

Committee/Meeting: Cabinet	Date: 7 th November 2012	Classification: Unrestricted	Report No: 044/123
Report of: Aman Dalvi, Corporate Director of Development and Renewal Originating Officer(s) Anne-Marie Berni		Title: Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule Wards Affected: All	

Lead Member	Councillor Rabina Khan
Community Plan Theme	A Great Place to Live
Strategic Priority	Provide effective local services and facilities

1. **SUMMARY**

- 1.1 The Community Infrastructure Levy (CIL) is a new tariff system that enables local authorities to implement a charge on most forms of new development to fund infrastructure. The resources raised can then be used to fund a wide range of local and strategic infrastructure that is required as a result of new development such as: transport schemes; open spaces; schools and community facilities.
- 1.2 CIL will largely replace s106 planning obligations as the means to secure funding for infrastructure from development proposals. The rate at which a levy is charged is set out in a Charging Schedule which must be supported by appropriate evidence of infrastructure needs and development viability. This is subsequently subject to an independent examination.
- 1.3 Tower Hamlets is a small borough, but with significant variances in land values across the area. The Council proposes a variable rate across the CIL charging area, to ensure that the maximum value is gained to support infrastructure, but within the parameters of what is viable for new development. This will be under consistent review and a new Charging Schedule can be undertaken, as and when appropriate, to reflect market changes. It should be noted that any new Charging Schedule will need to follow the full approvals process again, in the same way and will therefore take at least 12 months to go through this process.
- 1.4 Cabinet is being asked to approve the Tower Hamlets Preliminary Draft Charging Schedule for public consultation. Further decisions will be sought from Cabinet as the proposed Charging Schedule moves through the statutory stages for adoption.

2. **DECISIONS REQUIRED**

The Mayor in Cabinet is recommended to:-

- 2.1 Approve the Tower Hamlets Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule as set out in Appendix 1 for a 6 week public consultation period from 16th November 2012 to 2nd January 2013.
- 2.2 Note the Equalities Analysis Scoping Report (Appendix 2), the Consultation Plan (Appendix 3), the Strategic Environmental Assessment Screening Report (Appendix 4) and also the LBTH CIL Viability Study Report which is a supporting document and is available upon request.
- 2.3 Delegate authority to the Corporate Director of Development and Renewal, in consultation with the Lead Members for Housing and Resources, to make editorial changes to the Preliminary Draft Charging Schedule where necessary, prior to the beginning of the consultation period.

3. **REASONS FOR THE DECISIONS**

- 3.1 The reason for the decision, is for Cabinet to agree the publication of rates set at a level that ensures the proper basis for the introduction of the CIL in the borough, which mitigates the impacts of development and leads to the provision of much needed supporting infrastructure.
- 3.2 The Council must set out its proposed rates in a Preliminary Draft Charging Schedule (PDCS) and invite representations from the consultation bodies set out in CIL Regulation 15, as well as residents and businesses in the Borough and other interested parties.

4. **ALTERNATIVE OPTION**

- 4.1 To not proceed with a Tower Hamlets Charging Schedule would mean not being able to move forward with the introduction of CIL in the borough. This will severely limit the Council's ability to raise funds, for the identified infrastructure needs of the borough, as the scope for securing infrastructure funding through s106 agreements will be more constrained from April 2014.
- 4.2 If the Council does not adopt a CIL Charging Schedule it will be difficult to deliver the required infrastructure to mitigate development impact and support improvements to the borough.

5. **BACKGROUND**

- 5.1 The Community Infrastructure Levy (CIL) was provided for in the 2008 Planning Act. Specific CIL Regulations were released in April 2010 (as amended in 2011) setting out the detailed provisions for its operation. The CIL is a new levy that local authorities (known as Charging Authorities in this context) can charge on developments in their area to help fund infrastructure to support the development of an authority's area.

5.2 The benefits to the Council, developers, employees and residents of the borough in introducing CIL can be summarised as follows:

- It will deliver funding for the Council to carry out a wide range of infrastructure projects across the borough that support growth and benefit the local community.
- CIL is not restricted to being spent in a specific place in the borough, having more flexibility built into its use than s106 receipts.
- It will give the Council, and its partners, a predictable funding stream that allows us to plan ahead for infrastructure delivery more effectively.
- It provides developers with much more certainty 'up front' about how much money they will be expected to contribute, which in turn encourages greater confidence in bringing development forward
- It will enable the Council to allocate a potentially small share of the levy raised in a neighbourhood, to deliver infrastructure the neighbourhood wants.

5.3 In setting the rates, CIL Regulation 14 requires that a Charging Authority “must aim to strike what appears to be an appropriate balance between:

- the desirability of funding from CIL (in whole or in part), the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and
- the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area”¹.

5.4 In order to respond to the diverse nature of the borough, the Council proposes a variable CIL rate. However, the Council has sought to strike a balance between generating an overly complex set of rates and overly simplistic single rate which is in accordance with statutory guidance which states “*Charging authorities that plan to set differential CIL rates should seek to avoid undue complexity, and limit the permutations of different charges that they set within their area.*”

5.5 The Council, its partners and independent experts have produced evidence relating to infrastructure needs and development viability to inform decisions on setting CIL rates. A number of discussions with Mayor Rahman and the Lead Members for Housing and Resources have taken place in the development of the proposed Charging Schedule. A Developer Forum was held on 6th July 2012 to give the key developers in the industry opportunity to input into the rate setting exercise. Through initial consultation and evidence

¹ CIL Regulations 2010 (as amended)

work, it is considered that the proposed rates strike the required appropriate balance between funding infrastructure and development viability.

- 5.6 The Charging Schedule evolves in stages, in accordance with the CIL Regulations. Further consultation will be undertaken on a Draft Charging Schedule before it is submitted to the Planning Inspectorate for independent examination, likely to be next summer (2013). If the CIL Charging Schedule is found to be sound it is anticipated that the Council's CIL Charging Schedule will come into effect in late 2013.

Table 1: Timetable for the Introduction of CIL

Stage	Dates
Consultation of the Preliminary Draft Charging Schedule	16 th November 2012 to 2 nd January 2013
Draft Charging Schedule to Cabinet for approval	March 2013
Consultation on the Draft Charging Schedule	March to April 2013
Submission of Draft Charging Schedule and supporting evidence to Planning Inspectorate	June 2013
Examination in Public of Draft Charging Schedule	July 2013
Final Charging Schedule for Council approval	September 2013

6. CIL IMPLEMENTATION

- 6.1 CIL is a charge on most new development. The funds raised can then be used to fund a wide range of local and strategic infrastructure that is required as a result of development and that local communities want, such as transport schemes, open spaces, schools and community facilities.
- 6.2 CIL is charged per square metre on net additional floorspace of development on most development that consists of over 100 square metres of additional floorspace. It is calculated at the grant of planning permission and is payable on the commencement of development. There are a number of exemptions to the levy including affordable housing units and developments by charitable institutions for charitable purposes.
- 6.3 The introduction of CIL will mean significant changes to how and when the Council can secure planning obligations under Section 106 of the Town and Country Planning Act 1990, to address the impacts of development. The introduction of the CIL Regulations means that after 6th April 2014, s106 planning obligations will exist in a much more limited capacity. Therefore the Council needs to bring a CIL into effect before this date, if development is to continue to contribute to strategic infrastructure, which is needed to promote growth and mitigate the impacts of development.
- 6.4 The Council may still seek to pursue s106 from some developments to secure site specific improvements, to ensure developments are acceptable

in planning terms, the detail of which is still to be determined and opportunities may be more limited. Affordable housing will also continue to be secured through s106 agreements, in accordance with the writing of the current CIL Regulations.

Evidence Base and Rate Setting

6.5 In order to comply with the CIL Regulations, the Council and its independent experts have produced significant evidence of infrastructure needs, based on the list of infrastructure contained within the Infrastructure Delivery Plan (IDP) and development viability. In summary:

- The total cost of infrastructure requirements for the period 2011 to 2017 has been identified at £695.3m across 10 infrastructure categories and 145 projects.
- A total of £378m of funding from various sources including third party sponsors has been identified leaving a funding gap of £317.3m.

6.6 The identified infrastructure funding gap of £317m could be addressed as follows:

- Anticipated CIL income of £12m
- Bids for other funding such as Education funding, capital programme and other funds
- Potential sale of local assets
- Sustainable and affordable levels of borrowing
- On-going reassessment of infrastructure needs and priorities
- Detailed project costing assessments to ensure efficiencies and value for money in delivery

6.7 Given 2013/14 is the likely year of the implementation of CIL, it will take some time beyond that date for the Council to receive significant income through CIL, as it is payable on the commencement of development, not upon the grant of planning permission which is when the CIL liability is assigned.

6.8 It should be noted that the IDP is an aspirational document and the projects contained within have varying degrees of priority status. Given the funding gap, it is anticipated that lower priority projects may not be delivered in the timescale currently outlined. However, further discussions will need to take place, within the Council and through its relevant infrastructure planning processes, regarding those priorities – ultimately agreed by the corporate level Strategic Projects and Infrastructure Board. The IDP is a ‘live’ document which is and will be updated annually, as projects are delivered and where there is updated evidence of need, changing priorities and as other funding options are identified.

6.9 Development appraisals, as part of the evidence base, found that the value of residential developments varies significantly across the borough. Therefore differential rates of between £35/sqm to £200/sqm (exclusive of

the London Mayor CIL) are proposed in three zones of the borough, as set out in the Preliminary Draft Charging Schedule attached at Appendix 1.

- 6.10 Research has found that small retail developments are capable of being able to sustain a levy of £100/sqm in the City Fringe and North Docklands, whilst large format retailing (e.g. supermarkets/retail warehousing) is able to sustain a levy of £200/sqm across the Borough.
- 6.11 Research has found that office developments in the City Fringe and North Docklands are capable of being able to sustain a levy of £125/sqm.
- 6.12 All other development including industrial, leisure, health and education uses have been found not to be able to sustain a levy at the current time and a zero rate is proposed across the Borough.
- 6.13 Given the level of infrastructure funding gap, it is considered justified to introduce CIL. Officers consider that the appropriate balance between viability and infrastructure funding has been met with the rates proposed.

7. CONSULTATION

- 7.1 Notwithstanding consultation already taken place, as mentioned in para 5.4, the CIL Regulations and the Council's Statement of Community Involvement (SCI) set out the consultation requirements, the Consultation Plan (Appendix 3) sets out the consultation that will be carried out in relation to the Preliminary Draft Charging Schedule. A formal public consultation will take place between 16th November 2012 and 2nd January 2013, in order to allow representations to be made. As well as making the document available on the Council's website and in local libraries, the Council will invite representations from residents, businesses, voluntary bodies and other interested parties. Officers will be available to attend meetings as required, and further workshops may be held.
- 7.2 The Charging Schedule evolves in stages, in accordance with the CIL Regulations. A further report will be brought to Cabinet in March 2013 seeking approval of the Draft Charging Schedule for consultation in order for final comments to be made prior to submission for independent examination. This will include a consultation statement summarising all comments made to the PDCS and officer responses to these, explaining the reasoning why we have/have not made amendments.
- 7.3 It is anticipated the Draft Charging Schedule will be submitted for examination next summer and provided approval is gained it is anticipated CIL will be enacted in late 2013.

8. FUTURE PROCESSES AND THE USE OF CIL FUNDS

- 8.1 As a Charging and Collecting authority for CIL, there will be a significant role for the Council in the administration and governance of CIL. The Council has been acting as the Collecting Authority for the London Mayor CIL since

April 2012, in accordance with the obligation in the CIL Regulations, and new systems have been developed to enable this collection. These will be further developed to ensure the smooth introduction of the Borough's own CIL.

- 8.2 It is anticipated the Tower Hamlets CIL will generate circa £4m annually between 2015 and 2017 for infrastructure spending (although accurate estimates are difficult at this stage). Transparent processes need to be put in place to arrive at decisions on the release of funds taking account of infrastructure funding priorities.

9. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 9.1 This report seeks Mayoral approval to commence public consultation into the Preliminary Draft Charging Schedule for the Council's Community Infrastructure Levy (CIL). It is intended that the Council's CIL comes into effect by April 2014, although in advance of this, the Borough is currently 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.
- 9.2 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. It is therefore important that the charges are set at a realistic level that enables the generation of significant community resources in tandem with the delivery of viable developments.
- 9.3 As outlined in this report, the Charging Schedule has been developed by officers in conjunction with external advisors, and has been prepared in accordance with the Authority's infrastructure needs and development viability. The development of the Charging Schedule is laid out in the Preliminary Draft Charging Schedule, attached at Appendix 1. It is anticipated that in the period to 2016-17, CIL will generate resources of approximately £12 million, although this is anticipated to increase significantly in subsequent years. The Charging Schedule will ultimately be subject to an independent examination to determine reasonableness.
- 9.4 Paragraphs 3.9 to 3.12 outline the likely infrastructure needs within the borough over the period to 2017. These are valued at approximately £695 million of which indicative funding of £378 million has potentially been identified across the various public agencies. 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.
- 9.5 The costs of the consultation process will be met from within existing resources.

10. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)

- 10.1 The statutory framework for CIL is set out in sections 205-225 of the Planning Act 2008 (PA 2008) and further detail is provided principally under the CIL Regulations 2010.
- 10.2 The legal requirements for the preparation of a CIL Charging Schedule are set out under s211 of the PA 2008. The Schedule must be informed by appropriate available evidence regarding viability (see part 6 of this report). The Council's Preliminary Draft Charging Schedule is set out at Appendix 1 of this report.
- 10.3 Charging authorities must consult on their proposed CIL rates before they finalise a draft charging schedule (section 211(7) of the PA 2008 and Regulation 15, CIL Regulations 2010). Following consultation, the Draft Charging Schedule is submitted for independent examination. Upon the Examiner's recommendations being issued, final approval will be required from Cabinet.
- 10.4 This report seeks members' approval to carry out public consultation on the Council's Preliminary Draft Charging Schedule in accordance with the PA 2008 and CIL Regulations 2010.
- 10.5 The legislation on CIL does not prescribe how decision making within an authority should operate in order to formulate a charging schedule. The Local Government Function Regulations have not been amended in respect of CIL charging schedules.
- 10.6 CIL is a planning policy function and forms part of the Council's Local Development Framework (LDF) (albeit it is not a statutory development plan), and to this extent the CIL Charging Schedule can be considered analogous to LDF documents such as Local Development Documents (LDDs). Therefore it is considered appropriate to follow the same decision making process used for LDDs in respect of submission for consultation and for examination, which is to seek approval from Cabinet.
- 10.7 Accordingly, Cabinet members are authorised to approve the Council's Preliminary Draft Charging Schedule for public consultation.

11. ONE TOWER HAMLETS CONSIDERATIONS

- 11.1 The proposed CIL, although primarily a financial tool, may fund projects that will contribute to the One Tower Hamlets objectives of reducing inequalities; ensuring community cohesion; and strengthening community leadership.
- 11.2 An equalities analysis has been undertaken as part of the preparation of the CIL Preliminary Draft Charging Schedule and is attached at Appendix 2.

12. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 12.1 A Strategic Environmental Assessment Screening report is included at Appendix 4. CIL can be used to raise monies from individual development projects towards infrastructure which may include projects, to support a greener environment and aid sustainable development. However the proposed Charging Schedule is not a plan or programme but a financial tool.

13. RISK MANAGEMENT IMPLICATIONS

- 13.1 The 2008 Planning Act and the CIL Regulations require that the rate the CIL will be levied at, to be assessed independently. As mentioned, the aim is to strike an appropriate balance between the 'desirability of funding infrastructure through CIL and the potential effects of its introduction on the economic viability of development across the Borough. If the CIL is set too high, there is a risk that it will be challenged at examination and potentially be found unsound, because of the harm to the economic viability of development across the borough. Further significant work would then be required to reassess the level at which the CIL is set. If the CIL is set too low there is a risk that necessary social, physical and green infrastructure will not be able to be provided; putting at risk the Council's strategic objective of ensuring the borough is a great place to live.
- 13.2 It is considered that that the rates proposed as set out in the Preliminary Draft Charging Schedule strike an appropriate balance. The viability assessments have been undertaken by experienced experts involving in-depth research and subsequent assumption setting, based on the appropriate available evidence gathered. We will be further informed of the appropriateness of the rates by two rounds of public consultation. Overall it is considered that the risk of the proposed CIL rates being found unsound by an independent inspector is considered to be low.

14. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 14.1 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, such as CCTV units and street lighting. Discussions on the use of CIL funds for these purposes will be held with the Community Safety manager.

15. EFFICIENCY STATEMENT

- 15.1 The operation of both the London Mayor CIL and in future, the Tower Hamlet's CIL will be an administration burden on the Council with additional staff needing to be employed. The CIL Regulations enable the Council to recoup the costs of administering CIL from the levies collected. The Council are able to keep up to 4% from the London Mayoral CIL receipts to fund admin costs and up to 5% from LBTH CIL receipts.

16. APPENDICES

Appendix 1 – LB Tower Hamlets **Preliminary Draft Charging Schedule**

Appendix 2 – LB Tower Hamlets Preliminary Draft Charging Schedule
Equalities Analysis

Appendix 3 – LB Tower Hamlets Preliminary Draft Charging Schedule
Consultation Plan

Appendix 4 – LB Tower Hamlets Preliminary Draft Charging Schedule
Strategic Environmental Assessment Screening

**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 papers”	Name and telephone number of holder and address where open to inspection.
LBTH CIL Viability Study BNP Paribas 2012	Anne-Marie Berni, Infrastructure Planning Manager Development & Renewal 5 th Floor Anchorage House Tel: 020 7364 5324
LBTH Local Development Framework: 2010 Adopted Core Strategy 2012 Adopted Fish Island Area Action Plan 2012 Managing Development – DPD (Submission)	