portal; therefore this method/technique was not utilised.

Available for Inspection	Documents were made available for inspection during the DCS consultation, see paragraph 13 above.
Surveys/ Questionnaires	An online questionnaire was prepared using SurveyMonkey. The questionnaire asked whether respondents agreed or disagreed with the DCS and provided opportunity for further comments to be submitted by respondents. Six survey responses were received; these are summarised in the Schedule of Representations to the CIL Draft Charging Schedule Consultation (document reference: LBB-009)
Notification by letter/email using the consultation database	Letters and emails were sent out to individuals and organisations registered on the Planning Policy database, see paragraph 12 above.
Local / Specialist Press	A notice was placed in a local newspaper – the News Shopper. The notice appeared in the printed edition and in the online notice section of the News Shopper website. A copy of the notice is provided in the consultation statement (document reference: LBB-009)