



## ISSUE 3

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### **WRITTEN REPRESENTATIONS TOWARDS THE EXAMINATION IN PUBLIC**

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In respect of

### **THE LONDON BOROUGH OF BARNET'S COMMUNITY INFRASTRUCTURE LEVY – DRAFT CHARGING SCHEDULE**

On behalf of

### **MAYOR'S OFFICE FOR POLICING & CRIME /METROPOLITAN POLICE SERVICE**

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Planning • Heritage

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**Author:**  
**Sophie Jamieson**

**Approved by:**  
**Matt Roe**

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## **Introduction**

- 1.1 This statement has been prepared by CgMs on behalf of the Mayor's Office for Policing and Crime and the Metropolitan Police Service (MOPAC/MPS) who wish to make further representations in respect of the Council's Community Infrastructure Levy (CIL) Draft Charging Schedule concerning *Issue 3 – Will the rates put the overall development of the area at risk?*

## **Why is the draft CIL Charging Schedule unsound?**

- 1.2 We do not consider that Barnet's CIL Charging Schedule satisfies the legal requirements of Part 11 of the Planning Act 2008 nor does not meet the criteria for setting CIL rates in the CIL Regulations 2010 (as amended 2011 & 2012).

## **Legal considerations**

- 1.3 In setting CIL rates, the Local Authority is required by Regulation 14(1) to strike an appropriate balance between using CIL to fund the infrastructure required to support development in an area and the potential effects of the proposed charge on the economic viability of development.
- 1.4 The Council has not provided adequate supporting evidence to justify the proposed flat rate for all uses in viability terms and, despite recognising that public bodies will be at increased risk of viability (para 3.8.3 of draft Charging Schedule), no reduced rate is proposed for new community uses such as policing facilities. The future development of such uses is therefore at serious risk.
- 1.5 Furthermore, the proposed CIL rates are inconsistent with the Crime and Disorder Act 1998 which was introduced to further the government's aim of 'putting crime prevention at the heart of decision making'. Section 17 of the Act imposes a duty on every police authority, local authority and other specified bodies to consider the prevention of crime and disorder in the exercise of all their functions. Specifically it states: 17(1) Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely

effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

- 1.6 Planning Inspectorate Note No. 953 states that the subject matter of Section 17 - crime prevention, can be a material consideration for the Inspector in reaching a decision.

### **Policy considerations**

- 1.7 Paragraph 157 of the National Planning Policy Framework (NPPF) highlights that local plans should plan positively for the development and infrastructure required in the area and be based on co-operation with public sector organisations. This is consistent with the final bullet point of paragraph 17 of the NPPF which requires local authorities to 'take account of and support local strategies to improve health social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs'.
- 1.8 In addition, paragraph 70 of the NPPF seeks to ensure the delivery of social facilities and services to meet the needs of the community. The third bullet point of paragraph 70 notes that planning policies should ensure that facilities and services are able to develop and modernise in a way that is sustainable, whilst the fourth bullet point requires planning policies to ensure an integrated approach to considering the location of community services.

### **Practical considerations**

- 1.9 The Borough is expected to experience significant future growth and change over the coming years. It is therefore essential that the MOPAC/MPS are able mitigate the impact of development through the provision of new and enhanced policing facilities where required.
- 1.10 The provision of new policing facilities allows the Borough police estate to continue to reflect changing patterns of need and is of crucial importance to ensure that Barnet remains and safe and secure community for Londoners and visitors alike. Without the proposed alteration to the Charging Schedule, the

MOPAC/MPS' ability to meet future policing requirements is prejudiced as the proposed flat rate would make MOPAC/MPS liable to pay CIL, thereby diverting funding away from capital expenditure. This would restrict investment in the estate contrary to the aims of the Estate Strategy which is seeking to improve service provision.

- 1.11 Section 216 of the Planning Act 2008 highlights that regulations can add, remove or vary the list of matters included within the meaning of infrastructure. The DCLG 'Community Infrastructure Levy: An Overview' document (May 2011) at paragraph 12 highlights that police stations and other community safety facilities are infrastructure. Policing is listed in the Barnet Infrastructure Delivery Plan. There is therefore no doubt that policing is therefore infrastructure.
- 1.12 Therefore in providing community infrastructure (i.e. new policing facilities) which would attract a CIL liability, the MPS' contribution to community infrastructure would effectively be double counted. On the one hand being charged CIL whilst on the other being a potential beneficiary.
- 1.13 The provision of new floorspace is generally a consolidation of the estate therefore there is no greater impact on infrastructure than the existing position.
- 1.14 It is noted that in the July 2012 version of Barnet's Draft Charging Schedule, the Council recognised that public bodies would not be able to benefit from charitable relief and would therefore be eligible for a CIL grant 'equivalent to the total CIL charge levied upon any such infrastructure that is identified within the Council's Infrastructure Delivery Plan as either 'necessary' or 'critical' to the delivery of the Council's Local Plan' (para 3.8.3). However, in the November 2012 Statement of Modifications to the Draft Charging Schedule, the Council reworded this paragraph stating that 'the CIL burden from such infrastructure could easily be recognised and an equivalent amount of CIL funds be used towards the self delivery of the infrastructure should this be required to make such development viable'.
- 1.15 This approach is considered unnecessarily complex and would place unreasonable pressures on the limited time and resources of public bodies such as the MOPAC/MPS. By having to initially pay CIL and then to seek to have this

reimbursed places an extra layer of administrative burden which could easily be avoided through exemption.

- 1.16 It also creates a level of uncertainty as to the timescales for receipts due to the process for drawing down funding.
- 1.17 Furthermore, the provision of new policing floorspace which is made necessary by new development, but is not identified as 'necessary' or 'critical' within the Council's IDP, would also be prejudiced.
- 1.18 The Council clearly recognises that the proposed flat rate would put the development of some community facilities and infrastructure at risk but has failed to alleviate the burden on public bodies, including the MOPAC/MPS, by setting a nil rate for such uses.

#### **Examples of nil rates set by other charging authorities**

- 1.19 In the Bristol CIL Charging Schedule (approved by full council on 18<sup>th</sup> September 2012, and comes into affect on 1<sup>st</sup> January 2013) it lists 'Residential and Non-residential Institutions (Classes C2, C2A, D1) and development by the emergency services for operational purposes' as attracting £0 CIL rate/m<sup>2</sup>, which the Inspector accepted.
- 1.20 The examiner's report for Huntingdonshire District Council CIL was published on 11th April 2012 and concluded that, subject to two modifications, the Charging Schedule be approved. On the 25th April 2012, Huntingdonshire District Council approved the implementation of the CIL from the 1st May 2012. This states that Business (B1), General Industrial, Storage & Distribution (B2 and B8), Community Uses (provided by the public, not-for-profit or charitable sectors) (within D1 - except Health Uses - and D2) and Agricultural attract a nil rate.
- 1.21 In relation to London Borough's, Brent's Draft CIL Charging Schedule (July 2012) lists Police station and police facilities (Sui Generis) as attracting a zero charge and Sutton's Draft CIL Charging Schedule (November 2012) lists community

uses as attracting a nil rate. Other London Borough's exempt office and sui generis uses and thus MOPAC/MPS floorspace would be exempt.

### **Proposed change**

- 1.22 For the reasons set out above, the MOPAC/MPS seek an amendment to the rates set out in the Draft CIL Charging Schedule to include a nil rate for new policing floorspace in Barnet.

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