

Cabinet 31st October 2018	 TOWER HAMLETS
Report of: Ann Sutcliffe, Acting Corporate Director, Place	Classification: Unrestricted
Approval to consult on a new Community Infrastructure Levy Draft Charging Schedule	

Lead Member	Councillor Rachel Blake, Cabinet Member for Regeneration and Air Quality
Originating Officer(s)	Matthew Pullen, Infrastructure Planning Manager
Wards affected	All wards
Key Decision?	Yes
Forward Plan Notice Published	27 September 2018
Reason for Key Decision	Because the Council's Community Infrastructure Levy will help the Council raise significant resources to contribute towards the delivery of infrastructure to support development.
Community Plan Theme	A great place to live

Executive Summary

The Community Infrastructure Levy (CIL) is a pound per square metre charge on most types of new development, charged to pay for supporting infrastructure. The rates currently chargeable in Tower Hamlets (which exclude the area of the borough within the London Legacy Development Corporation area which is subject to a separate charge) are set out in a Charging Schedule that was adopted by the Council in April 2015.

This item seeks approval for the undertaking of at least one public consultation on a new CIL Draft Charging Schedule and approval to submit the proposed Charging Schedule for Public Examination. The newly proposed Charging Schedule seeks to increase the rates the Council currently charges.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Approve the *Tower Hamlets CIL Draft Charging Schedule* (Appendix A of this report) and supporting evidence (listed below) for a 6 week public consultation.
2. Authorise the Corporate Director of Place to:
 - Approve minor modifications to the Draft Charging Schedule (“DCS”) following the public consultation;
 - Where no material modifications are required following the consultation on the DCS, to approve the submission of the Council’s proposed Charging Schedule and associated evidence base for public examination.
3. Note that if material modifications to the DCS are required following consultation, that approval to undertake a subsequent consultation or submit for public examination as necessary will be referred to the Mayor in Cabinet.
4. Note BNP Paribas Real Estate’s *CIL Viability Study* (Appendix B) that forms part of the supporting evidence for the DCS. The document appended is less its appendices (as they run to hundreds of pages) – the full document including the appendices is available separately as a background document. The full document will be published for consultation.
5. Note the *Supporting Evidence and Funding Gap Report* attached at Appendix C. This document explains the infrastructure planning criteria the Council must account for in adopting a new CIL Charging Schedule.
6. Note the *Additional Evidence and Information Document* attached at Appendix D. This document sets out the Council’s position with respect to a number of matters and evidence in order to provide context to the approach it has taken to forming the rates described in its Draft Charging Schedule.
7. Note the *Summary of Consultation Responses Report* attached at Appendix E. This document sets out and summarises the responses the Council received in respect of its consultation on its Preliminary draft Charging Schedule.
8. Note other associated documents that will be published alongside the DCS, including:
 - A Payment in Kind and Infrastructure Payments Policy (Appendix F);
 - Charging Schedule Explanatory Notes (Appendix G).

9. Note that an Equality Assurance Checklist was completed and referred to the Mayor in Cabinet in respect of the approval to consult on a previous iteration of the Draft Charging Schedule that is the subject of this cabinet Report. This Equality Assurance Checklist is attached at Appendix H.

1. REASONS FOR THE DECISIONS

- 1.1 The reason for the decision is to ensure that the Council's CIL rates are set at an appropriate level, to allow the Council to maximise the funding to deliver much needed supporting infrastructure.
- 1.2 Consultations on the proposed Charging Schedule are required by regulations prior to the examination and adoption of a new Charging Schedule.

2. ALTERNATIVE OPTIONS

- 2.1 One alternative option would be to not seek to renew the Council's CIL Charging Schedule. This is not considered appropriate because this would result in the Council not maximising its CIL income.

3. DETAILS OF THE REPORT

Background

What is CIL?

- 3.1 CIL is a pounds per square metre charge on most new development and must be used to help deliver infrastructure to support the development of the area. It can be used to provide new infrastructure, increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support development. Please note that the Council currently collects the Mayor of London's CIL as well as local CIL – this document only pertains to the local CIL Charging Schedule.
- 3.2 CIL is payable on the commencement of relevant planning permissions. It generally takes many months for any development to go from permission to commencement and it can take up to three years for larger developments to commence.
- 3.3 CIL is charged on most types of development and the CIL Regulations are highly prescriptive on the way CIL is calculated and applied to development; unlike with Section 106 Planning Obligations there is no negotiation. However, developers may apply for relief from the CIL payment for affordable housing dwellings or for developments by charity and, if permitted by the local authority, exceptional circumstances although the Council has never approved an application on this basis.

- 3.4 Seeking CIL contributions and Section 106 Planning Obligations to pay for the same type of infrastructure is generally prohibited (the only exception to this relates to financial contributions from development for Crossrail). The Council has a Regulation 123 List (within Appendix C) which identifies the types of projects on which the Council intends to spend its CIL which the Council will be considering as part of the consultation process.

How can a Charging Authority spend CIL?

- 3.5 Subject to the restrictions set out in paragraph 3.1 above, it is the authority of the Executive to decide how to spend CIL. All expenditure decisions of the Council are the function of the Council's Executive unless regulatory functions require otherwise.. CIL was provided for in the Planning Act 2008. It is a financial charge that local authorities can levy on developments to help fund infrastructure such as schools, health, open space and transport facilities to support growth in an authority's area. Please note that the proposals described in this document do not relate to how the Council will spend current or future CIL income.

How are CIL rates set?

- 3.6 A requirement of CIL rate setting is the need to demonstrate that the Council needs, in financial terms, to charge a CIL to deliver infrastructure to support development. Therefore, the Council must identify a funding gap in delivering infrastructure to support development. This information is set out in Appendix C.
- 3.7 CIL rates are based on what development across the borough can viably afford. The Council commissioned BNP Paribas Real Estate to undertake a Viability Study to establish the rates that can apply in Tower Hamlets' Charging Authority Area. It should be noted that rates cannot be set to reflect the Council's entire funding gap as CIL must be based on what development can viably afford. CIL is only one funding stream that should be utilised to fund infrastructure.
- 3.8 The Viability Study undertakes testing on generic development types across the borough as well as a number of selected "Strategic Sites" which are made up of a selection of the Council's site allocations in the Tower Hamlets Local Plan 2031: Managing Growth and Sharing the Benefits (submission version). The Viability Study takes account of all of the policy costs attached to the new draft Local Plan. Please find the Viability Study attached at Appendix B.

What is the process for adopting a new CIL Charging Schedule?

- 3.9 In order to implement a new Charging Schedule for Tower Hamlets, the CIL Regulations 2010 (as amended) require that a Charging Schedule setting out CIL rates must be the subject of at least two stages of consultation – one of these consultations, on a Preliminary Draft Charging Schedule, has already taken place.

- 3.10 Guidance states that Charging Authorities should make these consultations at least 6 weeks long. Before the Charging Schedule can be adopted it must then be approved at a public examination and then adopted in a Full Council meeting.

A national review of the CIL process

- 3.11 Earlier in 2018, the Ministry for Housing Communities and Local Government published a document named *Supporting housing delivery through developer contributions: Reforming developer contributions to affordable housing and infrastructure*. This document proposed a number of changes to the process for adopting and collecting a CIL, including:

- The alignment of CIL rate setting and plan-making processes.
- The removal of restrictions on how S106 Planning Obligations can be used.
- Removing Regulation 123 Lists and requiring the annual publication of Infrastructure Funding Statements: Regulation 123 Lists are the lists Charging Authorities must publish to describe on what they intend to spend their CIL.
- Changing the way CIL rates are indexed.

- 3.12 However, the outcomes of the consultation and the extent to which they will be implemented have not yet been confirmed. Officers do not consider it is appropriate to wait for new measures to be implemented before proceeding as no timelines for implementation have been confirmed. It is not clear as to whether the Council would need to undertake further consultations on its newly proposed CIL Charging Schedule if these measures were adopted before the Council were to adopt its new CIL Charging Schedule.

Consultation on Preliminary Draft Charging Schedule

- 3.13 The Council consulted on a previous iteration of the Draft Charging Schedule that is the subject of this report, from the 11th January to the 22nd February 2018. The Council received 18 responses to the consultation from various entities including the public, developers and public authorities. As per the normal process, the Council will be publishing all of the consultation responses on the Council's website.
- 3.14 Alongside the consultation responses, the Council is required to publish a report that summarises the responses received. This document also sets out key issues raised and how the Council has taken consultation responses into account. This document is attached at Appendix E.

Proposals

Proposed rates

3.15 The following table identifies the Council's current CIL rates (in brackets) alongside the rates proposed (bold, red) in the new Charging Schedule:

Development type	Proposed CIL rate per sq. m (GIA) of development			
Residential (Sale)	Zone 1	Zone 2	Zone 3	Large Allocated Sites*
	(£200) £280	(£65) £150	(£35) £50	(Nil) N/A
Offices	City Fringe	North Docklands	Large Allocated Sites	Rest of Borough
	(£90) £100	(Nil) £100	(Nil) N/A	(Nil) N/A
Retail (Except Convenience Supermarkets/ Superstores and Retail Warehousing)	(£70) £100	(£70) £100	(Nil) TBC	(Nil) N/A
Convenience Supermarkets/ Superstores and Retail Warehousing	Borough Wide, except Large Allocated Sites			Large Allocated Sites*
	(£120) £130			(Nil) N/A
Hotel	Borough Wide, except Large Allocated Sites			Large Allocated Sites*
	(£180) £190			(Nil) N/A
Student Housing Let at Market Rents	Borough Wide, except Large Allocated Sites			Large Allocated Sites*
	(£425) £450			(Nil) N/A
Student Housing Let at Below Market Rents	Borough Wide, except Large Allocated Sites			Large Allocated Sites*
	(Nil) Nil			(Nil) N/A
All Other Uses	Borough Wide			
	(Nil) Nil			

* Note that the Council's current Charging Schedule has a nil rate for four sites (Wood Wharf, Westferry Printworks, Bishopsgate Goods Yard and London Dock) that were rated as such by the examiner of the Council's current Charging Schedule. The newly proposed Charging Schedule does not intend to nil rate these sites.

3.16 The Council's DCS attached at Appendix A describes the rates proposed.

3.17 Please note that changes have occurred to the proposed rates from those consulted on earlier in 2018, for which a separate Cabinet approval was granted. The changes proposed are based on updated viability evidence that takes account of representations received in respect of the consultation on the

Preliminary Draft Charging Schedule and changes in market conditions, including general increases in build costs and stagnation in sales values. The CIL Viability Study attached at Appendix B describes the changes proposed.

3.18 In terms of the extent of the changes described in the paragraph above:

- Residential rate, Zone 2: This has been reduced from £180 at Preliminary Draft Charging Schedule Stage, to £150 at DCS stage. The rate applicable to this zone in the Council's adopted Charging Schedule is £65 per sq. m.
- Residential rate, Zone 3: This has been reduced from £85 at Preliminary Draft Charging Schedule Stage, to £50 at DCS stage. The rate applicable to this zone in the Council's adopted Charging Schedule is £35 per sq. m.
- Retail rate (applicable in City Fringe and North Docklands area): This rate has been increased from £90 at Preliminary Draft Charging Schedule Stage, to £100 at DCS stage. This is to ensure that the rate proposed better reflects the evidence

3.19 Whilst CIL income is very difficult to project, it is estimated that a new Charging Schedule could raise up to an additional £28.7m above the currently adopted CIL Charging Schedule for the Council up to the end of the year 2030/31.

Proposed consultations

3.20 The aim is to undertake consultation from mid-November for a period of six weeks. However, the Council's proposed DCS must follow the outcomes of the examination on the Council's new proposed Local Plan which is currently proposed to take place in September and October 2018. Should the Examination for the Local Plan raise any issues that directly impact on the proposed DCS there may be a need for further work to be undertaken which could delay the consultation. This is considered unlikely, but should it occur then the consultation will be commenced as soon as possible.

3.21 Following the close of the consultation on the DCS, representations made will be considered and amendments to the Charging Schedule will be made as necessary. All representations will be published on the Council's website.

3.22 Following the close of the consultation the DCS will be submitted for public examination. It is possible that a further consultation will be undertaken prior to the public examination, should feedback from the consultation warrant material changes to the proposed new Charging Schedule, but this is considered unlikely.

Modifications to the Charging Schedule following consultation

3.23 This report recommends that the Corporate Director of Place is authorised to approve minor modifications to the DCS following consultation and approve

the referral of the DCS for public examination or if necessary a further consultation.

- 3.24 Minor modifications include any changes made for accuracy and clarity such as changes to terminology or formatting and includes changes to the rates of 10% or less. Substantial amendments will be referred back to the Mayor in Cabinet for approval.

4. EQUALITIES IMPLICATIONS

- 4.1 An Equality Assurance Checklist was completed and referred to the Mayor in Cabinet in respect of the approval to consult on a previous iteration of the DCS that is the subject of this Cabinet Report. This Equality Assurance Checklist (which is attached at Appendix H) found that the proposal:

Does not appear to have any adverse effects on people who share Protected Characteristics and no further actions are recommended at this stage.

- 4.2 Because the proposals have not changed in any way that would have any equalities implications, it has not been considered necessary to carry out another Equality Assurance Checklist.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:

- Best Value Implications,
- Consultations,
- Environmental (including air quality),
- Risk Management,
- Crime Reduction,
- Safeguarding.

- 5.2 The consultation(s) proposed will be carried out in accordance of the requirements of the Community Infrastructure Levy Regulations 2010 (as amended) and the Council's Statement of Community involvement.

- 5.3 The proposals have limited impact on best value implications and no safeguarding implications arise from the proposals.

- 5.4 In terms of risk management the proposals set out in this report seek to maximise the Council's income through CIL. Maximising CIL income will help mitigate against the risk of the Council being unable to provide enough infrastructure to support development.

- 5.5 In terms of crime reduction implications proposals set out in this report seek to maximise the Council's income through CIL. This will help the Council deliver infrastructure that might assist with the Council's crime and disorder objectives.
- 5.6 In terms of environmental implications, the infrastructure delivered using the Council's CIL can help the Council meet its sustainability and environmental objectives.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 This report seeks approval for amendments to be made to the charging schedule for the Tower Hamlets Community Infrastructure Levy and, following the earlier statutory consultation on the preliminary draft charging schedule, for a further statutory consultation process to be undertaken on the revised schedule. The charging schedule will then be subject to an independent examination by the Planning Inspectorate, following which it will be submitted to full Council for implementation in April 2019.
- 6.2 The updated charging schedule has been developed and revised by officers in conjunction with external advisors, and has been prepared in accordance with the Authority's infrastructure needs and development viability assessment. The revised draft charging schedule is attached at Appendix A. Based on the latest development assumptions and the revised charging schedule, it is anticipated that in the period from 2018/19 to 2030/31, CIL will generate resources of approximately £254 million. This is a significant increase on the £225 million that would have been received based on the existing charging schedule rates.
- 6.3 The revised likely infrastructure needs within the borough over the period to 2030/31 were assessed as part of the evidence base that was prepared to support the revision of the CIL rates. This assessment is included as Appendix C. These are valued at approximately £1.901 billion, of which indicative funding of £976 million has potentially been identified across the various public agencies. This leaves a funding gap of approximately £925 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.
- 6.4 The infrastructure needs and the likely resources available must be continually reviewed, but based on assessments within the evidence base, the funding gap of £925 million will be partly filled through the estimated CIL income of £293 million, leaving an overall indicative funding need of £632 million across the organisations within the Borough.
- 6.5 The costs of the consultation and inspection processes will be met from within existing resources.

6.6 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 is independent of the Council's CIL requirement.

7. COMMENTS OF LEGAL SERVICES

7.1 This item seeks approval to publish for consultation a revised CIL Draft Charging Schedule and subject to the outcome of consultation the approval to submit the proposed Draft Charging Schedule for Public Examination.

7.2 Part 11 of the Planning Act 2008 provides for the imposition of a charge known as the Community Infrastructure Levy ("CIL") by a Charging Authority. The Council is a Charging Authority. The detailed provisions are set out in the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 as amended ("The Regulations").

7.3 Regulation 15 of the Regulations provides that a Charging Authority which proposes to revise a charging schedule must prepare a preliminary draft charging schedule for consultation. This report confirms that the Council carried out such a consultation from the 11th January to the 22nd February 2018. The Council received 18 responses to the consultation from various entities including the public, developers and public authorities. By paragraph 15(7) the charging authority must take into account any representations made to it under this regulation before it publishes a draft of the charging schedule for examination.

7.4 Regulation 16 provides that before submitting a draft charging schedule for examination, the charging authority must make a copy of the draft charging schedule, the relevant evidence and a statement of the representations procedure available for inspection and a statement of the fact that the draft charging schedule and relevant evidence are available for inspection and of the places at which they can be inspected and how representations can be made. The period for making representations must not be less than four weeks.

7.5 Regulation 17 states that any person is entitled to make representations on the draft schedule.

7.6 Regulation 19 requires that following the Regulation 16/17 representations period the charging authority must submit the following to the examiner:(a)the draft charging schedule;(b)a statement setting out if any, the number of representations made to the draft charging schedule and a summary of the main issues raised by the representations and(c) copies of any representations made in accordance with regulation 17 (d)where the charging authority modified the draft charging schedule after it was published in accordance with regulation 16, a statement of modifications; and (e)copies of the relevant evidence.

7.7 Attention is drawn to paragraph 2.34 and 2.35 of the PNB Paribas report. This reminds the decision maker that the CIL regulations state that in setting a

charge, local authorities must strike “an appropriate balance” between revenue maximisation on the one hand and the potentially adverse impact upon the viability of development on the other. The regulations also state that local authorities should take account of other sources of available funding for infrastructure when setting CIL rates.

Taking account of representations

- 7.8 The report states that the Regulation 17 Representations have been taken into account. The report identifies five main issues and addresses them. Members are reminded to have regard to all the issues set out in the appendix and not just the five main issues identified in the report

Linked Reports, Appendices and Background Documents

Linked Report

None

Appendices

- Appendix A: Proposed Draft Charging Schedule
- Appendix B: Viability Study (less appendices)
- Appendix C: Supporting Evidence and Funding Gap Report
- Appendix D: Additional Evidence and Information Document
- Appendix E: Summary of Consultation Responses Received Document
- Appendix F: A Payment in Kind and Infrastructure Payments Policy
- Appendix G: Charging Schedule Explanatory Notes
- Appendix H: Equality Assurance Checklist

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

Full Viability Study, including Appendices
The Council’s Infrastructure Delivery Plan (submission version)

Officer contact details for documents:

Matthew Pullen or Joshim Uddin:
London Borough of Tower Hamlets
Mulberry Place
5 Clove Crescent
E14 2BG
Tel: 020 7364 6363/1666