

Cabinet Member Delegated Decision: 24 April 2019

Report title: Lambeth CIL Instalments Policy

Wards: All

Portfolio: Councillor Matthew Bennett, Cabinet Member for Planning, Regeneration and New Homes

Report Authorised by: Emma Peters: Interim Strategic Director for Sustainable Growth and Opportunity

Contact for enquiries:

Benny Clutario

CIL/S106 Manager

Growth, Planning & Employment

020 7926 4447

bclutario1@lambeth.gov.uk

Report summary

The report recommends that the Council issues its own CIL instalments policy which will supersede the CIL instalments policy issued by the Mayor of London.

Finance summary

The recommendation proposes Lambeth Council replaces the current CIL instalment payment policy set by the Mayor of London with its own policy

Recommendations

1. To approve Lambeth's CIL instalments policy which is set out in paragraph 2.1 of this report.
2. To apply Lambeth's CIL instalments policy from 1 June 2019 and will be applied on all CIL demand notices issued for developments commencing on or after this date.

1. Context

- 1.1 Lambeth currently does not have its own CIL instalments policy. As collecting authority for both charging authorities Lambeth Council and the Mayor of London, the CIL Regulations 2010 (as amended) requires that the Council must apply the Mayor of London’s instalment policy on all developments in Lambeth that are liable for both Mayoral CIL and Lambeth CIL.
- 1.2 Regulation 70 paragraphs 3 and 4 of the CIL Regulations 2010 (as amended) provides as follows:

70. - Payment periods

(3) Where-

- (a) A is charged by both the Mayor of London and a London borough council or MDC; and
 - (b) the London borough council or MDC has issued an instalment policy on or before the commencement date stated in the commencement notice received under paragraph (1)(b),
- A is payable in accordance with that instalment policy.

(4) Where-

- (a) A is charged by both the Mayor of London and a London borough council or MDC;
 - (b) the London borough council or MDC has not issued an instalment policy on or before the commencement date stated in the commencement notice received under paragraph (1)(b); and
 - (c) the Mayor of London has issued an instalment policy on or before the commencement date stated in the commencement notice received under paragraph (1)(b),
- A is payable in accordance with the Mayor's instalment policy.

1.3 The Mayor of London’s instalment policy is currently as follows:

Amount of CIL liability	Number of instalment payments	Amount or proportion of CIL payable in any instalment/time at which payments are due
£100,000 or less	no instalments	total amount payable within 60 days of commencement of development
£100,001 or more	two	<ul style="list-style-type: none"> • the greater of £100,000 or half the value of the total amount payable within 60 days of commencement of development • the remainder within 240 days of commencement of development

1.4 A public consultation on the Preliminary Draft Charging Schedule (PDCS) was held from 22 October to 17 December 2018 as the first step towards amending Lambeth’s current CIL Charging Schedule. During the consultation, representations were received from two major developers in the borough requesting that the Council adopt its own CIL instalment policy different from that of the Mayor of London.

1.5 Vauxhall Cross Island Ltd are the planning applicants for the proposed development at the Vauxhall Island site (planning reference 17/05807/EIAFUL). VCI Ltd have proposed that the Council consider introducing its own CIL instalments policy as follows:

Amount of CIL liability	Number of instalment payments	Amount or proportion of CIL payable in any instalment/time at which payments are due
£100,000 or less	no instalments	total amount payable within 60 days of commencement of development
£100,001 to £10,000,000	two	<ul style="list-style-type: none"> • the greater of £100,000 or half the value of the total amount payable within 60 days of commencement of development • the remainder within 240 days of commencement of development
£10,000,001 or over	four	payable in four instalments of equal amounts within 60, 240, 420 and 600 days of commencement of development

1.6 HB Reavis UK Ltd are the owners of the Elizabeth House site which is proposed to be redeveloped based on planning permission 12/01327/FUL which was granted in 2015. HB Reavis UK Ltd have indicated that they intend to commence 12/01327/FUL but at the same time, they are submitting another planning application for substantial changes to the proposed development at Elizabeth House which may supersede 12/01327/FUL. HB Reavis UK Ltd have proposed that the Council consider introducing its own CIL instalments policy as follows:

Amount of CIL liability	Number of instalment payments	Amount or proportion of CIL payable in any instalment/time at which payments are due
£100,000 or less	no instalments	total amount payable within 60 days of commencement of development
£100,001 to £10,000,000	two	<ul style="list-style-type: none"> the greater of £100,000 or half the value of the total amount payable within 60 days of commencement of development the remainder within 240 days of commencement of development
£10,000,001 or over	five	payable in five instalments of equal amounts within 60, 240, 420, 600 and 780 days of commencement of development

1.7 These requests for the Council to issue its own CIL instalments policy will be considered separately from other issues that were also raised during the public consultation for PDCS 2018 in connection with the proposed changes to CIL rates in Lambeth. These other issues will be addressed during the second round public consultation on the Draft Charging Schedule which is targeted to be held in the summer of 2019. The Council can provide its own CIL instalments policy ahead of adopting a revised CIL Charging Schedule which is targeted to be in effect in 2020.

2. Proposal and Reasons

2.1 It is proposed that the Council issue its own CIL instalments policy as follows:

Amount of CIL Liability	Number of instalments	Payment periods and amounts
£100,000 or less	no instalments	total amount payable within 60 days of commencement of development
£100,001 to £10,000,000	two	<ul style="list-style-type: none"> the greater of £100,000 or half the value of the total amount payable within 60 days of commencement of development the remainder within 240 days of commencement of development
£10,000,001 to £15,000,000	three	payable in three instalments of equal amounts within 60, 240, and 420 days of commencement of development
£15,000,001 to £20,000,000	four	payable in four instalments of equal amounts within 60, 240, 420 and 600 days of commencement of development
£20,000,001 or over	five	payable in five instalments of equal amounts within 60, 240, 420, 600 and 780 days of commencement of development

2.2 Appendix 1 provides information about CIL charging authorities in London that do not have a CIL instalment policy and therefore apply the CIL instalment policy issued by the Mayor of London. It also provides information about London CIL charging authorities that apply their own CIL instalment policies, including details of the payment plans of these policies. There is no evidence that the lack of a CIL instalment policy deters development from coming forward.

2.3 The CIL Regulations 2010 (as amended) treats an individual phase in a phased planning permission (which expressly provides for a development to be carried out in phases) as a separate chargeable development in its own right. This regulation allows CIL to be paid in conjunction with the commencement of each phase of the development, effectively allowing CIL to be paid in instalments even where no CIL instalment policy applies.

2.4 However, there may be a case for large scale developments where CIL liabilities are likely to be substantial, i.e. over £10 million, in which having to pay a huge sum of money in a short span of time

can place significant financial constraints on the project. For schemes like this, it is important that cashflow is spread across the duration of the project in a manner commensurate to the extent of works taking place on site. Making significant large payments upfront can affect a scheme's rate of return, further compounding the impact on viability and therefore possibly reducing the extent of potential benefits the scheme can deliver. More often than not, CIL liability will be just one element of the overall package of contributions that will be required from a scheme of this size.

- 2.5 The only drawback from having an extended CIL instalments policy is that payment of CIL will be delayed and the proceeds from a development will not be immediately available to the Council for expenditure on infrastructure. It could also mean that interest will not be earned on CIL that the Council has not yet received.
- 2.6 However, a CIL instalment policy particularly for developments with a substantial CIL liability can be the difference between a development coming forward or not at all. If a development does not commence, the Council will not receive any CIL payment in respect of this development. It is considered that the proposed CIL instalment policy will encourage large-scale development schemes with substantial potential CIL liabilities to proceed rather than not come forward at all.
- 2.7 Very few schemes in Lambeth will have CIL liabilities of over £10 million. Appendices 2 and 3 provide case studies of two developments that are coming forward and may benefit from Lambeth having its own CIL instalment policy as proposed in paragraph 2.1.
- 2.8 Lambeth's CIL instalment policy can take effect immediately after the decision has been taken. It is proposed that this takes effect on 1 June 2019. This will be applied on any development that commences from that date. The CIL Regulations 2010 (as amended) require that the CIL instalment policy is published on the Council's website.

3. Finance

- 3.1 The recommendation proposes that Lambeth Council replaces the current instalment policy set by the Mayor of London with its own policy. It is anticipated that the change in policy will attract further development to the borough and increase future CIL payments.
- 3.2 As per 1.3 and 2.1, the recommendation only increases the number of payment instalments for CIL liabilities over £10,000,001. Therefore, these payments will take longer to credit Lambeth's bank account resulting in a reduction of bank interest generated. However, the service notes in 2.5 that few developments are projected to have a CIL liability greater than £10,000,001.
- 3.3 From 30 London Boroughs, 16 currently adhere to Mayor of London policy and 14 follow their own policy.
- 3.4 The proposed change in policy will be managed within existing resources by the S106/CIL team.

4. Legal and Democracy

- 4.1 The Council can introduce an instalments policy in accordance with Regulation 69B of The Community Infrastructure Levy Regulations 2010.
- 4.2 The Council must comply with the following requirements which are set out in that regulation:

69B.- Instalment policies

- (1) A charging authority which wishes to allow persons liable to pay CIL to do so by instalments must publish on its website an instalment policy containing only the information described in paragraph (2) (“the instalment policy”).
- (2) The instalment policy must state-
 - (a) the date on which it takes effect, which must be no earlier than the day after the instalment policy is published on the website;
 - (b) the number of instalment payments;
 - (c) the amount or proportion of CIL payable in any instalment;
 - (d) the time (to be calculated from the date the development is commenced) that the first instalment payment is due, and the time that any subsequent instalment payments are due; and
 - (e) any minimum amount of CIL below which CIL may not be paid by instalment.
- (3) The charging authority must-
 - (a) make the instalment policy available for inspection—
 - (i) at its principal office, and
 - (ii) at such other places within its area as it considers appropriate; and

4.3 The Council is not obliged to introduce an instalments policy. It is a matter for the Council’s discretion.

4.4 The decision maker must have regard to both the benefits and the drawbacks of such a policy when deciding whether to approve the proposed policy. These are set out in paragraphs 2.5 and 2.6 of this report. In summary, the benefit is that the policy will encourage large developments to come forward by delaying the time at which often very large sums of CIL have to be paid. The disadvantage for the council is that it is less advantageous to receive these sums later.

4.5 This proposed key decision was entered in the Forward Plan on 25 March 2019 and the necessary 28 clear days’ notice has been given. In addition, the Council’s Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days - the call-in period – must then elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

5. Consultation and co-production

Not applicable

6. Risk management

6.1 It is always more advantageous for the Council to receive payments sooner than later. On the other hand, it is unlikely that future payments will be at risk if payment of very large sums is delayed for 180, 360, 540 or 720 days after the first instalment has been paid within 60 days from commencement of development.

6.2 In case payment is missed for any instalment that is due, Regulation 70(8)(a) provides that payment of the full unpaid amount becomes due immediately. The regulation states as follows:

70.- Payment periods

- (8) Where an amount payable in accordance with this regulation is not received in full on or before the day on which it is due-
 - (a) the unpaid balance of A becomes payable in full immediately;

- 6.3 Once non-payment of CIL occurs, enforcement action may ensue immediately. The CIL Regulations provide a range of enforcement action that the collecting authority may undertake to recover unpaid CIL. This includes application of surcharges and late payment interest, issuing CIL stop notices, court injunctions and liability orders as set out in Part 9 Regulations 80-111 of the CIL Regulations 2010 (as amended).

7. Equalities impact assessment

- 7.1 The full Equalities Impact Assessment carried out in 2013 for the adoption of Lambeth's CIL Charging Schedule and other supporting documents, including the Regulation 123 List, continues to be relevant and accurate. That report states: "The infrastructure and services that CIL will provide (for example schools, medical and community facilities, improvements to green open spaces, and transport) will enhance accessibility and liveability of all sectors of society, including all equality groups."
- 7.2 Whilst preparing for the recently concluded public consultation on the Preliminary Draft Charging Schedule in October to December 2018, it was agreed with the Council's Equalities Officers that a full EIA will not be required for proposed changes to the CIL rates. The proposed CIL instalments policy will affect only very large developments. It will not have a detrimental impact on any of the equalities groups.

8. Community safety

- 8.1 Both CIL and S106 provide for infrastructure and measures that contribute towards the safety of the local population in Lambeth.

9. Organisational implications

9.1 Environmental

Both CIL and S106 provide for a range of environmental improvements that will benefit the local population in Lambeth.

9.2 Staffing and accommodation

None.

9.3 Procurement

Not applicable.

9.4 Health

Lambeth's Regulation 123 List includes the provision of healthcare facilities that may be funded, wholly or partly, from CIL

10. Timetable for implementation

- 10.1 If approved by Cabinet Member Delegated Decision, Lambeth's CIL instalment policy will be published on the Council's website. It will take effect from 1 June 2019 and will apply on any development that commences from that date.

Audit Trail				
Consultation				
Name/Position	Lambeth directorate / department or partner	Date Sent	Date Received	Comments in paragraph:
Councillor Matthew Bennett	Cabinet Member for Planning, Regeneration and New Homes	25.03.2019	08.04.2019	
Councillor Andy Wilson	Cabinet Member for Finance	09.04.2019	09.04.2019	
Andrew Travers	Chief Executive	11.03.2019	02.04.2019	
Emma Peters	Interim Strategic Director for Sustainable Growth and Opportunity	11.03.2019	02.04.2019	
Sandra Roebuck	Director of Growth, Planning & Employment - Sustainable Growth and Opportunity	11.03.2019	25.03.2019	
Andrew Ramsden	Assistant Director of Finance - Sustainable Growth and Opportunity, Corporate Resources	01.03.2019	01.03.2019	
Paul Badiani	Group Manager - Major Capital Projects (Investment & Growth, Planning), Corporate Resources	26.02.2019	01.03.2019	3
Peter Flockhart	Senior Planning Lawyer, Legal Services, Legal and Governance	26.02.2019	05.03.2019	4.1 - 4.4
Maria Burton	Senior Democratic Services Officer, Legal and Governance	26.02.2019	05.03.2019	4.5
Michael Munnely	Head of Business Development and Investment Monitoring, Sustainable Growth and Opportunity	26.02.2019	21.03.2019	
Rob Bristow	Assistant Director, Planning, Transport and Development, Sustainable Growth and Opportunity	26.02.2019	13.03.2019	
Ross Whear	Strategic Applications Manager, Planning, Transport and Development, Sustainable Growth and Opportunity	26.02.2019	13.03.2019	
Jeff Holt	Principal Planner - Strategic Applications, Planning, Transport and Development, Sustainable Growth and Opportunity	26.02.2019	13.03.2019	

Report History	
Original discussion with Cabinet Member	08.04.2019
Report deadline	N/A
Date final report sent	N/A
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	Yes
Date first appeared on forward plan	25.03.19
Key decision reasons	Expenditure, income or savings in excess of £500,000
Background information	The CIL Regulations 2010 as amended
Appendices	Appendix 1 – <i>Other London Boroughs' CIL Instalment Policies</i> Appendix 2 – <i>Case Study: Elizabeth House</i> Appendix 3 – <i>Case Study: Vauxhall Island</i>

APPROVAL BY CABINET MEMBER OR OFFICER IN ACCORDANCE WITH SCHEME OF DELEGATION

I confirm I have consulted Finance, Legal, Democratic Services and the Procurement Board and taken account of their advice and comments in completing the report for approval:

Signature: _____ **Date:** _____

Benny Clutario, CIL/S106 Manager, Growth, Planning and Employment

I confirm I have consulted the relevant Cabinet Members, including the Leader of the Council (if required), and approve the above recommendations:

Signature: _____ **Date:** _____

Councillor Matthew Bennett, Cabinet Member for Planning, Regeneration and Jobs

Any declarations of interest (or exemptions granted): None

Any conflicts of interest: None

Any dispensations: None