



OVERVIEW & SCRUTINY COMMITTEE

Tuesday, 3 February 2015 at 7.15 p.m., Room C1, 1st Floor, Town Hall,
Mulberry Place, 5 Clove Crescent, London, E14 2BG

SUPPLEMENTAL AGENDA PACK ONE

7.2 Approval of the London Borough of Tower Hamlets' Community Infrastructure Levy (CIL) Charging Schedule

This meeting is open to the public to attend.

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For further information including the Membership of this body and public information, see the main agenda.

**7 .2 Approval of the London Borough of Tower Hamlets'
Community Infrastructure Levy (CIL) Charging
Schedule**

All Wards

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Agenda Item 7.2

Committee: Overview and Scrutiny	Date: 03/02/15	Classification: Unrestricted	Report No.
Report of: Infrastructure Planning, Planning and Building Control	Title: Approval of the London Borough of Tower Hamlets' Community Infrastructure Levy (CIL) Charging Schedule		
Originating Officer(s): Owen Whalley	Wards: All		

1. INTRODUCTION

- 1.1 The attached Cabinet Report and Appendices comprise information pertaining to the adoption of a CIL in Tower Hamlets. This report will be put before Cabinet on the 4th February 2015 and Full Council on the 25th February 2015.

2. OVERVIEW

- 2.1 CIL is a mechanism to secure funding, from most types of new development, to provide supporting infrastructure such as schools, parks, health centres and community facilities.
- 2.2 CIL is, for the most part, replacing Section 106 (S106), as the mechanism to secure funding from development, towards the necessary infrastructure required to support development. The ability of the Council to use S106 will be significantly restricted from the 6th April 2015, due to legislative changes. As such it is intended to adopt a CIL by the 1st April 2015.
- 2.3 S106 will still remain for some matters, which can be defined as specific to the development site in question. These specific matters may include (but are not exclusive to) affordable housing, carbon offsetting measures, employment initiatives and public realm improvements.
- 2.4 Using the provision of public realm as an example, if it can be proven that improvements are required to make a specific, single development acceptable in planning terms then a S106 contribution can be sought for that site. However, there is scope for CIL to pay for public realm improvements that are not specifically related to one individual site, but are wider-reaching and more strategic in nature.
- 2.5 The objective of the Regulations governing the use of S106 and CIL is to ensure that S106 and CIL are **not** used to fund the same item of infrastructure – what is known as 'double counting'.
- 2.6 The restrictions on S106 mean that the number of contributions that can be pooled will be restricted. In addition, S106 cannot generally be used to provide infrastructure to support an area wider than one single development.
- 2.7 The restrictions placed on the use of S106 could seriously jeopardise the delivery of infrastructure required to support development if a CIL is not adopted. In effect, should

the Council not choose to implement a CIL, its ability to secure funding for the infrastructure necessary to support development will be seriously compromised.

3. BACKGROUND

- 3.1 The CIL Charging Schedule has been the subject of a Public Examination and was approved by the Examiner, subject to some changes. These changes are set out in more detail in paragraphs 5.16 to 5.29 of the attached Cabinet Report. These changes must be made, if the Council wishes to proceed to adopt the CIL Charging Schedule.
- 3.2 Refer to Table 1 (Page 10) of the appended Cabinet Report for the rates that have been approved by the Examiner in Tower Hamlets.
- 3.3 CIL is different from S106 in that it applies to more types of development, including smaller scale developments. Adopting a CIL will allow the Council to secure funding from developments that would not have otherwise been captured under a S106 regime.
- 3.4 It is anticipated that CIL income will be limited in the short term, due to the fact that schemes secured under the existing S106 regime will still be coming forward. However, it is expected that CIL will raise significantly more income, in the medium to long term.
- 3.5 The types of infrastructure that the Council will be able to spend CIL on are set out in what is called a Regulation 123 List¹. This list does not detail which specific infrastructure projects will be supported using CIL funds. The projects on which CIL income will be spent will be the subject of a detailed, lengthy and collaborative prioritisation process, to ensure income is allocated appropriately, alongside other funding mechanisms. Further work on the allocation process and accompanying procedures will be undertaken in due course.
- 3.6 With reference to section 6 below, please note that only approval for Appendix 1A will be sought at both Cabinet and Full Council. Approval for Appendices 1C, 1D and 1E will only be sought at Cabinet. Appendices 1A(1) and 1B are for information only. These approvals are sought at these committees as a result of legal advice.

4. RECOMMENDATION

- 4.1 The risks of not implementing a CIL in the Borough would be likely to result in difficulties with securing the appropriate funding to help pay for much needed infrastructure, to accompany the continuing regeneration and growth of the borough. As such, it is recommended that the Overview and Scrutiny Committee consider and comment on the report, enabling the report to be put before Cabinet and Full Council for the adoption of a CIL in Tower Hamlets.

5. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 5.1 The comments of the Chief Financial Officer are incorporated in the attached report

¹ The Council is required to produce the Regulation 123 list by the CIL Regulations. This list is set out in Appendix C to the Cabinet Report.

6. LEGAL COMMENTS

- 6.1 The Overview and Scrutiny Procedure Rules as set out in Part 4.5 of the Constitution entitle the Committee as part of its terms of reference to advise the Mayor and Cabinet of key issues/questions to be considered in relation to reports due to be considered by the Executive. Full legal comments on the recommendations made in the Cabinet report have been provided in Section 7 of the report. As noted in these comments (and at paragraph 3.6 above) in accordance with s213 of the Planning Act 2008 the Charging Schedule at Appendix 1A must be adopted by a majority of votes of the Full Council whilst the adoption and approval of the other documents (Appendices 1A(1), 1B, 1C, 1D, 1E and 1F) is a function which can be exercised by the Executive.
- 6.2 Pursuant to paragraph 10.2 of Part 4.5 of the Constitution, in relation to the Council's approach to matters not forming part of its policy and budget framework, the Overview and Scrutiny Committee may make proposals to the Mayor or Executive for developments in so far as they relate to matters within its terms of reference. The Overview and Scrutiny Committee shall report their recommendations on proposals for consideration by the Mayor/Executive and the Mayor/Executive are required to consider the report at one of its next two meetings.

7. APPENDICES

- Appendix 1: Cabinet Report - Approval of the London Borough of Tower Hamlets' Community Infrastructure Levy (CIL) Charging Schedule
- Appendix 1A: Proposed Charging Schedule.
- Appendix 1A(1): Charging Schedule Explanatory Notes
- Appendix 1B: The Final CIL Examination Report.
- Appendix 1C: A Regulation 123 List.
- Appendix 1D: An Instalments Policy.
- Appendix 1E: A Payment in Kind and Infrastructure Payments Policy.
- Appendix 1F: Equalities Analysis

Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012


List of "Background Papers" used in the preparation of this report

Brief description of "background paper"

Name and telephone number of holder and address where open to inspection

NONE

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Cabinet 4 th February 2015	 TOWER HAMLETS
Report of: Aman Dalvi, Director of Development and Renewal	Classification: [Unrestricted or Exempt]
Approval of the London Borough of Tower Hamlets' Community Infrastructure Levy (CIL) Charging Schedule	

Lead Member	Rabina Khan
Originating Officer(s)	Owen Whalley
Wards affected	All Wards
Community Plan Theme	A great place to live
Key Decision?	No – key decision at Full Council

1. EXECUTIVE SUMMARY

- 1.1 An approval at Full Council is required for the adoption of a CIL Charging Schedule in Tower Hamlets. CIL is a mechanism to secure funding, from most types of new development, to provide supporting infrastructure such as schools, parks, health centres and community facilities. CIL is replacing Section 106 (S106), for the most part, as the mechanism to do this. From the 6th of April 2015 the ability to use S106 contributions to provide infrastructure that will support a wider area than an individual development will be severely limited as a result of legislation that will restrict the pooling of contributions.
- 1.2 In order to bring CIL in before the restrictions come into force, it is intended to implement a CIL by the 1 April 2015. CIL income is expected to be limited in the short term due to the fact that schemes secured under the existing S106 regime will be coming forward. However, it is expected that CIL will raise significant income in the medium to long term. Not implementing a CIL within the borough would be likely to present the Council with difficulties in securing the appropriate funding to help pay for much needed infrastructure to accompany the continuing regeneration and growth of the borough.

2. RECOMMENDATIONS

2.1 The Mayor in Cabinet is recommended to:

1. Approve the Charging Schedule (attached at Appendix A) to be put to Full Council for adoption, with the following recommendations: -
 - Approve the Tower Hamlets CIL Charging Schedule, as modified by the Independent Examiner's report, for adoption on the 1 April 2015, as attached at Appendix A.

- Note the CIL Examination Report, attached at Appendix B.
 - Note the documents which support the proposed Charging Schedule, for adoption alongside it.
 - Note the CIL Charging Schedule Explanatory Notes document, attached at Appendix A1
 - Approve an annual review of the Charging Schedule, to establish whether an update is necessary and appropriate.
 - Approve the referral of CIL income information within the Capital Programme to be referred to the Budget Setting Full Council every year.
2. Note the CIL Examination Report, attached at Appendix B.
 3. Note the CIL Charging Schedule Explanatory Notes document, attached at Appendix A1.
 4. Approve the documents which support the proposed Charging Schedule, for adoption alongside it. These documents comprise of: -
 - A Regulation 123 List, attached at Appendix C.
 - An Instalments Policy, attached at Appendix D.
 - A Payment in Kind and Infrastructure Payments Policy, attached at Appendix E.

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3. REASONS FOR THE DECISIONS

3.1 It is a legal requirement, set out in the CIL Regulations 2010 (as amended) (“the CIL Regulations”), to refer the decision relating to the adoption of a CIL Charging Schedule to Full Council.

3.2 The reasons for the decisions and recommendations are: -

- From the 6 April 2015, S106 will not allow for the funding of infrastructure in the same way. The Council will no longer be able to pool five or more contributions from new development. This will make it difficult to use S106 to secure appropriate funding to help deliver the level of infrastructure necessary to support development.
- The adoption of a CIL Charging Schedule will allow the Council to secure funding to help deliver the infrastructure required to support development, in light of changes to the S106 mechanism.

4. ALTERNATIVE OPTIONS

4.1 An alternative option is for the Council to not adopt the proposed Charging Schedule, and instead commence the CIL rate setting process again straight away whilst continuing to secure funding for infrastructure through S106 in the interim.

4.2 In this scenario, the Council would unlikely to be able to implement a CIL until early 2017. From the 6 April 2015, Local Authorities will no longer be able to pool more than four S106 contributions. This will make it very difficult to ensure appropriate levels of funding can be pooled to fund the level of infrastructure that the borough requires.

4.3 This option is deemed not to be appropriate due to the difficulties associated with using S106 to fund infrastructure in the interim.

4.4 The Council could adopt the Charging Schedule and re-commence the rate setting process straight away. It is considered that this would likely produce a similar Charging Schedule. Undertaking an annual review of the Charging Schedule to establish whether an update is necessary and appropriate will allow the Council to re-commence the rate setting process at the most appropriate time, in the context of the wider market.

4.5 It is therefore not considered appropriate to take any alternative actions.

5. BACKGROUND TO THE PROCESS TO DATE

What is CIL?

- 5.1 It is a financial charge that local authorities can levy on new development to help fund infrastructure such as schools, health, open space and transport facilities to support growth in an authority's area. CIL was provided for in the Planning Act 2008 and is intended to replace the use of S106 agreements for securing most types of infrastructure.
- 5.2 CIL is charged on most types of development and the CIL Regulations are highly prescriptive in the way that CIL is calculated and applied to development; unlike with Section 106, there is no negotiation. However, developers may apply for relief from the CIL payment for affordable housing dwellings or for developments by charities.
- 5.3 The Mayor of London has a separate CIL charge, which is used to help raise funding to pay for the Crossrail project and is collected by Tower Hamlets on his behalf. This charge was implemented in April 2012 and is applied to most development. The rate that applies to Tower Hamlets is £35 per sq. m.

Why is it Important to Adopt a CIL?

- 5.4 From the 6 April 2015, restrictions will apply on the pooling of S106 contributions. This may make it difficult to deliver the required level of projects through S106. Under CIL, this issue does not arise as there are no pooling restrictions.
- 5.5 CIL is different from S106 in that it applies to more types of development, including smaller scale projects. Adopting a CIL will allow the Council to secure funding from projects that wouldn't have otherwise been captured under a S106 regime.
- 5.6 Not adopting a CIL could compromise the Council's ability to adequately secure funding to deliver infrastructure to support development.

How Has the Proposed Charging Schedule Been Developed?

- 5.7 The Council started to prepare a CIL Charging Schedule in the summer of 2012. The processes which the Council has followed to publish and consult on its CIL are summarised in the table below: -

Key Milestone	Dates
1. Cabinet Decision for Consultation on the Preliminary Draft Charging Schedule (PDCS)	7 November 2012
2. Public consultation on the PDCS and supporting evidence	16 November 2012 – 2 January 2013 (6 weeks)
3. Cabinet Decision for Consultation on the Draft Charging Schedule (DCS)	10 April 2013
4. Public consultation on the DCS and	22 April 2013 - 5 June 2013 (6 weeks)

Key Milestone	Dates
supporting evidence	
5. Cabinet Decision for Consultation on the Revised Draft Charging Schedule (RDCS)	9 October 2013
6. Public consultation on the Revised Draft Charging Schedule (RDCS) and supporting evidence	21 October 2013 – 2 December 2013 (6 weeks)
7. Submission to the Planning Inspectorate and consultation on Statement of Modifications	11 February 2014 – 11 March 2014 (4 weeks)
8. Initial Examination Hearing	28 – 30 May 2014 (3 days)
9. Public consultation on further work undertaken to address Examiner's queries	7 August 2014 – 12 September 2014 (5 weeks 1 day)
10. Further Examination Hearing	6 October 2014
11. Receipt of Draft Examination Report	28 October 2014
12. Receipt of Final Examination Report	14 November 2014

- 5.8 Cabinet approval was sought for each of the three initial drafts for consultation and Members have been kept apprised of the progress to adopting a Charging Schedule.
- 5.9 Three public consultations were undertaken in compliance with the CIL Regulations and the Council's Statement of Community Involvement. The proposed Charging Schedule was submitted to the Planning Inspectorate for Examination after these consultations.
- 5.10 The Planning Inspectorate appointed an Examiner and an initial hearing took place at the end of May 2014. This involved the Examiner receiving written and verbal statements from numerous parties including the development industry, the Greater London Authority (GLA), Transport for London (TfL) and the Council.
- 5.11 The focus of the Examination was overwhelmingly on the viability of the CIL rates; the main issues that arose are summarised below: -
- Developers of strategic sites (primarily Wood Wharf and Bishopsgate Goods Yard) objected to the rates on the basis that the appraisal assumptions were inappropriate to their sites and would risk delivery and also the development plan. They also questioned the legal practicalities of delivering in kind facilities through CIL.

- The Greater London Authority (GLA) and Transport for London (TFL) objected to the Council's approach of 'sharing' available monies between the Council CIL and Crossrail S106 Top-up¹ for offices in North Docklands. Linked to this they also challenged the Wood Wharf site viability appraisal.
- There were concerns about the impact on affordable housing delivery – particularly in the context of estate renewal schemes.
- Hotel and Student accommodation providers contended that the borough wide rates were too high and should be lower.

5.12 At the initial hearing the Examiner asked the Council to produce some further evidence in anticipation of a potential further hearing. This included: -

1. Information on opportunity areas and site allocations including relevant housing targets and job growth.
2. Further appraisals, including sensitivity testing of assumptions, of the strategic sites tested.
3. Further Hotel appraisals testing different scenarios.
4. An explanation as to the approach to the Crossrail Section 106 top up payment by other relevant boroughs

5.13 The Examiner's decision to seek further information was not expected but is not without precedent, this also occurred in the Examination of the Council's Managing Development Document and in relation to the Examination of other CIL Charging Schedules, such as the London Borough of Southwark. It should be acknowledged that the level of challenge at the Examination was high and probably the most contentious to date at a CIL hearing.

5.14 The further work undertaken by the Council, as requested by the Examiner, was the subject of a 5 week consultation which took place from August to September 2014. Beyond the close of this consultation, a further hearing was held on 6 October 2014. This hearing was much more limited in scope and focussed on the further work undertaken by the Council.

5.15 On the 28 October 2014 the Examiner published a draft 'Fact Check' report, which proposed a number of modifications that the Council must make in order to implement its CIL Charging Schedule.

What Modifications to the Charging Schedule Did the Independent Examiner Propose?

5.16 The Examiner's Report found that the vast majority of the rates proposed were sound and can be adopted without modification. These rates represent

¹ North Docklands Crossrail S106 Charge (£190 sqm) – Mayoral CIL (£35 sqm) = North Docklands Crossrail S106 Top-up Charge (£155 sqm)

the vast majority of the Council's projected CIL income and is a positive result for the Council.

5.17 However, a few modifications were proposed. The Council must make modifications to address the issues raised in order to adopt the Charging Schedule. The modifications are summarised below: -

1. Reducing the North Docklands area rate for offices to nil to ensure that CIL does not result in an inappropriate reduction in funding secured through the Mayor of London's SPG.
2. Setting a nil rate for all development within the boundaries of the Bishopsgate Goods Yard (LBTH proportion), Wood Wharf, Westferry Printworks and London Dock allocated sites as defined in the Tower Hamlets Local Plan Managing Development Document.
3. For the sake of clarity and to provide for fair and transparent implementation, a more detailed definition of Convenience Supermarket/Superstores and Retail Warehousing to be included in the Charging Schedule.
4. Setting a nil rate for Student Development, led by a registered University, let at below market rent.

5.18 It is not expected that the modifications numbered 3 and 4 in paragraph 5.17 above will have a demonstrably negative impact for the Council. The modification that relates to the definition of Convenience Supermarket/Superstores and Retail Warehousing will just involve the Council applying an already established and agreed upon definition to the Charging Schedule.

5.19 The modification that relates to setting a nil rate for Student Housing let at below a market rent, will likely have a limited impact because the University developing the accommodation will have a charitable exemption to pay CIL in any case.

5.20 The most significant modifications proposed by the Examiner are numbered 1 and 2 in paragraph 5.17 above. The impacts of these modifications are set out in paragraphs 5.21 to 5.22 below: -

Modification 1: Reducing the North Docklands area rate for offices to nil to ensure that CIL does not result in an inappropriate reduction in funding secured through the Mayor of London's SPG.

5.21 This modification will mean that the Council will not be able to collect CIL funding from office development in the North Docklands area. Please refer to pages 5 and 6 of the Council's proposed Charging Schedule (Appendix A) for a map which shows the area to which this modification will apply.

- 5.22 Apart from the Wood Wharf development (which is dealt with under Modification 2 below), there is no significant office development expected within this area in the life of the initial Charging Schedule. Therefore, it is likely that this modification will have a very limited impact on the Council, in line with current development forecasts.

Modification 2: Setting a nil rate for all development in Tower Hamlets within the boundaries of the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock allocated sites as defined in the Tower Hamlets Local Plan Managing Development Document.

- 5.23 This modification means that the Council will not be able to collect CIL funding from development on these sites. This modification was proposed because it was argued by the owners/developers of these sites that CIL cannot be viably accommodated if the full requirements of the development plan are accounted for, the Examiner upheld this despite the Council's counter arguments.
- 5.24 The impact of this modification is not as significant as it may seem. Two of these sites (Wood Wharf and London Dock) already have a planning permission under the current S106 regime. If they implement the permission (London Dock already has) and develop the sites in accordance with it then the Council will experience no loss of CIL receipts as financial contributions will be delivered under already agreed S106 agreements.
- 5.25 If the developers of Wood Wharf do not implement the planning permission on this site and apply for planning permission again under the initial Charging Schedule then the Council will not be able to charge CIL on the new scheme.
- 5.26 The Westferry Printworks and Bishopsgate Goods Yard sites do not have current planning permissions so it can be reasonably assumed that they will be delivered under a CIL regime.
- 5.27 These sites are required to deliver certain items of infrastructure on-site under the Council's Local Plan. The cost of delivering these items can be deducted from the chargeable CIL. Given this, it is likely that the CIL payments for these sites would have been significantly reduced.
- 5.28 As a nil CIL rate has been applied to these sites, the required on-site infrastructure has been excluded from CIL. The Council will seek to secure this infrastructure through a S106 agreement. It does not mean that no planning obligations will be made available.
- 5.29 As there is no CIL payable on these sites, the development cost is reduced. As a result, there may be scope for securing an increased level of affordable housing and/or enhancements to the required on-site infrastructure. This will be a matter for detailed discussion and negotiation with applicants.

What Does the CIL Charging Schedule Look Like?

5.30 Please refer to Appendix A for the Council's proposed Charging Schedule, including zone maps. Table 1 below sets out the rates that would apply in Tower Hamlets: -

Table 1

Development Type	Proposed CIL Rate Per sq m (GIA) of Development			
	Zone 1	Zone 2	Zone 3	Large Allocated Sites
Residential	£200	£65	£35	Nil
	City Fringe	North Docklands	Large Allocated Sites	Rest of Borough
Offices	£90	Nil	Nil	Nil
	£70	£70	Nil	Nil
Retail (Except Convenience Supermarkets/ Superstores and Retail Warehousing)				
Convenience Supermarkets/ Superstores and Retail Warehousing	Borough Wide, except Large Allocated Sites			Large Allocated Sites
	£120			Nil
Hotel	Borough Wide, except Large Allocated Sites			Large Allocated Sites
	£180			Nil
Student Housing Let at Market Rents	Borough Wide, except Large Allocated Sites			Large Allocated Sites
	£425			Nil
Student Housing Let at Below Market Rents	Borough Wide, except Large Allocated Sites			Large Allocated Sites
	Nil			Nil
All Other Uses	Borough Wide			
	Nil			

5.31 It should be noted that the area of the London Legacy Development Corporation (LLDC) within Tower Hamlets will be the subject of separate rates, set and administered by the LLDC and not by the Council. The boundary of this area is detailed on the maps in the CIL Charging Schedule.

What Documents Support the Charging Schedule?

5.32 The Charging Schedule will be supported by three documents: -

- A Regulation 123 List, attached at Appendix C. This is the list of types of projects that the Council will be able to spend CIL on. The Council is required to produce this list by the CIL Regulations.
- An Instalments Policy, attached at Appendix D. This will allow the payment of CIL in instalments on large developments and is consistent with the policy adopted by the Mayor of London in relation to his CIL.

- A Payment in Kind and Infrastructure Payments Policy, attached at Appendix E. This will allow the Council to use CIL to secure land and/or on-site strategic infrastructure in lieu of CIL monetary payments where it is deemed necessary and appropriate.

What CIL Income is the Council Expecting and What Will it Be Spent On?

- 5.33 In the Council's Infrastructure Planning and Funding Gap Report, approved for consultation at Cabinet on the 9 October 2013, it is estimated that the Council is likely to receive a CIL income of approximately £170m between 2014/15 and 2026/2027. This works out at an average annual income of £13m whereas between 2009 and 2012 the Council received an average of £11m per annum from S106.
- 5.34 However it is likely that the initial years of CIL will yield a lower income than this due to the fact that many developments commenced in this period will still fall under the current S106 regime, so S106 received may be higher than the CIL secured for the first few years. However, these are estimates only and are entirely dependent upon the development cycle, which is difficult to predict. Separate reporting on infrastructure planning and income/expenditure on CIL can be provided on to Full Council as part of the Capital Programme, annually. Further work and discussions will be undertaken, in due course, to establish procedures for planning and delivering infrastructure projects, supported by funds collected through CIL and other mechanisms.
- 5.35 The list of types of projects that the Council will be able to be spend CIL on is referred to as a Regulation 123 List, which is attached at Appendix C. The Council is required to produce this list by the CIL Regulations.
- 5.36 In summary, the Council's Regulation 123 List directs that the Council will use CIL funding to deliver any infrastructure necessary to support development in its area, apart from infrastructure required to be provided on the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock sites, as these sites have been nil rated and the infrastructure must therefore be delivered using S106.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 This report seeks approval for the adoption of the charging schedule for the Tower Hamlets Community Infrastructure Levy following the completion of the Examination in Public and the subsequent issuing of the Independent Examiner's report. Approval is sought for the Council's CIL to come into effect from 1 April 2015.
- 6.2 As outlined in previous reports, the Community Infrastructure Levy will replace elements of the current Section 106 planning process which will continue in a

reduced capacity. The Authority currently generates substantial resources via the Section 106 system, and this will continue under the CIL.

- 6.3 The Charging Schedule was developed and revised by officers in conjunction with external advisors, and prepared in accordance with the Authority's infrastructure needs and development viability. Following the completion of the Examination in Public, the charging schedule has been amended to take into account the recommendations of the Examiner – the main modifications are outlined in paragraphs 5.20 to 5.29 and relate to the reduction of the CIL rate for offices in the North Docklands area to nil, and the establishment of a nil CIL rate for all development within the boundaries of the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock sites.
- 6.4 Although the Council will lose CIL resources through the setting of the zero CIL rate in these areas, as stated in paragraphs 5.28 and 5.29, the Council will still seek to secure infrastructure through Section 106 agreements and there may be scope for securing an increased level of affordable housing and enhancements to the required on-site infrastructure.
- 6.5 The revised charging schedule is attached at Appendix 1. Based on the latest development assumptions and the revised charging schedule, it is anticipated that in the period to 2026/27, CIL will generate resources of approximately £170 million.
- 6.6 The revised likely infrastructure needs within the borough over the period to 2026-27 were assessed as part of the evidence base that was prepared to support the introduction of the CIL. These are valued at approximately £528.7 million of which indicative funding of £151.4 million has potentially been identified across the various public agencies. This leaves a funding gap of approximately £377 million before CIL charges. It should be noted that these are the infrastructure needs of all the major public sector organisations within the borough, and it is not solely the Council which must seek additional resources to meet the assumed infrastructure need.
- 6.7 The infrastructure needs and the likely resources available must be continually reviewed, but based on assessments within the evidence base, the funding gap of £377 million will be significantly filled through the estimated CIL income of £170 million, leaving an overall indicative funding need of £207 million across the organisations within the Borough.
- 6.8 The costs of the consultation and Inspection processes were met from within existing resources.
- 6.9 In addition to the Council's own CIL, the Borough will continue to be responsible for the collection of the Mayor of London's CIL which came into operation on 1 April 2012. The Mayoral CIL is independent of the Council's CIL requirement.

7. LEGALCOMMENTS

- 7.1 This report recommends that the Mayor in Cabinet refer the proposed Charging Schedule to Full Council for adoption and seeks approval for the adoption of the associated Regulation 123 list, the Instalments Policy and policies on Land and Infrastructure Payments. The recommendation follows the receipt of the Independent Examiner's report which was issued following an examination held over dates in May and October 2014. In accordance with s213 of the Planning Act 2008 ("PA 2008") the Charging Schedule must be adopted by a majority of votes of the Full Council.
- 7.2 The statutory framework for CIL is set out in sections 205-225 of the PA 2008 and further detail is provided under the CIL Regulations. The legal requirements for the preparation of a CIL Charging Schedule are set out under s211 of the PA 2008 and this report demonstrates that the statutory requirements have been met. The PA 2008 and the CIL Regulations set out requirements for adopting a Community Infrastructure Levy and provide that a draft Charging Schedule must be submitted to an Independent Examiner who is empowered to make findings and recommendations on it. Where pursuant to s212A of the PA 2008 the Independent Examiner has made recommendations as to modifications that the Independent Examiner considers sufficient and necessary to remedy a non-compliance, then pursuant to s213 the Council are only able to adopt the Charging Schedule with modifications that are sufficient and necessary to remedy the non-compliance found. As noted in this report the Independent Examiner appointed to examine the Council's draft Charging Schedule has recommended approval of the Council's draft Charging Schedule subject to modifications, and the nature of the modifications have been detailed herein. The Council may therefore only adopt the Charging Schedule if it does so with the necessary modifications and should have regard to the recommendations and the Independent Examiner's reasons for them.
- 7.3 Once adopted the Council must publish and give notice of the approval of the Charging Schedule in accordance with Regulation 25 of the CIL Regulations. The Charging Schedule will come into effect on the day specified within the schedule but this must not be earlier than the day after it is published.
- 7.4 Pursuant to Regulation 123 of the CIL Regulations from the 6th of April 2015, the Council's ability to pool s106 contributions will be severely restricted which will impact on the Council's ability to deliver infrastructure from contributions secured under s106 agreements. It is therefore necessary for the Council to introduce the CIL Charging Schedule as soon as possible so that the Council can continue to deliver infrastructure with flexibility, free of the incoming restraints. Regulation 123 also allows the Council as Charging Authority to publish a list of infrastructure projects or types of infrastructure that it intends will be, or may be wholly or partly funded by CIL ("relevant infrastructure"). Where such a list has been published a planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure. If the Council did not adopt such a list, then this restriction on planning obligations would apply to any infrastructure.

- 7.5 Regulation 69B of the CIL Regulations allows the Council to publish an instalments policy and sets out the information which must be provided in it. The policy will take effect on the date specified in the policy but this cannot be earlier than the day after it has been published on the Council's website. The policy must also be made available for inspection at the Council's offices and other appropriate locations.
- 7.6 Regulation 73 of the CIL Regulations provides that the Council as charging authority may accept one or more land payments in satisfaction of the whole or part of the CIL due in respect of a chargeable development. The amount of CIL paid is an amount equal to the value of the acquired land and the value of the acquired land must be determined by an independent person and secured by an agreement.
- 7.7 Regulation 73A of the CIL Regulations allows the Council as Charging Authority to make infrastructure payments available in its area in satisfaction of CIL, and the amount of CIL paid is an amount equal to the value of the infrastructure provided, as determined by an independent person. The infrastructure being provided must be relevant infrastructure and the Council must be satisfied that it is not necessary to make the development granted permission acceptable in planning terms. The infrastructure must be secured by an agreement entered into before the chargeable development is commenced. In order to allow infrastructure payments in the Council's area, as the Charging Authority the Council are required to issue a document giving notice of this and to state the date on which the Council will begin accepting infrastructure payments and the types of infrastructure projects or infrastructure which it will consider accepting (Regulation 73B). This document must be published on the Council's website and made available for inspection at the Council's offices and such other places that the Council considers appropriate.
- 7.8 Having regard to the provisions outlined in paragraphs 7.4 to 7.7, the Council has power to make policies of the kind set out in appendices C to E of the report. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 have not been amended in respect of CIL and therefore the approval of the Regulation 123 list, the Instalments Policy and the policies on Payments in Kind and Infrastructure Payments is a function which can be exercised by the Council's executive.
- 7.9 When considering whether to adopt the proposed Charging Schedule and policies, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't (the public sector equality duty). An equality analysis is required which is proportionate to the functions in question and the potential impacts.

8. ONE TOWER HAMLETS CONSIDERATIONS

- 8.1 An Equalities Analysis was undertaken as part of the preparation of the CIL Preliminary Draft Charging Schedule, a copy of which is appended to the report. The document indicated that the impact of CIL is neutral and means it was not necessary to repeat this process for later iterations of the Charging Schedule because it is not considered that the modifications will have an impact on the conclusions.

- 8.2 There is the potential for CIL receipts to be used to fund appropriate projects that will contribute to the One Tower Hamlets objectives of reducing inequalities; ensuring community cohesion; and strengthening community leadership.

9. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 9.1 A Strategic Environmental Assessment Screening was undertaken at the Preliminary Draft Charging Schedule stage of preparing the Schedule and can be provided upon request. This document concluded that it was not necessary to prepare a Strategic Environmental Assessment. Government guidance is clear that CIL is not required to be subject to a Sustainability Appraisal (Community Infrastructure Levy Guidance, CLG, 2013, paragraph 7).
- 9.2 There is the potential for CIL receipts to be applied to infrastructure which support a greener environment and aid sustainable development.

10. RISK MANAGEMENT IMPLICATIONS

- 10.1 From the 6 April 2015, S106 will not exist in the same way. The Council will no longer be able to pool five or more contributions. This may make it difficult to use S106 to secure appropriate funding to help deliver infrastructure to support development.
- 10.2 CIL rates have been set at a level that enables development and, along with other funding sources, the delivery of infrastructure to support that development. Having CIL rates that were too high would prejudice the delivery of the development plan for Tower Hamlets (that is the London Plan and the Council's own Local Planning Documents).
- 10.3 It is considered that the rates set out in the Charging Schedule strike an appropriate balance based on the viability evidence and will enable the delivery of the development plan as a whole.

11. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 11.1 CIL is a new development levy that will raise funds for infrastructure projects. This could include infrastructure that reduces the incidences and fear of crime. The potential use of CIL funds for these purposes will be developed through consultation with the Community Safety Manager.

12. EFFICIENCY STATEMENT

- 12.1 The preparation of the Charging Schedule and its proposed adoption will continue to give rise to staff costs. The CIL Regulations enable the Council to recoup the costs of establishing the Charging Schedule from CIL from the

levies collected. The Council are also able to up to 5% from LBTH CIL receipts to fund the administrative costs of collecting CIL.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Appendix A: Proposed Charging Schedule.
- Appendix A1: Charging Schedule Explanatory Notes
- Appendix B: The Final CIL Examination Report.
- Appendix C: A Regulation 123 List.
- Appendix D: An Instalments Policy.
- Appendix E: A Payment in Kind and Infrastructure Payments Policy.
- Appendix F: Equalities Analysis

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None

Officer contact details for documents:

- Joseph Ward, CIL Viability and Property Officer, Infrastructure Planning, Ext: 2343

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Community Infrastructure Levy (CIL)

Charging Schedule

April 2015

1. The Charging Authority

- 1.1 The London Borough of Tower Hamlets is a Charging Authority for the purposes of Part 11 of the Planning Act 2008 and may therefore charge the Community Infrastructure Levy (CIL) in respect of development in Tower Hamlets.

2. Date of Approval

- 2.1 This Charging Schedule was approved by the Council on [date to be inserted]

3. Date of Effect

- 3.1 This Charging Schedule will come into effect on 1 April 2015.

4. Liability to Pay CIL

- 4.1 A chargeable development is one for which planning permission is granted and or which is liable to pay CIL in accordance with the CIL Regulations 2010 (as amended). CIL will be chargeable on the net additional floorspace (gross internal area¹) of all new development apart from those exempt under Part 2 and Part 6 of the Community Infrastructure Levy Regulations 2010 (as amended). These exemptions include:

- Developments where the gross internal area of new build² on the relevant land will be less than 100 square metres except where the development will comprise one or more dwellings;
- Buildings into which people do not normally go, or go into only intermittently for the purpose of inspecting or maintaining fixed plant or machinery;
- Development where the owner of a material interest in the relevant land is a charitable institution³ and the development will be used wholly (or mainly) for charitable purposes.

- 4.2 In addition, the Regulations also allow exemptions to be claimed for self-build housing, and residential annexes and extensions over 100 square metres (regulation 42A and 42B). Affordable housing will be eligible for relief from CIL (regulation 49).

¹ Please refer to the accepted method of calculation set out in the Royal Institution of Chartered Surveyors' Code of Measuring Practice: A Guide for Professionals.

² Please refer to Part 2 of the CIL Regulations 2010 (as amended).

³ Please refer to Part 5 of the CIL Regulations 2010 (as amended).

5. CIL Rates

5.1 The Council intends to charge different rates of CIL by the land use of a proposed development (expressed as pounds per square metre) and by the area where a proposed development is situated, as set out in the Table 1 below.

5.2 The Council is designated as the 'Collecting Authority' for the CIL of the Mayor of London. This requires a charge of £35 per square metre to be levied in addition to the amount specified in Table 1.

Table 1 Proposed Rates

Development Type	Proposed CIL Rate Per sq. m (GIA) of Development			
	Zone 1	Zone 2	Zone 3	Large Allocated Sites*****
Residential	£200	£65	£35	Nil
Offices	City Fringe	North Docklands	Large Allocated Sites	Rest of Borough
	£90	Nil	Nil	Nil
Retail (Except Convenience Supermarkets/ Superstores* and Retail Warehousing**)	£70	£70	Nil	Nil
Convenience Supermarkets/ Superstores* and Retail Warehousing**	Borough Wide, except Large Allocated Sites*****			Large Allocated Sites
	£120			Nil
Hotel	Borough Wide, except Large Allocated Sites			Large Allocated Sites
	£180			Nil
Student Housing Let at Market	Borough Wide, except Large Allocated Sites			Large Allocated Sites

Development Type	Proposed CIL Rate Per sq. m (GIA) of Development	
Rents***	£425	Nil
Student Housing Let at Below Market Rents****	Borough Wide, except Large Allocated Sites	Large Allocated Sites
	Nil	Nil
All Other Uses	Borough Wide	
	Nil	

-* Convenience Supermarkets/Superstores are defined as shopping destinations in their own right, where weekly food needs are met, catering for a significant proportion of car-borne customers, and which can also include non-food floorspace as part of the overall mix of the unit.

-** Retail Warehousing is defined as shopping destinations specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for a significant proportion of car-borne customers.

-*** Student housing not falling with the definition at **** below.

-**** Student housing let at below market rents, to meet an identified need, secured by a s106 planning obligation.

-***** Large Allocated Sites are defined as the sites, within Tower Hamlets, contained within the boundaries of the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock allocated sites as set out in the *Tower Hamlets Local Plan Managing Development Document*.

5.3 For 'Student Housing Let at Below Market Rents', a below market rent will need to be in place for a minimum of seven years. The discount, to make the rent 'below market' (over a seven year period), must, as a minimum, equate to the CIL liability that would be applicable to 'Student Housing Let at Market Rents'. A valuation should be carried out by an independent person, at the cost of the applicant, to establish this. Further Guidance is provided in the Council's CIL Explanatory Notes.

5.4 The Council will require 'Student Housing Let at Below Market Rents' to be university led development. Any developer undertaking development on behalf of a university must enter into a formal nomination agreement, or the equivalent, with the university in question. In addition, the university in question must have at least one teaching facility in Tower Hamlets' CIL Charging Area.

6. Charging Zones

- 6.1 The charging areas (Zones 1 to 3, City Fringe and North Docklands) referred to in the above table are illustrated on the Charging Zones Maps, attached at Appendix 1 of this document. The maps also identify the areas of Tower Hamlets, which fall within the boundary of London Legacy Development Corporation. Developments in these locations are not covered by this Schedule and will be subject to any Community Infrastructure Levy adopted by the London Legacy Development Corporation.

7. Calculating the Chargeable Amount

- 7.1 CIL will be calculated on the basis set out in Part 5 of the Community Infrastructure Levy Regulations 2010 (as amended).

8. Inflation and Indexation

- 8.1 The rates referred to in Table 1 above shall be subject to annual indexation in keeping with the “All-in Tender Price Index” published by the Building Cost Information Service (BCIS). The rates should be increased by an amount equivalent to the increase in the index from the date hereof until the date on which the sums are payable provided that in the event that the “All-in Tender Price Index” shall decrease, the sum not fall below the figures set out.

9. Further Information

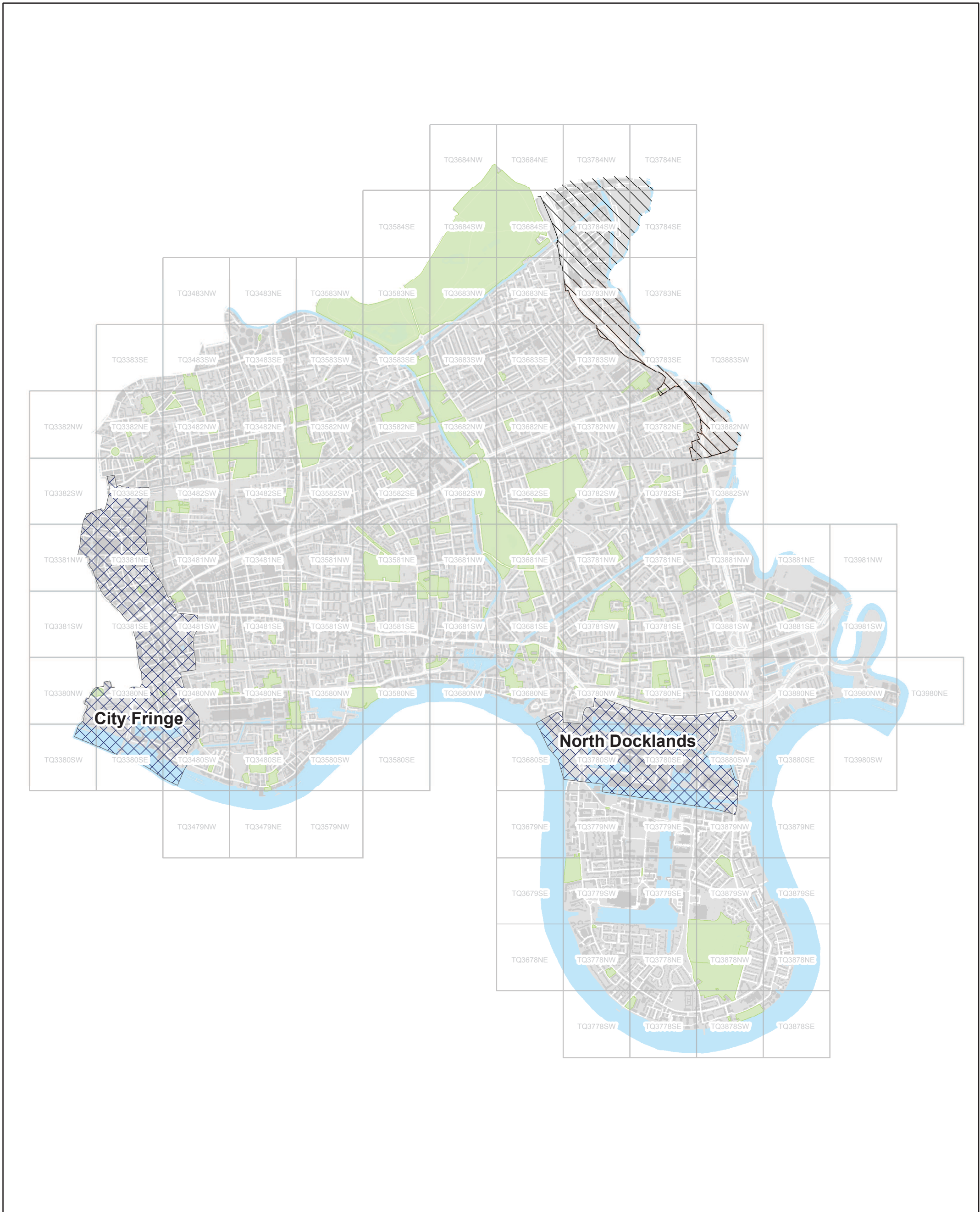
- 9.1 Further information on the Community Infrastructure Levy is available on the Council’s website www.towerhamlets.gov.uk/CIL




Appendix 1: Charging Area Maps



- Large Allocated Sites
- Residential Charging Zone Boundaries
- Ordnance Survey Grid (*Labels represent grid reference*)
- London Legacy Development Corporation Area





-  Office & Retail (except Convenience Supermarkets, Superstores and Retail Warehousing) Charging Zones
-  Ordnance Survey Grid (*Labels represent grid reference*)
-  London Legacy Development Corporation Area

Date: 08/01/2015





**Community Infrastructure Levy (CIL)
Charging Schedule Explanatory Notes**

April 2015

1. Relief from Payment of CIL

- 1.1 The following types of development will usually be exempt from CIL and can apply for relief from the payment of the London Borough of Tower Hamlets' CIL:
- Dwellings let by registered providers of social housing, in accordance with the specific provisions of Regulation 49 of the CIL Regulations (2010) (as amended).
 - Charities where the development will be used wholly, or mainly, for charitable purposes (regulation 43 of the CIL Regulations 2010 (as amended)).
- 1.2 Under sections 55 to 58 of the CIL Regulations 2010 (as amended), the Council has the option to provide discretionary relief in 'exceptional circumstances'. The Council intends to make relief for exceptional circumstances available in its area.

2. Payment by Instalments

- 2.1 Regulation 70 of the CIL Regulations 2010 (as amended) provides options for a Charging Authority to adopt an instalment policy, which will allow developers/liable parties to pay for the levy by instalments.
- 2.2 The London Mayoral Instalment Policy has been in effect since 1st April 2013, which allows two instalments for developments with a CIL liability equal to or more than £500,000. The Council's proposed Instalments Policy mirrors the one set out by the Mayor of London.

3. Relationship with Planning Obligations

- 3.1 By 6 April 2015, or the date (if earlier) when Tower Hamlets' Charging Schedule takes effect, the use of planning obligations for infrastructure will be largely scaled back by the Government. The Council's new Planning Obligations Supplementary Planning Document will set out the Council's approach to planning obligations. A 'Regulation 123' list is being published alongside this and will identify infrastructure that CIL may be spent on and for which planning obligations will not be sought.

4. Monitoring and Administration

- 4.1 The London Borough of Tower Hamlets will retain 5% of CIL charges for monitoring and administrative purposes in accordance with the CIL Regulations 2010 (as amended).

5. Reporting and Review

- 5.1 Regulation 62 of the CIL Regulations 2010 (as amended) requires the Charging Authority to publish annual reports for each financial year.
- 5.2 The Council will keep the operation of the CIL and the position regarding the funding and economic viability evidence under continual review and, where necessary, will seek to renew the Charging Schedule in accordance with relevant Government guidance and legislation.

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Report to the Council of the London Borough of Tower Hamlets

By Malcolm Rivett BA (Hons) MSc MRTPI

an Examiner appointed by the Council

Date: 14 November 2014

PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

REPORT ON THE EXAMINATION OF THE DRAFT LONDON BOROUGH OF TOWER HAMLETS COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

Charging Schedule submitted for Examination on 11 February 2014

Examination hearings held on 28, 29 and 30 May and 6 October 2014

File Ref: PINS/E5900/429/13

Non-Technical Summary

This report concludes that, subject to modification, the London Borough of Tower Hamlets Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. The Council has sufficient evidence to support the modified schedule and can show that the levy is set at a level that will not put the overall development of the area at risk.

Four modifications are needed to meet the statutory requirements. These can be summarised as follows:

- Reducing the North Docklands area rate for offices to nil to ensure that CIL does not result in an inappropriate reduction in funding secured through the Mayor of London's SPG.
- For the sake of clarity and to provide for fair and transparent implementation, including in the schedule a more detailed definition of Convenience Supermarket/Superstores and Retail Warehousing.
- Setting a nil rate for Student Housing let at below market rent.
- Setting a nil rate for all development in Tower Hamlets within the boundaries of the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock allocated sites as defined in the *Tower Hamlets Local Plan Managing Development Document*.

The specified modifications recommended in this report are based on matters discussed during the public hearing sessions.

Introduction

1. This report contains my assessment of the London Borough of Tower Hamlets Community Infrastructure Levy (CIL) Charging Schedule in terms of Section 212 of the Planning Act 2008. It considers whether the schedule is compliant in legal terms and whether it is economically viable as well as reasonable, realistic and consistent with national guidance.
2. References in this report to the "CIL Guidance" are to the Department of Communities and Local Government's (DCLG) *Planning Practice Guidance – Community Infrastructure Levy* which post-dates and has regard to the Community Infrastructure Levy (Amendment) Regulation 2014. However, as the guidance itself notes, changes to rate setting and Examination processes made by the 2014 Regulations do not apply to authorities, such as Tower Hamlets, who had published a draft charging schedule before the Regulations came into force. Consequently, where of specific relevance, I have also referred to DCLG's *Community Infrastructure Levy Guidance* of April 2013.
3. To comply with the relevant legislation the local charging authority has to submit what it considers to be a charging schedule which sets an appropriate balance between helping to fund necessary new infrastructure and the potential effects on the economic viability of development across the area. The basis for the Examination, on which hearing sessions were held on 28-30 May and 6 October 2014, is the submitted Revised Draft Schedule and the

accompanying Statement of Modifications of 11 February 2014. The Revised Draft Schedule was published for public consultation on 21 October 2013 and the Statement of Modifications was the subject of consultation between 11 February and 11 March 2014.

4. The Council proposes a rate for residential development, across three zones, of £35, £65 and £200 per sq m. For offices the proposed rate is £90 per sq m in the City Fringe area and £50 per sq m in the North Docklands area with a nil charge in the rest of the Borough. A Borough-wide charge of £120 per sq m is proposed for Convenience Supermarkets, Superstores and Retail Warehousing with all other retail to be the subject of a £70 per sq m charge in the City Fringe area and the North Docklands area and a nil charge in the rest of the Borough. For Hotel and Student Housing uses the Council proposes a Borough-wide charge of £180 per sq m and £425 per sq m respectively. All other uses are proposed to be subject to a nil charge.

Is the charging schedule supported by background documents containing appropriate available evidence?

Infrastructure Planning Evidence

5. The *Tower Hamlets Core Strategy Development Plan Document 2025 (CS)* was adopted in September 2010 and the *Managing Development Document (MDD)* in April 2013. At the heart of the Core Strategy's vision is the concept of "reinventing the hamlets". The Foreword to the plan identifies that, despite ongoing successes, the Borough still faces some difficult challenges; foremost of which is the need to ensure there are sufficient good quality affordable homes for families. It goes on to state that continuing to improve education and skills as well as providing opportunities for employment and enterprise remains another high priority. The MDD sets out the detailed planning policies and 20 site allocations designed to achieve the CS's vision. Section 3 of the document, which details the site allocations, indicates that they have been identified using the *Infrastructure Delivery Plan (IDP)* of 2009 and the 2012 IDP Update. The 2012 IDP Update informed the production of the 2013 *Infrastructure Delivery Schedule*.
6. The *Infrastructure Delivery Schedule* identifies that some 200 projects are CIL eligible, 120 of which have been costed. The projects cover 19 categories of infrastructure; Transport and Connectivity, Primary Education and Secondary Education being the three most significant in terms of cost. The total cost of the 120 costed projects is around £528.65m of which it is anticipated £151.4m will be funded by non-CIL sources. This leaves an aggregate funding gap of £377.25m. A number of concerns are raised about the Draft Reg 123 list, which sets out the projects/types of infrastructure which the Council intends to fund through CIL. I refer to possible changes to the Reg 123 list in connection with the proposed modification to the CIL rates on large allocated sites. However, beyond that, as the CIL guidance indicates, the Reg 123 list is essentially not a matter for consideration in the Examination.
7. There is some criticism of the accuracy of the infrastructure planning evidence. However, the CIL guidance recognises that there may be some uncertainty in this regard, particularly in pinpointing other infrastructure funding sources, and I am satisfied that the evidence is appropriately robust. It is also argued

that a distinction should be made between infrastructure necessary to support development and that necessary to meet the changing and growing demands of the existing population of the Borough. However, it seems to me that it is, in effect, impossible to separate the two: much new development in Tower Hamlets is likely to be used by the Borough's existing residents as part of their changing and growing demands.

8. The *CIL Infrastructure Planning and Funding Gap Report* (October 2013), as updated by Appendix 3 of the February 2014 Statement of Modifications, projects that CIL, if introduced as proposed by the Council, would generate £199.75m in the period to 2026/27, although allowing for reduced CIL liability for existing floorspace, it would be likely to generate in the order of £164.8m. Either way, the figures demonstrate the need to levy CIL, that CIL would be likely to make a significant contribution towards meeting the aggregate funding gap but that it would not generate more income than is needed to fund infrastructure in the Borough. Tower Hamlets is not unusual in terms of CIL income being unlikely to fully meet the aggregate funding gap and it appears to me that there is nothing in the relevant regulations which require an authority in such circumstances to set out the implications of this.

Economic Viability Evidence

9. The Council commissioned BNP Paribas Real Estate to prepare a *CIL Viability Study* which informed its Preliminary Draft Charging Schedule of November 2012. In response to consultation the March 2013 Draft Charging Schedule was published, supported by the *March 2013 CIL Viability Study*, and then in October 2013 a Revised Draft Charging Schedule, supported by the *August 2013 CIL Viability Study*, was published for consultation. In submitting the Revised Draft Schedule for Examination in February 2014 the Council also proposed and consulted on a Statement of Modifications, reducing a number of the proposed CIL charges.
10. In essence the *August 2013 CIL Viability Study* compares the residual land values of a range of types of development likely to come forward in Tower Hamlets to a range of benchmark land values. It identifies that if a development incorporating a given level of CIL generates a higher value than the benchmark land value then it can be judged that that level of CIL will be viable. Residual land value is calculated by deducting all the development's costs (including CIL) and the developer's profit from the forecast value of the completed scheme.
11. For residential development the study identifies seven, postcode-based, market areas for which average sales values per sq m are assumed. Seven types of residential development (ranging from a scheme of three houses up to one of 400 flats) are appraised against four benchmark land values (higher value secondary office space, lower value secondary office space, lower value secondary industrial space and community building space). Amongst other costs of development the appraisals include the Mayoral CIL, an estimate of residual s106 costs and a 35% affordable housing requirement in line with the minimum basic requirement of policy SP02 of the CS.
12. The study similarly appraises a range of commercial developments, based on research into rents achieved and how they vary by location across the

Borough. It is assumed that commercial development will take place on existing commercial sites, falling into one of three existing uses of a specific current use value (CUV). As the appraisals have been refined and updated the CUV employed has, in some cases, varied. This has been a somewhat confusing aspect of the development of the CIL schedule from the Preliminary Draft through to the Revised Draft and there is criticism that this represents manipulation of the appraisals to demonstrate that CIL would be viable. However, at the 6 October hearing the Council confirmed that the appraisals employ the highest value CUV at which, without CIL, a development would be viable. The CUV has therefore, in some cases, changed between the various stages of production of the schedule as the viability of development, irrespective of CIL, has altered. To my mind it is sensible to appraise development against the highest CUV at which it would be viable without CIL: if a development is not viable even without CIL it is unlikely that it would come forward.

13. Having regard to the representations to the contrary, I also agree with the Council that benchmark land values and current use values (which in the study appraisals are subject to a landowner premium as an incentive for the site to come forward for development) are a more appropriate basis on which to appraise CIL viability than historic market values. Historic market values will have been affected by the wide variety of circumstances applicable at the time and these may have changed or may no longer be relevant. Moreover, historic market values will not have been influenced by CIL as they are likely to be if and when CIL is in place. It is also sensible for the appraisals to assume that new commercial development will have higher rents and lower yields than that existing on the site: if this were not to be the case, once again development would be unlikely to come forward.
14. The *August 2013 CIL Viability Study* (partly updated in support of the Statement of Modifications) identifies maximum CIL rates at which residential development would be viable across the seven market areas, which to reduce complexity are combined into three postcode-based zones (1, 2 and 3). For offices and retail (except convenience supermarkets, superstores and retail warehousing) maximum CIL rates are identified for the City Fringe area, North Docklands area and the rest of the Borough. A maximum viable CIL charge across the Borough is identified for convenience supermarkets, superstores and retail warehousing, hotels, student housing and all other uses.
15. CIL guidance advises that charging rates should not be set right at the margins of viability and consequently the Council considers it appropriate to reduce the maximum viable CIL levels by 25% (slightly higher for student housing) to act as a buffer against unforeseen events or costs. Whilst noting that some parties believe a larger buffer is necessary (and question why the buffer has changed over time), given the generally detailed nature of the appraisals in the viability study, a 25% buffer is to my mind sufficient to ensure that, even accounting for unforeseen factors, most development likely to come forward in the Borough would not be made unviable by the proposed CIL charges, modified as I have recommended. The Council's proposed charges, set out in the February 2014 Statement of Modifications (summarised in paragraph 4 above), are based on the maximum CIL charges and the buffer.

16. In response to updated guidance published by the Department of Communities and Local Government (since further updated and incorporated in its *Planning Practice Guidance*), the viability study specifically appraises the effect of CIL on the viability of development on eight of the 20 site allocations set out in the 2013 *Managing Development Document*. For all sites the study analyses CIL as a percentage of development costs and for the four largest sites (Bishopsgate Goods Yard, London Dock, Wood Wharf and Westferry Printworks) it indicates each scheme's Internal Rate of Return (IRR) achieved, assuming CIL were and were not to be charged. For development of the four smaller sites the study simply identifies the difference between the residual land value and the viability benchmark.
17. In connection with the appraisals of the large sites in particular, a number of the assumptions used were criticised in response to the consultation on the Draft and Revised Draft Charging Schedule and at the May 2014 hearing sessions. In response the Council commissioned updated appraisals of three of the four sites, using revised assumptions, which were submitted as Supplementary Evidence in July 2014. At the 6 October hearing the Council confirmed that the revised appraisals now form the basis of its justification for its proposed CIL charges. The Supplementary Evidence includes a number of other revised appraisals and a range of analysis although it does not fundamentally alter the approach of the *August 2013 CIL Viability Study*.
18. It has been argued that evidence prepared by the Council after submission of the schedule for Examination cannot be taken into account. However, it is not unusual for Examiners to consider supplementary evidence prepared after submission of the schedule and it appears to me that there is nothing in the relevant regulations or guidance which prevents this.
19. The appraisal work has been criticised for not specifically assessing development in Opportunity Areas or in the Whitechapel Masterplan Area. Opportunity Areas derive from the *London Plan* and they cover about two-thirds of the Borough, cutting across the postcode-based development value areas identified in the viability study. Whilst identified as areas for growth they do not, in Tower Hamlets at least, give rise to any specific burdens on development and it is envisaged that, the identified site allocations aside, most development within Opportunity Areas would come forward as individual residential or commercial schemes as appraised in the viability study. In the light of this the viability of development in Tower Hamlets is likely to be much more influenced by the development value area in which it is located (as appraised by the viability study) than its location inside or outside an Opportunity Area.
20. Moreover, there is no convincing evidence to suggest that development likely to come forward in response to the Whitechapel Masterplan would be significantly different from the range of residential and commercial development appraised by the viability study. Consequently, notwithstanding the fact that Opportunity Areas have been specifically appraised in preparing the CIL schedule in at least one London Borough, the Tower Hamlets economic viability evidence is not materially undermined by it not specifically appraising development in, and outside, the Opportunity Areas and the Whitechapel Masterplan area.

Conclusion

21. Even following the publication of the Council's Supplementary Evidence there remains considerable objection to a number of the CIL rates proposed by the Council. However, primarily, the objections relate to the way in which the evidence has been interpreted by the Council and the assumptions it has relied on in doing so. These points are considered in detail below in relation to each of the proposed CIL rates and result in my recommendation of modifications to the draft schedule. However, this aside, the Revised Draft Charging Schedule is supported by detailed evidence of infrastructure needs and the economic appraisal evidence itself (as updated by the July 2014 Supplementary Evidence), which has been used to inform the schedule, is proportionate, appropriate and in most cases robust.

Are the charging rates informed by and consistent with the evidence?

CIL Rates for Residential Development

22. The *August 2013 CIL Viability Study* contends that, without harming the viability of most residential development, CIL could be levied at £200 per sq m in Zone 1, £65 per sq m in Zone 2 and £35 per sq m in Zone 3. The three zones are based on extensive research into variations in residential sales values across the Borough. It makes sense for the appraisals to assume an average of the range of values achieved in each zone and the buffer, which reduces the maximum CIL rate which would be viable in each zone to the actual proposed rate, will ensure that most below-average value developments would remain viable with CIL in place.
23. The relevant appraisals assume that for residential development of 10+ units 35% affordable housing would be provided, which is the minimum requirement of the 35% - 50% (subject to viability) range set out in policy SP02 of the Core Strategy. It is also higher than the 30% figure which the Council's *Section 106 Report* indicates was, on average, actually achieved on market-led residential schemes in the period from 1 October 2007 to 31 March 2013. The sensitivity analysis undertaken as part of the appraisal demonstrates that if 50% affordable housing were to be assumed many residential developments would not be viable irrespective of CIL. Indeed the *Section 106 Report* identifies that no market-led scheme has exceeded 45% affordable housing provision.
24. There are arguments that, in order to ensure that CIL does not undermine the delivery of affordable housing, 50% provision should be assumed in the appraisals. However, within the range of the maximum and minimum figures set out in CS policy SP02, I consider it appropriate for the Council to be able to balance the delivery of affordable housing and other infrastructure through new residential development. If the 50% affordable housing requirement were assumed, it is likely that little or no CIL could be viably charged on residential development but it is also likely that on many, or even most, developments 50% affordable housing would not in any case be achieved. In contrast, the appraisals demonstrate that (other than on large allocated sites, considered below) if a 35% affordable housing requirement is assumed (which is higher than the average figure achieved in recent years) it is feasible that both this level of affordable housing and a worthwhile CIL contribution towards other

infrastructure can be achieved on most residential development.

25. Consequently, although it is set in the context of a strategic target of 50% of new homes being affordable, given that policy SP02 sets 35% as the minimum requirement for sites with more than 10 residential units (subject to viability), this is an appropriate assumption on which to base CIL charges and is one which would not threaten developing viably the scale of development identified in the Core Strategy.
26. There is evidence that some residential properties in the part of Cubitt Town proposed to be located in Zone 1 have values much closer to those typical of the, lower value, Zone 3. However, these are existing properties (which as they stand would not be subject to CIL). The Council's contention that any new residential development in this area would be highly likely to be smaller but of a higher quality is a persuasive one. Consequently, the assumption that the value (per sq m) of new residential development in Cubitt Town would be higher than that of some existing property in this area is sound.
27. It is also argued that the Lanark Square area, proposed to be located in Zone 1, has more in common with the southern area of the Isle of Dogs which is located in Zone 2. However, the evidence submitted by the representor does not support this: whilst the quoted £625 per sq ft value is below the average assumed value for Zone 1, it is well in excess of the minimum £575 sq ft value. The 25% buffer by which the maximum viable CIL rates have been reduced to the actual proposed CIL rates should ensure that development of below-average value in a particular zone remains viable with CIL in place. Moreover, given that property values can vary markedly over a short distance, there is no inherent flaw in the schedule proposing that, in places, Zones 1 and 3 will abut each other, without the "buffer" of an intermediate Zone 2.
28. Estate regeneration schemes, which frequently rely on cross-subsidy from private sales, have not been specifically appraised in the viability study. However, given that the extent of grant funding is likely to be the crucial factor in determining the overall viability of such schemes and that this is likely to vary significantly from scheme to scheme, an appraisal of even a range of estate regeneration schemes would be unlikely to assist in identifying the likely impact of CIL, the affordable housing units within such schemes in any case being the subject of mandatory social housing relief. Concern is also raised about potential difficulties in offsetting existing built-space against CIL, particularly in estate renewal schemes. The operation of the offsetting scheme is not directly a matter for consideration as part of the Examination. However, given that the residential scheme appraisals have not assumed any such offsetting (Para 10.6 of the Council's *Response to the Main Issues and Questions for the Examination*) I am satisfied that the CIL rates are appropriate, even if, in reality, no offsetting were to be possible on a specific scheme.
29. In conclusion, other than in respect of large site allocations which are considered below, the CIL rates for residential development are informed by and consistent with the evidence.

CIL Rates for Office Development

30. The *August 2013 CIL Viability Study* (as updated by the January 2014 Appendix 1) contends that, without harming the viability of most office development, CIL could be levied at £90 per sq m in the City Fringe area and £50 per sq m in the North Docklands area. A nil rate is proposed for offices in the rest of the Borough. Outside the North Docklands area the CIL rate allows for payment of the full Crossrail s106 "top-up", in accordance with the *Use of Planning Obligations in the Funding of Crossrail and the Mayoral Community Infrastructure Levy SPG* (April 2013). However, if the full Crossrail "top-up" were to be assumed for office development in the North Docklands area, the study identifies that development would not be viable with the levying of a Tower Hamlets CIL at any level. In the light of this the Council's proposed £50 per sq m rate for this area assumes that the available "headroom" in development to fund the Crossrail "top up" and the Borough's CIL is shared between the two.
31. It appears to me that, although, the relevant Regulations and Guidance include provisions and advice which relate to this matter, they do not unequivocally indicate how this particular issue should be addressed. Nobody at the hearings contended otherwise.
32. Regulation 123 of the CIL Regulations 2010 (as amended) prohibits the pooling of funding to a particular project or type of infrastructure from five or more planning obligations in an area in which a CIL schedule has been adopted. However, Regulation 123(4) specifically excludes Crossrail from this provision, the effect of which is to uniquely enable the pooling of funding for this project through planning obligations. In April 2013 the Mayor of London adopted the *Use of Planning Obligations in the Funding of Crossrail and the Mayoral Community Infrastructure Levy Supplementary Planning Guidance* (SPG). With reference to *London Plan* policy 6.5, the SPG sets out proposals for the securing (ie pooling), through planning obligations, of contributions towards the construction costs of Crossrail in connection with certain types/locations of new development. Indicative levels of charge per sq m are set out varying by type of development (office, retail and hotels) and by location (central London, Isle of Dogs and the rest of London). Whilst the rate for offices in the Isle of Dogs (which includes North Docklands) is the highest, the SPG justifies in some detail why the various rates are necessary to make development acceptable in planning terms.
33. As the Council points out, the status of the Crossrail s106 "top-up" is different from that of the Mayoral CIL. Nonetheless, paragraph 29 of the April 2013 CIL Guidance states that in proposing a levy rate charging authorities should take into account development costs arising from existing regulatory requirements, including taking account of any policies on planning obligations in the relevant plan. This is echoed in the current *Planning Practice Guidance*. For Tower Hamlets the *London Plan* is part of the relevant plan and thus its policy in respect of planning obligations for Crossrail (as detailed in the above mentioned SPG) is a regulatory requirement which Tower Hamlets Council must take into account in proposing its CIL rates.
34. It can be argued that "take into account" does not necessarily mean that a CIL charge must always and absolutely allow for the full cost of every planning

obligation requirement. Indeed, as indicated above, I consider it appropriate for Tower Hamlets to flex its planning obligation requirements in respect of affordable housing, within the range set out in the Core Strategy, to enable it to strike a balance between the provision of affordable housing and other infrastructure. In effect, this enables the Council to, within certain limits, decide how to share the likely available funding between CIL and affordable housing.

35. However, I consider that it is inappropriate for the Council to seek to adopt the same approach with the Crossrail s106 "top-up". Unlike, the affordable housing requirements, which are set out in Tower Hamlets' own Core Strategy, the Crossrail "top-up" requirement derives from policy 6.5 of the *London Plan*, the most strategic level document of the relevant plan in Tower Hamlets (with which Core Strategies in London must be in general conformity). In essence, whilst it may be acceptable for Tower Hamlets to pragmatically "flex", to some degree, its own planning obligation requirements to secure CIL on new development, it would be inappropriate for it to seek to do so with the pre-existing, adopted planning obligation requirements of another body, particularly given that, in this case, it relates to a pooled planning obligation regime which the CIL Regulations specifically and uniquely permit. I reach this conclusion notwithstanding the "room for pragmatism" in CIL rate setting encouraged by the CIL guidance.
36. There is disagreement over the amount of funding which would actually be lost to Crossrail as a result of the Council's proposed £50 per sq m CIL charge for offices in North Docklands, although at most it would be likely to be a relatively small proportion of the total funding secured through the s106 "top-up". Moreover, bearing in mind the "subject to viability" consideration of paragraph 3.34 of the SPG, it is the case that, even without CIL, there is no guarantee that all office developments in North Docklands would pay the full s106 "top-up" rate. However, notwithstanding this, the Council's ability to "flex" its own planning obligation requirements to secure CIL should not extend to the already adopted planning obligation requirements of other bodies.
37. The Council points out that office schemes in North Docklands are likely to be part of mixed-use developments which, overall, would be viably able to pay both the proposed CIL office rate and the full Crossrail s106 "top-up". In the run-up to the May hearings it was also argued (Doc ED5.10) that, contrary to the findings of the *August 2013 CIL Viability Study* (as updated by the February 2014 Statement of Modifications, Appendix 1), evidence of the improving economy indicates that even non-mixed use office developments in North Docklands would be viably able to pay the full Crossrail s106 "top-up". However, there may well be office only, or primarily office, developments in North Docklands. Furthermore, so as to ensure that development is assessed on a consistent basis and to avoid selective advantage, it is not appropriate to base the rates for general office development in one area of the borough on different assumptions about the state of the economy from that used in other areas.
38. I recognise that if a nil rate were to be set for offices in North Docklands to allow for the full "top-up" it is, in reality, likely that there would be schemes which could have viably paid both the Borough CIL and the full "top-up" but

which would not do so - eg mixed use schemes or even some office only developments, bearing in mind the buffer by which the maximum viable CIL rate has been reduced to the Council's proposed rate. However, this argument could be applied to any development and any proposed CIL rate: there will almost certainly be individual developments which, in reality, could viably pay more CIL than the rate levied. Nonetheless, it is important to set CIL rates based on a broad test of viability across uses and areas. That for Tower Hamlets (ie the *August 2013 CIL Viability Study* as updated by the Statement of Modifications Appendix 1) indicates that office development in North Docklands would not viably be able to pay the proposed Tower Hamlets CIL and the full Crossrail "top-up".

39. Moreover, the Tower Hamlets CIL charge would be mandatory and fixed whereas the s106 "top-up" is variable subject to an individual development's viability. Consequently, in connection with Tower Hamlets proposed CIL charges outside North Docklands, the Mayor/Greater London Authority (GLA) must take the risk that they will have to forego all or part of the Crossrail s106 "top-up" if the economy performs worse than anticipated and thus development is less viable than forecast. Therefore, I consider it would be highly inappropriate to expect the Mayor/GLA to also have to take the risk that office development in North Docklands will, in reality, be more viable than indicated in the *August 2013 CIL Viability Study* and Appendix 1 Update and will thus be able to viably pay the full "top-up".
40. Reference is made to the February 2010 *Report of the Panel into the London Plan Crossrail Alterations* and in particular the statement in paragraph 6.6 about Crossrail not "sweeping the pot". However, the paragraph states that it is "if contributions to such facilities [ie affordable housing and other infrastructure] are necessary to make the development acceptable in terms of local or site impact mitigation....there can be no questions of Crossrail "sweeping the pot"". It is then explained that this is because if the necessary facilities cannot be funded the development would be unacceptable and should not be permitted. Moreover, if the development does not go ahead s106 "top-up" funding for Crossrail would not be secured anyway. With this in mind it is clear to me that, with CIL in place in Tower Hamlets, the "contributions to such facilities" sensibly relates not to CIL, but to the affordable housing and other residual s106 obligations which would be necessary to make the development acceptable in planning terms. In the case of a development not being able to viably pay the Tower Hamlets CIL and the full affordable housing, other residual s106 obligation and Crossrail s106 "top-up" requirements, a balance would need to be struck across all but the CIL, thus ensuring that the Crossrail s106 "top-up" does not "sweep the pot".
41. The Panel's reasoning for Crossrail not "sweeping the pot" is to avoid the consequent refusal of permission for schemes not viably able to provide the necessary related infrastructure facilities. However, a scheme could not reasonably be refused planning permission because it does not make a contribution to infrastructure through CIL when, for viability reasons, a nil rate has been set for such development. Therefore, it follows that CIL cannot fall within the "pot" which the Panel identified should not be "swept" by the Crossrail s106 "top-up".
42. Consequently, to ensure that in striking an appropriate balance the Tower

Hamlets CIL schedule appropriately takes account of the provisions of policy 6.5 of the *London Plan* and the relevant SPG, as set out in the CIL Guidance, it is necessary to set a nil rate for offices in the North Docklands area.

Modification **EM1** is thus needed. Whilst this modification is necessary as a direct result of the Crossrail s106 "top-up" issue it would, nonetheless, nullify more general concerns raised about the viability of office development in the North Docklands area if subject to the £50 per sq m CIL charge.

43. It is argued that, on the basis that its office rentals are not comparable with other sites within the City Fringe area, Thomas More Square should be excluded from the City Fringe. However, the boundary of the area has been set with regard to average values for new build office space in this location, and I have seen no detailed evidence to suggest that this is inaccurate or an inappropriate assumption.
44. In conclusion, in order to take appropriate account of policy 6.5 of the *London Plan* and the *Use of Planning Obligations in the Funding of Crossrail and the Mayoral Community Infrastructure Levy SPG*, it is necessary to modify the schedule to set a nil rate for offices in the North Docklands area. That aside, and other than in respect of large site allocations considered below, the CIL rates for offices are informed by and consistent with the evidence.

CIL Rates for Retail Development

45. The *August 2013 CIL Viability Study* (as updated by the January 2014 Appendix 1) contends that, without harming the viability of most retail development, CIL could be levied at £120 per sq m across the Borough for convenience supermarkets, superstores and retail warehousing and at £70 per sq m in the City Fringe and North Docklands areas for all other types of retail development.
46. In response to contentions that the two categories of retail development are not different uses (nor allow for practical, fair and transparent implementation of the schedule), the Council has proposed wording (set out in para 12.3 of its *Response to the Main Issues and Questions for the Examination*) to more clearly define the nature of convenience supermarket/superstores/retail warehousing – primarily that they are shopping destinations which cater for a significant proportion of car borne customers. The CIL guidance indicates that use, in respect of CIL, is not tied to the classes of development in the Town and Country Planning Act (Use Classes) Order 1987 but that the Order provides a useful reference point. The Order distinguishes as different uses premises used for the sale of hot food for consumption on the premises from those which are used for the sale of hot food off the premises. Similarly, in my view, shopping destinations which are designed to enable many or most customers to arrive, and take home their purchases, by car can readily be distinguished at the planning application stage, and are a different use in CIL terms, from retail development which is not so designed. However, to provide clarity and to ensure effective and fair implementation of CIL in Tower Hamlets, it is necessary to include the Council's more detailed definition in the schedule itself. Modification **EM2** is thus necessary.
47. In the absence of any detailed evidence indicating why it is flawed, the viability study's assumption that new retail development in Tower Hamlets will

take place on land already in retail use, with a building of significant size, is appropriate. Moreover, the study identifies that there is a material difference between the level of CIL which would be viable at Convenience Supermarkets, Superstores and Retail Warehousing in the City Fringe and North Docklands areas, as opposed to in the rest of the Borough, and with that which would be viable in connection with other types of retail development across the Borough as a whole. The basis of this is the research into variation in retail rents across the Borough (Paragraph 4.49 and Table 4.48 of the *August 2013 CIL Viability Study*) which is a suitably fine-grained approach to evaluation. Consequently, the varying rates would not result in selective advantage.

48. Since the appraisals are based on current economic circumstances (at the time of their preparation) it is appropriate that current build costs are also used, rather than forecasts of build cost inflation in the future. I am satisfied that the appraisals' assumptions about retail rents, profit and professional fees reflect a realistic average and the buffer, by which the maximum viable CIL rates have been reduced to the proposed CIL rate, will ensure that the majority of retail development would remain viable with CIL in place.
49. As with office development it is argued that, on the basis that its retail rentals are not comparable with other sites within the City Fringe area, Thomas More Square should be excluded from this area. However, the boundary of the area has been set with regard to average values for new build retail space in this location, and I have seen no detailed evidence to suggest that this is inaccurate or an inappropriate assumption.
50. In conclusion, other than in respect of large site allocations considered below, the CIL rates for retail development are informed by and consistent with the evidence. However, to ensure clarity and fair and transparent implementation of CIL, it is necessary to more clearly define the two retail uses in the schedule.

CIL Rate for Hotel Development

51. The *August 2013 CIL Viability Study* (as updated by the January 2014 Appendix 1) contends that, without harming the viability of most development, CIL could be levied at £180 per sq m across the Borough for hotels.
52. In response to criticism that budget hotels were not adequately appraised, the Council submitted, as part of its Supplementary Evidence, an appraisal of the Bethnal Green Travelodge using information provided by Travelodge. The appraisal shows that, even assuming CUV 1, the proposed £180 per sq m rate (not £210 per sq m as referred to in Travelodge's 12 September 2014 representation) would not prejudice the viability of this scheme. Moreover, I agree with the Council that the actual previous use of the site of this scheme is more reflective of CUV2, which would allow for a maximum CIL charge of £389 per sq m – more than double that which the Council is proposing. The Supplementary Evidence also includes a revised appraisal of an Ibis hotel, using a £26 per sq ft, instead of £20.59 per sq ft, rent. With maximum viable CIL rates of between £213 and £672 per sq m (dependent on CUV), this demonstrates that the £180 per sq m CIL rate would not undermine the viability of this scheme either. Bearing in mind that the proposed rate is reduced by 25% from the maximum level of CIL demonstrated to be viable, I

am not persuaded that any of the other detailed criticisms of the assumptions used in the hotel appraisals would be likely to significantly undermine the viability of this CIL rate for most hotel development across the borough. Consequently, the Supplementary Evidence corroborates the conclusions of the *August 2013 CIL Viability Study*.

53. In conclusion, other than in respect of large site allocations considered below, the CIL rate for hotel development is informed by and consistent with the evidence.

CIL Rate for Student Housing Development

54. The *August 2013 CIL Viability Study* contends that, without harming the viability of most development, CIL could be levied at £425 per sq m across the Borough for student housing for which a market rent is charged. That this rate is by far the highest proposed in Tower Hamlets and that, unlike rates for other uses, it has not been reduced since earlier stages of the preparation of the schedule is not evidence that it would render student housing schemes unviable.
55. The reduction in the assumed build costs for student housing to £137 per sq ft (in the *August 2013 CIL Viability Study*) from £180 per sq ft in earlier appraisals is questioned. However the submitted Building Cost Information Service (BCIS) data (rebased for Tower Hamlets and up to date at the time of the *August 2013 CIL Viability Study*) shows a mean build cost of £137 per sq ft, albeit that the highest of the range of costs is approximately £244 per sq ft. Nonetheless, it makes sense to base the appraisals on average (mean) build costs at the time of the appraisal. There is no specific evidence to indicate that the Council has other, more appropriate, evidence on build costs which it chose to ignore in adopting the BCIS build cost. The maximum viable CIL rate resulting from this appraisal has been reduced by a buffer of approximately 30% which should ensure that most student housing schemes with above-average build costs remain viable even with the levying of the proposed CIL rate. There is no persuasive evidence that a 35% buffer, as originally proposed for student housing, is fundamental to ensuring CIL is viable for market rent student accommodation.
56. Comparison is made with the use of BCIS data in the preparation of the London Borough of Southwark CIL Schedule. However, Tower Hamlets is a different Borough for which, as explained above, I have seen no persuasive evidence that build costs are not soundly based. Moreover, whilst the proposed "direct let" student housing CIL rate in Southwark is significantly lower than that proposed in Tower Hamlets, I understand that Southwark has different affordable housing requirements, in connection with student housing, from other London Boroughs.¹

¹ In Tower Hamlets policy DM6 of the *Managing Development Document* sets out the requirement for an unspecified proportion of affordable housing in connection with student housing, except for such schemes providing accommodation exclusively for accredited colleges/universities. At the 6 October hearing session Council officers stated that, as far as they are aware, no affordable housing has been secured in connection with a student housing scheme in Tower Hamlets.

57. The appraisals for student housing, submitted by a representor in challenging the proposed CIL rates, demonstrate that in Aldgate a CIL charge of up to £533 per sq m would be viable. That this represents only a 20% buffer over the proposed £425 per sq m CIL charge does not indicate that the proposed rate is inappropriate: the 30% or so buffer applied by the Council to the maximum CIL rate identified as viable represents a cautious approach given that that appraisal cannot represent every possible circumstance. It is inevitable that there will be a different buffer between the maximum CIL which is shown to be viable and the proposed £425 sq m CIL rate on an appraisal with different assumptions (including in this case a £180 per sq ft build cost). Whilst the Mile End appraisal indicates a maximum viable CIL rate below the proposed £425 per sq m CIL rate, there is little to justify its combination of relatively high assumed rent (only £20 per week less than at Aldgate), the £180 per sq ft building costs and the 35% existing floor space assumption.
58. Appendix X of the Council's Supplementary Evidence indicates that the proposed £425 per sq m CIL charge (or indeed any CIL charge) would render unviable a student housing scheme providing accommodation at below market value rents, as is developed for their own students by some academic institutions. It is argued that, where such accommodation is developed by private sector firms on behalf of the institutions, it may be difficult or impossible to secure Charitable Relief on the CIL charge and that, as the Council is not obligated to provide it, there is no certainty that Exceptional Circumstances Relief could be secured for such a development. Consequently, it is contended that a nil rate should be set for student housing led by an academic institution and let at below market rents as secured by a s106 planning obligation.
59. The Council contends that it has no policy basis on which to require by planning obligation the provision of student accommodation at below market rent. However, Core Strategy policy SP02 (7) states that the Council will "provide for the specialist housing needs of the borough through (a) working with the borough's universities to enable the appropriate provision of student accommodation that meets identified needs...". It would be highly unlikely that a university would seek to provide accommodation for its students at below market rent unless there is an identified need for it. Thus, it seems to me that, in the light of policy SP02 the Council could require an obligation to ensure that student accommodation proposed to be let at below market rent is secured as such.
60. It is also suggested that below market rent student accommodation is not a use distinct from that let at market rents. However, bearing in mind that in the CIL context uses are not confined to those defined in the classes of the Town and Country Planning Act (Use Classes) Order 1987, I conclude that a development designed (and controlled by planning obligation) to meet identified housing needs can be a different use from development not so designed.
61. Given that the evidence clearly identifies that any CIL charge would be highly likely to render unviable below-market rent student housing and that it is not guaranteed that Charitable or Exceptional Circumstances Relief would apply to such development, I conclude that it is necessary to modify the schedule to set a nil rate for this use. Modification **EM3** is therefore necessary.

62. In conclusion, in view of the evidence demonstrating that a CIL charge for student housing let at below market rents would not be viable, it is necessary to modify the schedule to set a nil rate for this type of development. For other types of student housing, other than in respect of allocated sites considered below, the CIL rate for student housing is informed by and consistent with the evidence.

CIL Rates for Development on Allocated Sites

63. Whilst the CIL Guidance indicates that an area-based approach, involving a broad test of viability across their area, should be employed it also advises that in preparing its evidence an authority should directly sample a range of sites focussing on strategic sites on which the plan relies. The Tower Hamlets *Managing Development Document* sets out 20 site allocations, which paragraph SA.1 of the document states "have been allocated as part of the positive planning process to make sure the borough has the infrastructure needed to support the anticipated level of growth set out in the Core Strategy....". The *August 2013 CIL Viability Study* appraised the proposed CIL rates on indicative schemes likely to come forward on eight of these sites – four smaller sites and four large sites (Bishopsgate Goods Yard, London Dock, Wood Wharf and Westferry Printworks).
64. Many of the assumptions used in the appraisal of development on the four large sites in the *August 2013 CIL Viability Study* have been challenged by a number of parties and, in response, the Council produced revised appraisals of three of these sites (Bishopsgate Goods Yard, Wood Wharf and Westferry Printworks), with a number of altered assumptions, in its Supplementary Evidence. Whilst a smaller number of detailed assumptions are still, to some extent, disputed, I concur with the agreed view of the parties at the 6 October hearing session, that, either way, these would be unlikely to have a significant effect on the viability of the schemes. Given that it assesses the large allocated sites on a consistent basis (subject to my comments in paragraph 76 below) I am satisfied that the Supplementary Evidence is appropriate available evidence.
65. The Council has prepared the revised appraisals on the assumption that it would accept in-kind infrastructure CIL payments as provided for in 2014 CIL (Amendment) Regulations 73 and 74, the effect of which is to reduce the size of the residual s106 payments otherwise likely to be necessary for the allocated sites. A number of parties have strongly argued that in-kind infrastructure payments are not feasible in the context of the Tower Hamlets large allocated sites, given the precise wording of the relevant regulations. This is a matter for the courts to determine. Moreover, it was agreed at the 6 October hearing session that, given the scale of the likely in-kind infrastructure payments², whether or not such payments are feasible is unlikely to be crucial in determining the viability of the large allocated site

² At the 6 October hearing the Council argued that, based on the recently approved planning application, a £14.9m in-kind infrastructure payment is realistic for the indicative Wood Wharf scheme. This equates to only 29% of the proposed £50.1m Tower Hamlets CIL charge for that scheme, assuming 25% affordable housing, (Supplementary Evidence Appendix H, Scenario 4). It would represent an even smaller proportion of the CIL charge for a scheme providing a lower level of affordable housing.

schemes. Consequently, there is little point in me speculating on the likelihood of such payments actually occurring in the Tower Hamlets context.

66. The Supplementary Evidence indicates that, irrespective of the application of the proposed CIL charges, and allowing for either 35% or 25% affordable housing provision, the tested Bishopsgate Goods Yard, Wood Wharf and Westferry Printworks allocated site schemes would show Internal Rates of Return (IRR) of between a minimum of -5.75% and a maximum of 7.17% (Scenarios 1, 2, 4 and 5 of Table 4). It is generally agreed that at such IRRs the developments would be unlikely to come forward.
67. On the basis that, considering current economic circumstances alone, these schemes would be unlikely to come forward whether or not CIL were to be charged, and with reference to the likely very long build-out periods for these large allocated site schemes, the Council's Supplementary Evidence also appraises the schemes assuming economic growth. Whilst noting the argument that appraisals should solely consider current economic circumstances, to my mind the Council's approach makes sense. Under current, or worsening, economic circumstances the allocated site schemes would be very unlikely to come forward whether or not the proposed CIL charges were levied, but it is important to understand the likely effects of CIL on the likelihood of the developments coming forward if improved economic circumstances in the future are assumed, bearing in mind that such developments are likely to take place over an extended period.
68. However, I agree with the view that, because there is a great deal of uncertainty about economic growth (and its impact on the wide ranging aspects of the costs and revenue of development), development would only be likely to come forward on the assumption of improved economic circumstances in future years if the scheme's IRR were considerably higher than the 13% the Council has argued is indicative of viability. With this in mind, and having regard to the representations on this particular point, I consider that, assuming economic growth, a minimum IRR of 20% is likely to be indicative of that necessary for a scheme to come forward.
69. Line 2 of Table 5 of the Supplementary Evidence demonstrates that, assuming economic growth and the full proposed CIL charges, the three appraised allocated site schemes would be likely to achieve an IRR of 20% only if the affordable housing requirement were to be "flexed" below the 35-50% requirement of the Core Strategy – to 12.44% for Wood Wharf, 22.44% for Bishopsgate Goods Yard and 6.59% for Westferry Printworks.
70. As explained above it is appropriate for the Council to assume affordable housing provision at the lower, 35%, figure set out in the Core Strategy. However, whilst having regard to the proportion of affordable housing actually achieved in recent years (*Section 106 Report*), I am not persuaded that it would be appropriate to "flex" affordable housing requirements without limitation. Paragraph 4.4 of the supporting text of Core Strategy policy SP02 states that "In some instances exceptional circumstances may arise where affordable housing requirements need to be varied". At the hearings the Council indicated that this refers to a varying below the minimum 35% requirement of policy SP02. However, the paragraph goes on to explain that even where a robust financial statement is provided demonstrating

conclusively why planning policies cannot be met, "there should be no presumption that such circumstances will be accepted, if other benefits do not outweigh the failure of a site to contribute towards affordable housing provision".

71. As Table 5 demonstrates, even assuming economic growth, development on the three allocated sites would only be likely to come forward (ie at a minimum IRR of 20%) if affordable housing requirements were to be reduced significantly below both the 35-50% standard requirement of CS policy SP02 and the 30% figure which the Council has, on average, achieved in recent years. At Westferry Printworks this (6.59%) would be less than a fifth of the normal minimum 35% requirement and at Wood Wharf this (12.44%) would be less than half the minimum 25% affordable housing which has recently been secured on the pre-CIL approved planning application on this site.
72. Whilst, in connection with the CIL Examination, the Council has intimated that such levels of affordable housing would be acceptable (and it argues that effects on the delivery of the plan overall would be minimal), the supporting text (paragraph 4.4, as detailed above) of the relevant adopted policy (SP02) gives far less comfort to developers of the large allocated sites that very low affordable housing contributions would, in the future and in reality, be acceptable to the Council. This is particularly so when read in the context of the Core Strategy's Foreword which indicates that its foremost challenge is the need to ensure there are sufficient good quality affordable homes for families. Moreover, the Council's Opening Statement at the 6 October hearing session made reference to the anticipated population growth in Tower Hamlets of around 20% in the next 12 years and the Borough's significant deprivation and problems of overcrowding – ranked second nationally. If higher affordable housing contributions were to be required in connection with development on the large allocated sites (although potentially still below the 35-50% set out in CS policy SP02), the IRRs achieved would fall below the 20% likely to be necessary to ensure that the developments come forward, given the underlying assumption of economic growth.
73. In the context of the above it seems to me that there is a reasonable likelihood that, in reality, in connection with the development of the large allocated sites the Council would require higher affordable housing contributions than Table 5 indicates would be viable (ie would result in a 20% IRR assuming growth and the payment of CIL). Table 5 also indicates that on the large allocated sites the proposed Borough CIL equates to a relatively small level of affordable housing provision. Thus, if the Council were to require a level of affordable housing provision higher, even by a relatively small degree, than those set out in paragraph 69, the non-variable CIL charge would be likely to render the development unviable. Consequently, I conclude that in connection with development on Wood Wharf, Bishopsgate Goods Yard and Westferry Printworks sites the evidence does not support the proposed CIL charges which are relevant to each of the appraised developments.
74. Like with many developments, the CIL charges proposed by the Council would represent a relatively small part of both overall development costs and

development value on these large allocated sites³. Nonetheless, the charge would, in a material way, reduce the schemes' IRRs: whilst the Supplementary Evidence refers to CIL resulting in a reduction of IRR of in the order of 1%, this is 1 percentage point, which represents 5% of a 20% IRR and, obviously, an even greater percentage of a smaller IRR. As such I conclude that the proposed CIL charges could be determinative of whether or not one or more of the large allocated site schemes would be likely to come forward.

75. The exact mix of uses on the large allocated sites would only be determined at planning application stage and, dependent upon the precise mix, it is in theory possible that some form of development on the sites would be viable with the proposed CIL charges (eg one which were to be primarily a superstore and/or student housing). The matter of selective advantage if a nil rate were to apply to the large allocated sites therefore needs to be considered. However, given the detailed requirements for the sites set out in the MDD, it is highly unlikely that a development which the evidence suggests would be viable with the proposed CIL charges would come forward and secure planning permission. Consequently, I conclude that by setting a nil rate for all uses on these sites it could be reasonably ensured that CIL would not undermine the viability of development likely to come forward and that this would be highly unlikely to represent selective advantage to development on these sites.
76. The *August 2013 CIL Viability Study* differentiates between four large and 16 smaller allocated sites, the former including Wood Wharf, Bishopsgate Goods Yard, Westferry Printworks and London Dock. Whilst London Dock has not been appraised in the Supplementary Evidence, the *August 2013 CIL Viability Study* indicates that its IRR would be comparable with the other large sites and, based on what I have read and heard, the characteristics of development there is likely to have more in common with the large sites than the smaller ones. I am satisfied that this is appropriate available evidence on which to base a rate for this site and consequently conclude that, notwithstanding that development of the site has planning permission and is under construction, London Dock should also be subject to a nil CIL rate for all development. Modification **EM4**, to set a nil rate for all development in Tower Hamlets within the boundaries of the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock allocated sites (as set out in the *Managing Development Document*) is therefore necessary.
77. Nobody has argued that all 20 allocated sites should be the subject of a nil CIL rate, and whilst there is some suggestion that it might be appropriate to extend this to more than the four sites listed above, no detailed evidence to support this in connection with any specific sites has been provided. Again based on what I have read and heard, I conclude that the smaller allocated sites are generally of a much less complex nature than the four large ones,

³ The Council refers to paragraph 27 of the Examiner's Report on Trafford Council CIL Charging Schedule. Whilst the Examiner describes CIL representing 1.1% - 2.4% of GDV as "reasonable and acceptable" this calculation, which concerns the CIL rate for housing alone, is described as a "further health check" on rates which the Examiner has already found to be "well-conceived". Consequently, in the context of my finding that in Tower Hamlets there would be a reasonable likelihood of CIL rendering unviable development on large allocated sites, similar 'CIL as a percentage of GDV' calculations are not necessarily demonstration of the reasonableness or acceptability of the proposed CIL rates.

with fewer or no requirements for infrastructure provision as part of them. Whilst I note that, at the time of the *August 2013 CIL Viability Study*, three of the four smaller sites appraised were not viable irrespective of CIL, there is no evidence to indicate that should economic circumstances improve the proposed CIL charges would be likely to make these developments unviable. Consequently, there is not an evidential basis to include the smaller allocated sites in my recommendation of a nil rate for all development at the large sites.

78. The Council believes that none of the large allocated sites are critical to the delivery of the Core Strategy and Appendix C of the Supplementary Evidence indicates that, in terms of housing, the largest of these is anticipated to comprise only 3.79% of the overall capacity for housing identified in the Tower Hamlets Strategic Housing Land Availability Assessment. It is also the case that, in respect of rate setting, the schedule is subject to the CIL (Amendment) 2013 No. 982 Regulations which require the Council to aim to strike **what appears to it to be** an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.
79. However, under the heading "What is meant by the appropriate balance" the April 2013 DCLG CIL Guidance (published in the light of the 2013 Regulations) identifies that CIL should not threaten the ability to develop viably the sites and scale of development identified in the Local Plan. This advice is echoed in the *National Planning Policy Framework*. Moreover, there would be little point in the Regulations permitting rates to vary by geographical area and the guidance encouraging appraisal of the viability of CIL on individual strategic sites, if it were not to be an intention of the guidance that different rates should be considered for such sites if the evidence points toward this. In the light of this it would be inappropriate (and would not be striking an appropriate balance) to set a CIL charge which would be reasonably likely to render unviable development of one or more of the largest of 20 allocated sites set out in the *Managing Development Document*. Moreover, the evidence indicates that, in the circumstances outlined in paragraph 73, there is a reasonable likelihood of CIL rendering unviable not just one, but all of the large site allocation schemes. Aside from providing housing (and Appendix C indicates that together the four sites would account for nearly 10% of the total (SHLAA identified) potential supply of new housing in Tower Hamlets), a significant amount of commercial development is envisaged and, as referred to above, the Foreword of the Core Strategy identifies that providing opportunities for employment and enterprise is a high priority.
80. I appreciate the Council's concern that, notwithstanding possible consequent changes to its Regulation 123 list, a nil charge for the four large allocated sites could cause difficulties in securing the infrastructure that the MDD identifies is necessary as part of development on these sites (and which would be likely to have wider benefits). As such it is argued that a nil rate would result in the Development Plan not being delivered and that an appropriate balance would not be achieved. However, I have concluded that there is a reasonable likelihood of the charges proposed by the Council rendering development of the four sites unviable, in which case the developments would be highly unlikely to come forward and, thus, neither the necessary infrastructure nor

any CIL payment in respect of the site would be delivered anyway.

81. Whilst it might not represent an appropriate balance to set a nil rate for all development across the whole of the borough to ensure the economic viability of the four large allocated sites, I am satisfied that it would do so to set a nil rate for development on the sites themselves given their importance to the delivery of the plan. Moreover, planning permission has been granted for schemes on two of the sites (London Dock, on which work has commenced, and Wood Wharf) which, inevitably, require provision of the appropriate infrastructure necessary for the schemes to have gained consent. In reality, therefore, it seems highly unlikely that, on these two sites at least, the necessary infrastructure will not be secured, notwithstanding the recommended modifications to the CIL schedule.
82. The Council has referred to its intention to operate an Exceptional Circumstances Relief policy. However, based on the appraisals specifically undertaken in connection with CIL, I have found that there is a reasonable likelihood that CIL would render unviable development of the four large allocated sites. In the light of this it would, thus, not be an exceptional circumstance if it were to be shown that a specific proposal for development of one or more of these sites would be rendered unviable by CIL. Consequently, it would be inappropriate to rely on Exceptional Circumstances Relief, which the Council could withdraw at any time, as justification for the proposed CIL rates.
83. The setting of a nil rate for all development in Tower Hamlets within the boundaries identified in the MDD for Bishopsgate Goods Yard, Wood Wharf, London Dock and Westferry Printworks would inevitably make the CIL schedule more complex. However, it would not be excessively complicated and, whilst guidance discourages undue complexity, this is not a good reason to set a rate which would result in the reasonable likelihood of CIL rendering development on these sites unviable.
84. Although the Council has strongly argued that its proposed rates are appropriate, the Supplementary Evidence sets out a possible option of a recalibration of the proposed CIL rates for the large allocated sites based on the total financial (and financial equivalent) contributions through planning obligations which have actually been achieved on the recently approved Wood Wharf scheme. It is stated that the planning application process has established that these contributions can be viably accommodated on the scheme.
85. However, there is little evidence to demonstrate that the economics of the specific planning application at Wood Wharf can be appropriately applied to possible developments at the other large allocated sites, the precise details of which are not known. Moreover, and fundamentally, whilst the CIL Guidance does not require the use of the valuation models and methodologies which are available to help authorities prepare their evidence for CIL, it states that they may find it helpful in defending their levy rates if they do. The appraisal of the large allocated sites set out in the *August 2013 CIL Viability Study* (as revised by the Supplementary Evidence) is based on such a valuation model and, as detailed above, it demonstrates that there is a reasonable likelihood of development on these sites being rendered unviable by the proposed CIL

rates. To cast that evidence aside, and to instead seek to justify CIL rates based solely on the planning obligations secured in connection with one planning application, would be most inappropriate.

86. In conclusion the proposed CIL rates are not consistent with the evidence insofar as they would apply to development likely to come forward on the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock allocated sites, in accordance with the *Managing Development Document*. Thus, for the reasons set out above, the schedule should be modified to set a nil rate for all development on these sites.

Does the evidence demonstrate that the proposed charge rates would not put the overall development of the area at serious risk?

87. For the reasons explained above there is a reasonable likelihood that the proposed charge rates would render unviable development on the four large allocated sites (Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock). Furthermore, bearing in mind that it is based on the inappropriate assumption of the "flexing" of the requirements of the Mayor's *Use of Planning Obligations in the Funding of Crossrail and the Mayoral Community Infrastructure Levy SPG*, the proposed office rate in the North Docklands area would put at risk office development in this area. The evidence also demonstrates that student housing let at below-market rents would be rendered unviable by any level of CIL. Taken together, I therefore conclude that the charge rates proposed by the Council would put the overall development of the area at serious risk.
88. However, assuming that the CIL scheduled is modified in accordance with my recommendations, the evidence suggests that most development likely to come forward in Tower Hamlets would remain viable with CIL in place. Thus, CIL would be unlikely to put the overall development of the area at serious risk.

Conclusion

89. Rapidly changing economic circumstances have been a feature of the period during which the Council has sought to develop its CIL schedule. However, my report is based on the detailed viability evidence as set out in the *August 2013 CIL Viability Study* and updated in connection with the February 2014 Statement of Modifications and the July 2014 Supplementary Evidence. Other, more anecdotal, evidence about improved economic conditions, is not an appropriate basis on which to make recommendations about the schedule. However, it may point to the desirability of a fully-evidenced early review of the schedule.
90. Whilst the recommended modifications would be likely to result in less income from CIL than has been forecasted by the Council in the *CIL Infrastructure Planning and Funding Gap Report* (October 2013), as updated by Appendix 3 of the February 2014 Statement of Modifications, I consider that if implemented in an unmodified form there is a reasonable likelihood that development on the large allocated sites would be rendered unviable by CIL. As such neither the development nor CIL income associated with it would be achieved.

LEGAL REQUIREMENTS	
National Policy/Guidance	The Charging Schedule (modified as recommended) complies with national policy/guidance.
2008 Planning Act and 2010 Regulations (as amended)	The Charging Schedule (modified as recommended) complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, consistency with the adopted Core Strategy and Infrastructure Delivery Plan and is supported by an adequate financial appraisal.

91. In the light of the above, and having regard to all other matters raised in writing and at the hearing sessions, I conclude that subject to the modifications set out in the Appendix the London Borough of Tower Hamlets Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved.

Malcolm Rivett

EXAMINER

This report is accompanied by: Appendix (attached) – Modifications that I specify so that the Charging Schedule may be approved.

Appendix – Modifications

In respect of modifications **EM1**, **EM2**, **EM3** and **EM4** modify Table 1 of the Community Infrastructure Levy (CIL) Revised Draft Charging Schedule Statement of Modifications, February 2014 to be as follows:

Table 1 Proposed Rates

Development Type	Proposed CIL Rate Per sq m (GIA) of Development			
	Zone 1	Zone 2	Zone 3	Large Allocated Sites*****
Residential	£200	£65	£35	Nil
Offices	City Fringe	North Docklands	Large Allocated Sites	Rest of Borough
	£90	Nil	Nil	Nil
Retail (Except Convenience Supermarkets/ Superstores* and Retail Warehousing**)	£70	£70	Nil	Nil
Convenience Supermarkets/ Superstores* and Retail Warehousing**	Borough Wide, except Large Allocated Sites			Large Allocated Sites
	£120			Nil
Hotel	Borough Wide, except Large Allocated Sites			Large Allocated Sites
	£180			Nil
Student Housing Let at Market Rents***	Borough Wide, except Large Allocated Sites			Large Allocated Sites
	£425			Nil
Student Housing Let at Below Market Rents****	Borough Wide, except Large Allocated Sites			Large Allocated Sites
	Nil			Nil
All Other Uses	Borough Wide			
	Nil			

-* Convenience Supermarkets/Superstores are defined as shopping destinations in their own right, where weekly food needs are met, catering for a significant proportion of car-borne customers, and which can also include non-food floorspace as part of the overall mix of the unit.

-** Retail Warehousing is defined as shopping destinations specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for a significant proportion of car-borne customers.

-*** Student housing not falling with the definition at **** below.

-**** Student housing let at below market rents, to meet an identified need, secured by a s106 planning obligation.

-***** Large Allocated Sites are defined as the sites, within Tower Hamlets, contained within the boundaries of the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock allocated sites as set out in the *Tower Hamlets Local Plan Managing Development Document*.

Also in respect of modification **EM4** modify Appendix 1: Draft Residential Charging Zone Boundaries and Appendix 2: Draft Office & Retail (except Convenience Supermarkets, Superstores and Retail Warehousing) Charging Zones to define a "Large Allocated Sites" Area/Zone to include the boundaries of the Bishopsgate Goods Yard, Wood Wharf, Westferry Printworks and London Dock allocated sites (within Tower Hamlets) as set out in the *Tower Hamlets Local Plan Managing Development Document*.

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Community Infrastructure Levy (CIL)

Regulation 123 List

April 2015

Regulation 123 List

List of Infrastructure Projects

April 2015

The list below sets out those types of infrastructure projects that Tower Hamlets Council intends will be, or may, be wholly or partly funded by CIL.

Types of infrastructure (including new provision, replacement or improvements to existing infrastructure, operation and maintenance)*: -

- **Public education facilities**
- **Community facilities and faith buildings**
- **Leisure facilities such as sports facilities, libraries and Idea Stores**
- **Public open space**
- **Roads and other transport facilities**
- **Health facilities**
- **Employment and training facilities**
- **Strategic energy and sustainability infrastructure**
- **Strategic flood defences**
- **Electricity supplies to all Council managed markets**
- **Infrastructure dedicated to public safety (for example, wider CCTV coverage)**
- **Strategic public art provision that is not specific to any one site**

* Except: -

1. The infrastructure required by the Council's Managing Development Document on the Wood Wharf, WestferryPrintworks, Bishopsgate Goods Yard and London Dock sites.
2. Where the need for specific infrastructure contributions is required to make the development acceptable in planning terms and in accordance with the statutory requirements. Further detail is provided in the Council's latest Planning Obligations Supplementary Planning Document.
3. Site specific carbon reduction measures/initiatives.



Community Infrastructure Levy (CIL)

Instalments Policy

April 2015

1. Instalments Policy

1.1 This Instalments Policy has been prepared and published in accordance with regulation 69B of the Community Infrastructure Levy Regulations 2010 (as amended). It takes effect on the 1st April 2015.

1.2 The London Borough of Tower Hamlets will allow payment of Community Infrastructure Levy (CIL) required under its Charging Schedule as follows: -

Table 1

Amount of CIL liability	Number of Instalment Payments	Amount or proportion of CIL payable in any instalment/time at which payments are due
£500,000 or less	No instalments	Total amount payable within 60 days of commencement of development
£500,001 or more	Two	<ul style="list-style-type: none">• The greater of £500,000 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

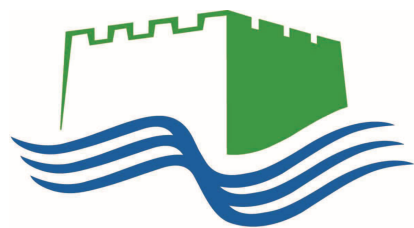


Community Infrastructure Levy (CIL)
Payment In Kind and Infrastructure Payments
Policy

April 2015

1. In accordance with Regulation 73, 73A, 73B and 74 of the Community Infrastructure Levy Regulations (2010) as amended, the London Borough of Tower Hamlets Council as the Charging Authority for the area hereby gives notice that the Council is offering the payment of CIL by way of the transfer of land to the Council, or by infrastructure payments.
2. This policy is effective from the day the London Borough of Tower Hamlets CIL Charging Schedule comes into effect on 01/04/2015.
3. The CIL Regulations 2010 (as amended) allow the Council to accept full or part payment of CIL liability by way of transfer of land to the Council. The Council may also enter into agreements in writing (subject to the criteria in Regulation 73A) to receive infrastructure payments, before the chargeable development is commenced¹. The infrastructure to be provided must be related to the provision of the types of projects listed in the Council's Regulation 123 list.
4. The Council is not obliged to accept any offer of payment in kind by land or infrastructure.
5. Please see the Community Infrastructure Levy Regulations 2010 (as amended), for the full details relating to payment in kind.

¹See Regulation 7 of the CIL Regulations (2010) as amended for "Commencement of Development".



TOWER HAMLETS

COMMUNITY INFRASTRUCTURE LEVY (CIL) PRELIMINARY DRAFT CHARGING SCHEDULE

EQUALITIES ANALYSIS

November 2012



Equality Analysis (EA)

Section 1 – General Information (Aims and Objectives)

Name of the proposal including aims, objectives and purpose:

(Please note – for the purpose of this doc, ‘proposal’ refers to a policy, function, strategy or project)

London Borough of Tower Hamlets Community Infrastructure Levy (CIL) Charging Schedule

Who is expected to benefit from the proposal?

The wider local community, which includes local residents, businesses and organisations within Tower Hamlets, through the provision of much needed infrastructure to support development and growth in the borough.

Service area:

Planning and Building Control

Team name:

Infrastructure Planning

Service manager:

Owen Whalley (Planning & Building Control Service Head)

Name and role of the officer completing the EA:

Hong Chen, Community Infrastructure Levy (CIL) Officer

Section 2 – Evidence (Consideration of Data and Information)

What initial evidence do we have which may help us think about the impacts or likely impacts on service users or staff?

The Community Infrastructure Levy (CIL) is introduced under the Planning Act 2008. The purpose of the levy is to help local authorities in England and Wales to raise funds to deliver infrastructure required for the growth of the area.

To adopt a CIL, the Council will need to prepare a robust and credible evidence base of infrastructure needs and development viability. Once adopted, the Council is required to monitor both the receipt and expenditure of CIL on an annual basis. This will include the amount raised, spent and infrastructure delivered etc. The information will be included in the Annual Monitoring Report (Planning & Building Control), as well as end of year financial reports.

In order to identify ‘likely’ equality impacts on service users or staff, there are two aspects to consider in terms of CIL:

- 1) The CIL charging rates, which apply to a development
- 2) Delivery of (whole or part of) infrastructure through CIL income

Evidence of where the Council has or intends to spend CIL will help us think about impacts or likely impacts on service users or staff.

Section 3 – Assessing the Impacts on the 9 Groups

How will what you're proposal impact upon the nine Protected Characteristics?

For the nine protected characteristics detailed in the table below please consider:-

- **What is the equality profile of service users or beneficiaries that will or are likely to be affected?**

The resident population of London Borough of Tower Hamlets is estimated to be approximately 254,000 in 2011 according to the census. In respect of the protected characteristics detailed in the Equalities Act 2012, the information below, sourced from 2011 census and GLA's population projections data, provide general information of equality profiles for various groups that will or likely to be affected by the LBTH CIL.

Age

The Tower Hamlets' population is expected to grow across all age groups; however, the growth is strongest in the older age groups, especially among those aged 50-64. The 35-49 age group and the over 65s group are also expected to show strong growth.

The young population (aged 20-34) comprises approximately 37 per cent of the Borough's population. One fifth of the Borough's population are aged under 16, with significant differences by ethnicity. The Black, Minority and Ethnic (BME) population is far younger than the White population.

Overall, the older age group is expected to increase the most over the next fifteen years in the Tower Hamlets as the peak of residents currently in their late twenties and early thirties.

Race

GLA estimates for 2011 show that 47 per cent of the Tower Hamlets' population are from BME groups. 41 per cent of the Borough's residents were born outside the UK. The largest ethnic group is the Bangladeshi population, which makes Tower Hamlets by far the largest Bangladeshi population in both London and England.

The BME groups are expected to continue to rise over the next 15 years in the Borough. Within the group, there is a substantial variation in the rate of population growth across ethnic groups. The Chinese population has the fastest increase; and the Black Caribbean population has the much older age profile and the lowest growth rate.

Religion or Belief

The Borough's largest faith groups are Christian and Muslim. The 2001 census shows that 39 per cent of residents identified themselves as Christian. In Tower Hamlets, there is a close relationship between faith and ethnicity. Over one third of residents said they were Muslim, the majority of whom was Bangladeshi. Other faith groups represented in the Borough include: Buddhists, Jews, Hindus and Sikhs.

Disability

By August 2010, there were more than 10,000 claimants of disability living allowance in the Tower Hamlets. 52 per cent were male and 48 per cent were female. Among them, over 7,000 people had claimed disability living allowance for 5 years and over. Age group 25-49 occupied the highest number of claimants of disability living allowance.

This group of people faces significant employment barriers, as only one third population of this group are in employment compared with almost two thirds of non-disabled group.

Gender Reassignment

The Council does not have information regarding the characteristic. However, this group of

people are taken into consideration as the profile of the Tower Hamlets population.

Sex

The ONS mid-year estimates for 2010 show that the gender ratio is: 105 males for every 100 females. Table below illustrates the estimated number of females and males in the Borough in 2011. The 2011 census figures show that the number of men outnumbers females significantly within the 35-54 age groups in the Borough. Women outnumber men among the 20-24 age group, and again in the 65 – 69 age group.

Total number of male	Total number of female
131,000	123,000

Source: NOS, 2011

Sexual Orientation

The Council does not have information regarding the characteristic. However, this group of people are taken into consideration as the profile of the Tower Hamlets population.

Marriage and Civil Partnerships

At the time of the 2001 Census, there were more single persons (aged 16 and over) than married/re-married persons living in the Tower Hamlets, which was about 39 per cent against 32 per cent. The same-sex couple living in households were slightly over 1,000.

Pregnancy and Maternity

From January to December 2010, the total birth in the Tower Hamlets was about 4,600. Over 50 per cent were males and about 48 per cent were females.

Socio Economic

There has been a rapid population growth in the Tower Hamlets in recent years. This trend is expected to continue over the next 15 years. As a result of the growth, there has been a pressing need to improve the provision of local infrastructure, which can help enhance people's quality of life in the Borough. Accessing affordable housing and job market are the two main issues in the Tower Hamlets.

• **What qualitative or quantitative data do we have?**

1. A profile of the Tower Hamlets Population (2010)
2. Population – key facts research briefing (2011)
3. Infrastructure Delivery Plan (2009) and updated report (2011)
4. Tower Hamlets Planning for population change and growth: capacity assessment baseline report (2009)
5. Equalities Analysis for London Borough of Tower Hamlet's Development Plan Documents (2011)
6. Sustainability Appraisal for London Borough of Tower Hamlet's Development Plan Documents (2011)
7. Planning Obligations Supplementary Planning Document (2012)
8. Consultation and engagement reports for London Borough of Tower Hamlets' Development Plan Documents, Local Development Framework (2011)
9. Tower Hamlets Local Development Framework Annual Monitoring Report (2011)

10. Strategic Housing Market and Needs Assessment (2009)
11. Planning for a healthier urban environment in Tower Hamlets (2011)
12. Tower Hamlet's Parking stress study (2011)
13. Managing Travellers' Accommodation (2011)
14. London Borough of Tower Hamlets - London Heat Map Study (2011)
15. Tower Hamlets Green Grid Strategy (2010)
16. The Cycling Plan for Tower Hamlets (2009)
17. Tower Hamlets Strategic flood risk assessment (2012)
18. Tower Hamlets Primary school site selection and summary table (2012)
19. Tower Hamlet's Transport Planning Strategy 2011 – 2031 (2011)
20. Tower Hamlets Public transport capacity assessment (2006)
21. The walking plan for Tower Hamlets 2011-2021 (2011)
22. London Borough of Tower Hamlets Waste evidence base report update (2011)
23. Multi-faith burial site for Tower Hamlets – Criteria for site identification (2009)
24. Character area assessments (2006)

- **Equalities profile of staff?**

The development of the LBTH CIL is a process, which involves other teams across directorates. The Charging Schedule itself does not have directly impact on staff but improved infrastructure as a result of CIL will benefit staff in the same way as other residents and employees in the borough.

- **Barriers?**

Communication – Many local residents in the Tower Hamlets are from BME groups. English may not be their first languages. This may cause difficulty to understand CIL and how it may impact their lives. Any consultation will be compliant with the Council's Statement of Community Involvement approved in 2009. If requests are received the consultation material can be translated.

- **Recent consultation exercises carried out?**

The development of the LBTH's CIL has been involved proactive engagement with both internal and external stakeholders. Within the Council, an Infrastructure Planning Steering Group has been set up to discuss infrastructure requirements, costs and funding sources for the Borough on a quarterly basis. To work with stakeholders outside the Council, the Infrastructure Planning Team has successfully organised a workshop for developers/agents to discuss the potential charging rate. Discussions have also be held with the Mayor of Tower Hamlets and the Lead Members for Housing and Resources in the development of the Charging Schedule.

In addition, a consultation plan which provides a programme that describes the main consultation methods that will be used to engage different types of internal and external consultation groups in accordance to the Statement of Community Involvement (SCI) and government legislation.

- **Additional factors which may influence disproportionate or adverse impact?**

The main factor which may have equality impacts is when deciding how the money collected through CIL is to be invested in the Borough to fund local infrastructure. It is important to note that CIL is only one of the funding sources and is unlikely to be able to fund all of the identified infrastructure needs of the district. The Council has no obligation to 'balance' expenditure, neither on a geographic basis nor for types of infrastructure delivered. However, Regulations require the funding to be spent to support growth in the area

- **The Process of Service Delivery?**

Securing funding and delivering infrastructure improvements through CIL will assist service delivery in helping the Council achieve its major objectives including ensuring Tower Hamlets is a great place to live.

Summary and next steps:

This EA will be kept as a live document, which provides an overarching analysis of the LBTH's CIL Charging Schedule project in terms of equalities. The results of the various consultation exercises will be fed back into the EA as evidence to inform future decision making, particularly for groups where the Council does not have sufficient information at this stage.

Once the Council adopts its own Charing Schedule and starts to operate it, separate equality analysis will be undertaken for delivery of (whole or part of) infrastructure through CIL income .

Target Groups	Impact – Positive or Adverse	Reason(s)
Race	Positive	<p>Please add a narrative to justify your claims around impacts and,</p> <ul style="list-style-type: none"> Please describe the analysis and interpretation of evidence to support your conclusion as this will inform decision making <p>Please also how the proposal will promote the three One Tower Hamlets objectives?</p> <ul style="list-style-type: none"> -Reducing inequalities -Ensuring strong community cohesion -Strengthening community leadership <p>The BME groups are expected to continue to rise over the next 15 years in the Borough. Within this group, unemployment levels are generally higher.</p> <p>CIL will not have direct equality impacts on this target group as it is a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. Once implemented, the monies generated through CIL from new developments can be spent on a wide range of local infrastructure that may improve access to for example, educational, community and recreational facilities that may have positive impacts on this group. Equalities needs are assessed by relevant service areas who deliver infrastructure which is required for their baseline work.</p> <p>Furthermore, evidence from the 2001 Census showed that BME residents were more likely to be in need of social housing and is amongst households with issue of overcrowding. The Regulations allow social housing relief therefore CIL will not represent an additional barrier to the delivery of social housing from this aspect.</p>
Disability	Positive	<p>The targeted group faces significant employment barriers, as only one third population of this group are in employment compared with almost two thirds of non-disabled group.</p> <p>CIL will not have direct equality impacts on this target group as it is a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. Once implemented, the monies generated through CIL from new developments can be spent on a wide range of local infrastructure. Provision of educational and community facilities such as schools, training centres and ideal stores, will help the target group to improve their education qualifications and skills which may result in gaining improved opportunities in the labour market. Equalities needs are assessed by relevant service areas who deliver infrastructure which is required for their baseline work.</p>
Gender	Positive	<p>The 2011 census figures show that the number of men outnumbers females significantly within the 35-54 age groups in the Borough. Women outnumber men among the 20-24 age group, and again in the 65 – 69 age group.</p>

		<p>CIL will not have direct equality impacts on this target group as it is a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. Once implemented, the monies generated through CIL from new developments can be spent on a wide range of local infrastructure. As a result provision of health, parks, educational and community facilities such as schools, training centres and idea stores may benefit all employees and residents of the district. Equalities needs are assessed by relevant service areas who deliver infrastructure which is required for their baseline work.</p>
Gender Reassignment	Positive	<p>The targeted group is taken into consideration as part of the profile of the Tower Hamlets population, although the data is unavailable at this stage.</p> <p>CIL will not have direct equality impacts on this target group as it is a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. Once implemented, the monies generated through CIL from new developments can be spent on a wide range of local infrastructure. As a result provision of health, parks, educational and community facilities such as schools, training centres and idea stores may benefit all employees and residents of the district. Equalities needs are assessed by relevant service areas who deliver infrastructure which is required for their baseline work.</p>
Sexual Orientation	Positive	<p>The targeted group is taken into consideration as part of the profile of the Tower Hamlets population, although the data is unavailable at this stage.</p> <p>CIL will not have direct equality impacts on this target group as it is a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. Once implemented, the monies generated through CIL from new developments can be spent on a wide range of local infrastructure. As a result provision of health, parks, educational and community facilities such as schools, training centres and idea stores may benefit all employees and residents of the district. Equalities needs are assessed by relevant service areas who deliver infrastructure which is required for their baseline work.</p>
Religion or Belief	Neutral	<p>In Tower Hamlets, there is a close relationship between faith and ethnicity. Over one third of residents said they were Muslim, the majority of whom was Bangladeshi. The BME groups are expected to continue to rise over the next 15 years in the Borough. Within this group, unemployment levels are generally higher.</p> <p>CIL will not have direct equality impacts on this target group as it is a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. In most circumstances, places of worships would be provided privately by a charitable organisation. Having considered the viability evidence, places of worship is considered as 'other uses' and it is proposed to be zero rated. Therefore, CIL does not considered to be a financial barrier to the development of places of worships. Equalities needs are assessed by relevant service areas who deliver infrastructure which is required for their baseline work.</p>
Age	Positive	<p>The older age group is expected to increase the most over the next fifteen years in the Tower Hamlets as the peak of residents currently in their late twenties and early thirties. Tower Hamlets is a relatively young Borough which comprises 37 per cent young population aged 20 -34. Under 16 years old, the BME population is far younger than the White population.</p>

		CIL will not have direct equality impacts on this target group as it is a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. Once implemented, the monies generated through CIL from new developments can be spent on a wide range of local infrastructure. As a result provision of health, parks, educational and community facilities such as schools, training centres and idea stores may benefit all employees and residents of the district. Equalities needs are assessed by relevant service areas who deliver infrastructure which is required for their baseline work.
Marriage and Civil Partnerships.	Positive	<p>At the time of the 2001 Census, there were more single persons (aged 16 and over) than married/re-married persons living in the Tower Hamlets, which was about 39 per cent against 32 per cent.</p> <p>CIL will not have direct equality impacts on this target group as it is a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. Once implemented, the monies generated through CIL from new developments can be spent on a wide range of local infrastructure. As a result provision of health, parks, educational and community facilities such as schools, training centres and idea stores may benefit all employees and residents of the district. Equalities needs are assessed by relevant service areas who deliver infrastructure which is required for their baseline work.</p>
Pregnancy and Maternity	Positive	<p>The targeted group is taken into consideration as part of the profile of the Tower Hamlets population.</p> <p>CIL will not have direct equality impacts on this target group as it is a financial document and therefore it is not considered it will have a disproportionate effect on the targeted group. Once implemented, the monies generated through CIL from new developments can be spent on a wide range of local infrastructure. As a result provision of health, parks, educational and community facilities such as schools, training centres and idea stores may benefit all employees and residents of the district. Equalities needs are assessed by relevant service areas who deliver infrastructure which is required for their baseline work.</p>
Other Socio-economic Carers	N/A	N/A

Section 4 – Mitigating Impacts and Alternative Options

From the analysis and interpretation of evidence in section 2 and 3 - Is there any evidence of or view that suggests that different equality or other protected groups (inc' staff) could have a disproportionately high/low take up of the new proposal?

No

If yes, please detail below how evidence influenced and formed the proposal? For example, why parts of the proposal were added/removed?

(Please note – a key part of the EA process is to show that we have made reasonable and informed attempts to mitigate any negative impacts. AN EA is a service improvement tool and as such you may wish to consider a number of alternative options or mitigation in terms of the proposal.)

Section 5 – Quality Assurance and Monitoring

Have monitoring systems been put in place to check the implementation of the proposal and recommendations?

Yes

How will the monitoring systems further assess the impact on the equality target groups?

The EqIA will be reviewed annually to assess impact of equality target groups of the Tower Hamlets Community Infrastructure Levy

Does the policy/function comply with equalities legislation?
(Please consider the [OTH objectives](#) and [Public Sector Equality Duty](#) criteria)

Yes

If there are gaps in information or areas for further improvement, please list them below:

How will the results of this Equality Analysis feed into the performance planning process?

The results of this EA will be used to ensure that:

1. The Council is clear on any future use of CIL 'relief' in the Charging Schedule
2. The Council sets out a clear governance structure for making decisions on allocating CIL expenditure in according to the CIL Regulations and agreed principles for prioritisation based on local needs and evidence.
3. The Council should be proactively engaging with key stakeholders and local communities on the PDCS and DCS as per the CIL Consultation Plan.

Section 6 - Action Plan

As a result of these conclusions and recommendations what actions (if any) **will** be included in your business planning and wider review processes (team plan)? Please consider any gaps or areas needing further attention in the table below the example.

Recommendation	Key activity	Progress milestones including target dates for either completion or progress	Officer responsible	Progress
<ul style="list-style-type: none"> The local community, key stakeholders are consulted appropriately as required by the Statement of Community Involvement and Government legislation 	Undertake 6 weeks consultation Undertake a further 4 weeks Examination in Public	Winter 2012 - 2013 Spring 2013 Summer 2013	CIL Project Officer	Developing Preliminary Draft Charging Schedule

Section 7 – Sign Off and Publication

Name: (signed off)	Anne-Marie Berni
Position:	Infrastructure Planning Manager
Date signed off: (approved)	18/10/2012