

<b>Cabinet</b>	 <b>TOWER HAMLETS</b>
27 November 2019	
<b>Report of:</b> Ann Sutcliffe, Corporate Director of Place	<b>Classification:</b> Unrestricted
<b>Adoption of a new Tower Hamlets Community Infrastructure Levy (CIL) Charging Schedule</b>	

<b>Lead Member</b>	<b>Councillor Cllr Rachel Blake, Cabinet Member for Planning, Air Quality and Tackling Poverty</b>
<b>Originating Officer(s)</b>	Matthew Pullen, Infrastructure Planning Manager Joshim Uddin, Development Viability Team Leader
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	Yes
<b>Decision Notice Published</b>	15 October 2019
<b>Reason for Key Decision</b>	The new CIL rate will generate additional funding to deliver much-needed infrastructure to support developments within the Borough.
<b>Strategic Plan Priority / Outcome</b>	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 recommends the adoption of a new schedule subsequent to three separate public consultations and examination in public. The newly proposed Charging Schedule seeks to increase the rates the Council currently charges.

### **Recommendations:**

The Mayor in Cabinet is recommended to:

1. Allow all relevant reporting and associated actions to take place for the full Council to formally adopt the new CIL Charging Schedule in accordance with The Community Infrastructure Levy Regulations 2010, Regulation 25.
2. Note that there have been some minor amendments made subsequent to the examination in public (in respect of student housing and some minor

errors in the funding gap report). These amendments are not substantial or affect the need for a Charging Schedule.

## **1 REASONS FOR THE DECISIONS**

- 1.1 The reason for the decision is to allow the Council to adopt the proposed CIL Charging Schedule to maximise the funding to deliver much needed supporting infrastructure.
- 1.2 The report from the examiner following examination in public examination confirm that the proposed rate satisfies the requirements of Section 212 of the Planning 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). Therefore, the examiner recommended that the proposed Charging Schedule be approved.

## **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 it would not be a reasonable response to the consultation. The review was carried out because the Council has an infrastructure funding gap and as the Independent Examiner has approved the reasons for the review the option of not approving the new charge would have to be exceptional.

## **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 F) which identifies the types of projects on which the Council intends to spend its CIL.

#### How can a Charging Authority spend CIL?

- 3.5 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. There are no regulatory restrictions on CIL in terms of who decides how these funding sources are spent. 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 the Council's Supporting Evidence and Funding Gap report (October 2019).
- 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 Local Plan.

#### 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 – three consultations were held in total.

- 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 In September 2019 the Government updated the guidance on CIL which includes the process of implementing new schedules.
- 3.12 The changes have removed the restriction on pooling more than 5 planning obligations towards a single piece of infrastructure, alongside the removal of the Regulation 123 List and its replacement with the annual Infrastructure Funding Statement.
- 3.13 The updated regulations relax the requirements for local authorities to consult on CIL charging schedules before adoption. Charging authorities will now be required to conduct one round of consultation, rather than the two rounds previously required.
- 3.14 However, the outcomes of the new regulations and the extent to which they apply do not impact the Councils actions in adopting a new Charging Schedule. Officers do not consider it necessary to delay or postpone adoption as there are no material impacts impeding its ability to be approved.

**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) <b>£280</b>	(£65) <b>£150</b>	(£35) <b>£50</b>	(Nil) <b>N/A</b>
Offices	City Fringe	North Docklands	Large Allocated Sites	Rest of Borough
	(£90) <b>£100</b>	(Nil) <b>£100</b>	(Nil) <b>N/A</b>	(Nil) <b>N/A</b>

Retail (Except Convenience Supermarkets/ Superstores and Retail Warehousing)	(£70) <b>£100</b>	(£70) <b>£100</b>	(Nil) <b>N/A</b>	(Nil) <b>N/A</b>
Convenience Supermarkets/ Superstores and Retail Warehousing	Borough Wide, except Large Allocated Sites			Large Allocated Sites*
	(£120) <b>£130</b>			(Nil) <b>N/A</b>
Hotel	Borough Wide, except Large Allocated Sites			Large Allocated Sites*
	(£180) <b>£190</b>			(Nil) <b>N/A</b>
Student Housing Let at Market Rents	Borough Wide, except Large Allocated Sites			Large Allocated Sites*
	(£425) <b>£450</b>			(Nil) <b>N/A</b>
Student Housing Let at Below Market Rents	Borough Wide, except Large Allocated Sites			Large Allocated Sites*
	(Nil) <b>Nil</b>			(Nil) <b>N/A</b>
All Other Uses	Borough Wide			
	(Nil) <b>Nil</b>			

\* 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 will not have any nil rated sites, every site including those previously nil rated will now be subject to CIL.

3.16 The Council's Charging Schedule attached at Appendix B describes the rates proposed.

3.17 Whilst CIL income is very difficult to project, it is estimated that a new Charging Schedule could raise up to an additional £29m above the currently adopted CIL Charging Schedule for the Council up to the end of the year 2030/31.

#### **4 EQUALITIES IMPLICATIONS**

4.1 An Equality Assurance Checklist was completed (October 2017) and referred to the Mayor in Cabinet in respect of the approval to consult before proceeding to examination and adoption of the new schedule. 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) have been 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 proposal has 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 The proposed rates in the new charging schedule would increase those currently charged. Additionally there are a number of sites that are currently

not subject to a CIL charge, which under the proposals would be. The current and proposed rates are set out in paragraph 3.15 and Appendix B.

- 6.2 Based on current development assumptions it is estimated that the proposed changes to the charging schedule could generate up to an additional £29m in the period 2020/21 to 2030/31. The total potential CIL income for the same period could be in the region of £224m.
- 6.3 The use of CIL income to fund specific infrastructure schemes would be considered as part of the Council's capital governance arrangements.
- 6.4 In addition to the Tower Hamlets CIL, the Council is responsible for collecting Mayoral CIL payments on behalf of the London Mayor. The Mayoral CIL is independent of the Council's CIL requirement.

## **7 COMMENTS OF LEGAL SERVICES**

- 7.1 This item seeks approval to approve a new CIL charging schedule following three separate public consultations and recommendations from an Inspector after Examination in Public. The proposed Charging Schedule would increase the rates the Council currently charges.
  - 7.2 The decision making framing for this decision is to be found in Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 as amended ("The Regulations"). The Act allows for the imposition of a charge known as the Community Infrastructure Levy ("CIL") by a Charging Authority. The Council is a Charging Authority for these purposes. The Regulations provides a prescriptive staged process involving rounds of publication and consultation all of which the report indicates have been carried out. Legal Services has advised throughout those stages. Section 212 of the Act provides that a charging authority may approve a charging schedule only (a)if the examiner makes recommendations under section 212A(4) or (5), and (b)the charging authority has had regard to those recommendations and the examiner's reasons for them. This report indicates that the Independent Examiner has recommended approval.
  - 7.3 Attention is also drawn to section 13 and 14 of the Planning Act 2008 which provides that the Charging Authority in setting a charge 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.
  - 7.4 Adopting the Charging Schedule is a non-executive function of the Full Council. Section 213 of the Planning Act further provides that a charging authority must approve a charging schedule (a) at a meeting of the authority, and (b)by a majority of votes of members present.
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## **Appendices**

- A. Examiners Report
- B. Charging Schedule (final)
- C. Statement of Modifications
- D. Equalities Impact Analysis
- E. Charging Schedule explanatory notes
- F. Regulation 123 list
- G. Instalment policy
- H. Supporting Evidence and Funding Gap Report

### **Officer contact details for documents:**

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