

<b>Committee/Meeting:</b> Cabinet	<b>Date:</b> 10 <sup>th</sup> April 2013	<b>Classification:</b> Unrestricted	<b>Report No:</b> CAB 94/123
<b>Report of:</b>  Aman Dalvi, Corporate Director of Development and Renewal  <b>Originating Officer(s)</b> Owen Whalley Service Head (Planning and Building Control)		<b>Title:</b>  Community Infrastructure Levy (CIL) Draft Charging Schedule  <b>Wards Affected:</b> All	

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

## 1. **SUMMARY**

- 1.1 The Community Infrastructure Levy (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 development and growth in an authority's area. The Mayor of London has already implemented a CIL to fund strategic transport and this charge will run in conjunction with the charges of all London local authorities.
- 1.2 This report seeks approval for the Draft Charging Schedule attached at Appendix 1, for public consultation, which sets out the proposed charges for the introduction of the Council's own CIL.
- 1.3 This Draft Charging Schedule has been informed by the results of the previous consultation on the Preliminary Draft Charging Schedule which was approved by Cabinet on the 7<sup>th</sup> November 2012. The *Community Infrastructure Levy: Preliminary Draft Charging Schedule - Summary of Consultation Responses* Report attached at Appendix 3 provides information relating to the nature of the representations received in relation to the consultation on the Preliminary Draft Charging Schedule.
- 1.4 This report should be considered in conjunction with the Cabinet report requesting the approval of a Revised Planning Obligations Supplementary Planning Document (SPD) for consultation; which is also an agenda item at this Cabinet meeting. If adopted the Council's CIL will replace requirements for certain planning obligations. The Revised Planning Obligations SPD clarifies the extent to which Section 106 (S106) contributions will be sought for delivering certain infrastructure and services at the site-specific scale.

## 2. **DECISIONS REQUIRED**

The Mayor in Cabinet is recommended to:-

- 2.1 Approve the *Tower Hamlets Community Infrastructure Levy (CIL) Draft Charging Schedule* (Appendix 1) for a six week public consultation including the charging zone maps and Regulation 123 List (the list of projects Tower Hamlets intends to be able to spend its CIL receipts on).
- 2.2 Note the *Infrastructure Planning and Funding Gap Report* (Appendix 2) that forms part of the supporting evidence base to the Draft Charging Schedule. This document informs in respect of the infrastructure planning criteria Tower Hamlets must meet in order to implement a CIL Charging Schedule.
- 2.3 Note the *Community Infrastructure Levy: Preliminary Draft Charging Schedule - Summary of Consultation Responses* Report attached at (Appendix 3) that forms part of the supporting evidence base to the Draft Charging Schedule.
- 2.4 Note BNP Paribas Real Estate's *Viability Study* that forms part of the supporting evidence for the Draft Charging Schedule.
- 2.5 Note the Cabinet report regarding the Planning Obligations SPD, running as a consecutive Agenda item, as relating to this report.
- 2.6 Authorise the Corporate Director of Development and Renewal, in consultation with the Lead Members for Housing and Resources, to make any minor modifications to the Draft Charging Schedule and supporting evidence following the public consultation and to submit the Draft Charging Schedule and all supporting evidence, together with any proposed modifications, to the Planning Inspectorate for public examination.

## 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 Draft Charging Schedule and invite representations in accordance with Regulation 16 of the CIL Regulations 2010 (as amended).
- 3.3 The Council can choose to set differential rates in the Draft Charging Schedule, and for different areas, but it must aim to strike what appears to it to be an appropriate balance between: -

(a) 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

(b) The potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area. In doing so, the Council must also take into account the rates set by the Mayor in his Charging Schedule.

#### **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 and support the levels of projected growth. It should be noted that the scope for securing infrastructure funding through S106 agreements will be far 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 much needed improvements to the borough.

#### **5. BACKGROUND**

- 5.1 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 development and growth in an authority's area. CIL was provided for in the 2008 Planning Act. The CIL Regulations 2010 (as amended) set out the detailed provisions for its operation. There could be further amendments to the Regulations in 2013.
- 5.2 The Council must also have regard to any guidance issued by the Secretary of State under section 221 of the 2008 Planning Act about any matter connected with CIL. At the time that Cabinet was asked to approve the Preliminary Draft Charging Schedule on 7<sup>th</sup> November 2012 for public consultation, the relevant guidance note was the "Community Infrastructure Levy Guidance: Charge setting and charging schedule procedures" dated March 2010. The Secretary of State has replaced the guidance note with the "Community Infrastructure Levy – Guidance", published in December 2012. The main changes that have been made are noted in the concurrent report from Legal Services below.
- 5.3 As Cabinet will be aware, the Mayor of London introduced his own CIL for funding Crossrail, which has been in operation since 1 April 2012. The Council must take this into account when setting its own CIL rates. The Mayor has also published a SPG on the "use of planning obligations in the funding of Crossrail" (July 2010) and has issued for public consultation a draft supplementary planning guidance on 'Use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy' (Consultation closed on 15 January 2013). It has been assumed that this will come into force by the time the Council introduces its own CIL, and the

effect of this has therefore also been taken into account in choosing the appropriate CIL rates in the Draft Charging Schedule.

## **6. Preliminary Draft Charging Schedule**

6.1 The Preliminary Draft Charging Schedule was consulted on between the 16<sup>th</sup> November 2012 and the 2<sup>nd</sup> January 2013. This followed receiving Cabinet approval to do so on the 7<sup>th</sup> November 2012.

6.2 The overarching aim of the consultation was to provide an opportunity for involvement from a wide range of groups and individuals, to proactively encourage participation. The consultation was undertaken in compliance with Regulation 15 of the CIL Regulations 2010 (as amended) and the Planning Act 2008 which sets out the consultation requirements for the Preliminary Draft Charging Schedule and included:

- Placing an advert in the East End Life newspaper prior to the commencement of the consultation period.
- Making consultation documents available via the Council's website. They were also available in hard copy at the Planning Desk in the Town Hall and the main Idea Stores and Libraries throughout the Borough.
- Holding an event for Councillors regarding CIL and the consultation.
- Holding an event for developers, interested parties and the public regarding CIL.

### ***Representations Received in Relation to the Preliminary Draft Charging Schedule Consultation***

6.3 Thirty consultation responses were received from a range of developers and local stakeholders. These Responses also refer to the Secretary of State's December 2012 Guidance. CIL Knowledge's report *Community Infrastructure Levy: Preliminary Draft Charging Schedule - Summary of Consultation Responses*, attached at Appendix 3, contains a summary and analysis of the main topics of the representations received. The Report also outlines how the Council's responses to these representations.

6.4 In accordance with Regulation 15(7) of the CIL Regulations 2010 (as amended), all representations were taken into account and any changes that were considered to be necessary have been made to the Draft Charging Schedule (as highlighted in section 7.1 below).

## 7. Draft Charging Schedule

### ***Modifications Made to the Draft Charging Schedule to Account for Representations Received in relation to the Preliminary Draft Charging Schedule***

7.1 The CIL rates in the Draft Charging Schedule have been altered to account for the additional viability work undertaken in response to the representations received and to the CIL guidance published by the Secretary of State in December 2012. The Draft Charging Schedule, attached at Appendix 1, details these rate proposals.

7.2 A number of changes have been made to the rates. These are in summary:

a) The office rate in North Docklands has been reduced from £125 to £100.

Rationale: The revised rate takes account of the likely effect of the Mayor of London's Crossrail SPG charge. It has been based on the reasonable assumption that there will be a 70% negotiated reduction in the top-up. Section 4.54 of the Viability Report, which forms a background document to this Cabinet Report, advises that this is reasonable approach to determine the rates proposed. The office rates for North Docklands and the City Fringe have also now been separated, as explained below.

b) The office rate in the City Fringe has been increased from £125 to £215.

Rationale: The rate as stated in the Preliminary Draft Charging Schedule for the City Fringe area was set to a flat rate across the zone, in order to align with the rates established for North Docklands. This was to ensure that the CIL rates were not too complex. The additional viability work has established that it is no longer appropriate to set a flat rate across this zone, and so the rates have been separated. The new rate for the City Fringe has been separately justified.

c) The hotel rate has been reduced from £425 to £210.

Rationale: This is to account for the availability of additional evidence to help inform the viability work. Again, this rate accounts for the likely effect of the London Mayor's Crossrail SPG charge, as defined in section a) above.

d) The small retail rate has been reduced from £100 to £70.

Rationale: This is to account for the availability of additional evidence to help inform the viability work and the likely effect of the London Mayor's Crossrail SPG charge.

e) The large retail rate has decreased from £200 to £195.

Rationale: This as a result of the adoption of new viability methodology that separates large convenience based retail outlets from smaller high street

retail accommodation. The examination in public for Plymouth City Council established that this approach was a reasonable one.

- 7.3 As part of the process for preparing the Draft Charging Schedule all the relevant boundaries were re-examined. This resulted in changes to the boundaries for the residential zones to account for the additional viability work undertaken, following representations received and the CIL Guidance published by the Secretary of State in December 2012. The map in the Draft Charging Schedule, attached at Appendix 1, illustrates the newly established charging zone boundaries.
- 7.4 The rates and zone boundaries as set out in the Draft Charging Schedule (attached at Appendix 1) are subject to the outcomes of the consultation and examination in public process.

### ***Consultation on Draft Charging Schedule***

- 7.4 This consultation will be undertaken in compliance with Regulation 16 of the CIL Regulations 2010 which sets out the consultation requirements for the Draft Charging Schedule.
- 7.5 It is intended that the consultation will run for just over six weeks to allow for public holidays, from the 22<sup>nd</sup> April 2013 until the 5<sup>th</sup> June 2013.
- 7.6 Hard copies of the Draft Charging Schedule will be available at the Planning Desk and in the main Idea Stores and Libraries throughout the borough and an advert regarding the consultation will be placed in the East End Life.
- 7.7 It is intended that two public events will be held by the Council to provide the opportunity for the public, developers and other interested parties to discuss CIL and the consultation with officers.

## **8. FUTURE PROCESSES**

- 8.1 Subject to approval at Cabinet and following the consultation period on the Draft Charging Schedule, any required amendments will be made and will be submitted, along with the supporting evidence documents, to the Planning Inspectorate. It is intended that the Draft Charging Schedule will be the subject of an independent CIL examination in autumn 2013 following submission to the Planning Inspectorate in summer 2013.
- 8.2 In accordance with section 213 of the Planning Act 2008, the Council may only adopt a CIL Charging Schedule where the examiner's report does not recommend rejection, and it must pay due regard to any recommendations made by the examiner and remedy any areas where the drafting requirements have not been complied with.
- 8.3 It is anticipated that the Charging Schedule will be submitted to full Council at the end of 2013/early 2014 for approval. If approved, the Charging Schedule will be implemented in early 2014.

8.4 Charging Authorities will be able to amend their Charging Schedules at any point following the adoption of their Charging Schedule, subject to a full consultation process and subsequent examination in public.

## **9. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

9.1 In November 2012, the Mayor in Cabinet approved the Tower Hamlets Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule which was then submitted for a 6 week public consultation period. Following the completion of the consultation and consideration of the responses received, this further report seeks Mayoral approval to amend elements of the schedule, as laid out in paragraphs 7.1 and 7.2, and undertake further consultation into the amended Charging Schedule.

9.2 It is intended that the Council's CIL may come 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.

9.3 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.

9.4 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 Draft Charging Schedule is attached at Appendix 1. It is anticipated that in the period to 2026, CIL will generate resources of approximately £134.4 million. The Charging Schedule will ultimately be subject to an independent examination by the Planning Inspectorate later this year, following which the Charging schedule will be submitted to full Council for implementation in April 2014.

9.5 Paragraph 2.2 of the Draft CIL Infrastructure Planning and Funding Gap Report (attached as Appendix 2) outlines the revised likely infrastructure needs within the borough over the period to 2026. These are valued at approximately £439 million of which indicative funding of £245.6 million has potentially been identified across the various public agencies. This leaves a funding gap of approximately £193.4 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.

9.6 The infrastructure needs and the likely resources available must be continually reviewed, but based on the assessments within the CIL Infrastructure Planning and Funding Gap Report, the funding gap of £193.4 million (paragraph 9.5) will be significantly filled through the estimated CIL

income of £134.4 million (paragraph 9.4), leaving an overall indicative funding need of £59 million across the organisations within the Borough.

9.7 The costs of the consultation process are being 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. The Council's 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 the Draft Charging Schedule (section 211(7) of the PA 2008 and Regulation 15, CIL Regulations 2010). Following a 6 week statutory consultation, the Draft Charging Schedule is submitted for independent examination. Upon the Examiner's recommendations being issued, final approval will be required from full Council to adopt the Charging Schedule, in accordance with s 213 of the PA 2008.

10.4 This report confirms that the Council has consulted on the Preliminary Draft Charging Schedule in satisfaction of Regulation 15, and seeks members' approval to carry out public consultation on the Council's Draft Charging Schedule in accordance with the PA 2008 and CIL Regulations 2010 (Regulation 16). Following consultation, the Draft Charging Schedule will be submitted to the Planning Inspectorate for public examination.

10.5 The legislation on CIL does not prescribe how decision making within an authority should operate in order to formulate a charging schedule save from requiring that an approved charging schedule should be approved by a resolution of Full Council (PA 2008, s213(2)). 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), and to this extent the CIL Charging Schedule can be considered similar to LDF documents such as Local Development Documents. Therefore it is considered appropriate to follow the same decision making process in respect of submission of the Draft Charging Schedule for consultation and for examination, which is to seek approval from Cabinet.

10.7 Accordingly, Cabinet members are authorised to approve the Council's Draft Charging Schedule for public consultation and to authorise the Director of



Development and Renewal to submit the Draft Charging Schedule to the Planning Inspectorate for public examination. The final decision as to adoption of the CIL Charging Schedule will be for Full Council.

- 10.8 Before adopting the Charging Schedule, 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 report indicates that an equality impact assessment has been carried out to assist the Council to consider these matters (see paragraph 11.2 below). This assessment is to be made available to the public as part of the consultation, which should increase the likelihood of the Council meeting its equality duty.
- 10.9 The Council must also have regard to any guidance issued by the Secretary of State under section 221 of the 2008 Planning Act about any matter connected with CIL. The important point to note here is that this Guidance has changed since the Cabinet was asked to approve the Preliminary Draft Charging Schedule on 7<sup>th</sup> November 2012. Fortunately, the new Guidance was issued during the period allowed for public consultation on the Preliminary Draft Charging Schedule, and the responses that the Council received were able to take it into account. The Council has also on its own account reconsidered the Charging Schedule in the light of the new Guidance, the "Community Infrastructure Levy – Guidance", published in December 2012. The Draft Charging Schedule and its supporting evidence now take account of these new considerations. The principle changes, following the issue of this guidance, are related to:
- (a) The evidence tests at examination, as the Council will now need to 'show and explain' how its CIL rates contribute positively towards, and not threaten delivery of its relevant (development) plan as a whole, now and through the economic cycle;
  - (b) The introduction of a clear thread between:
    - 1. Plan making evidence on Infrastructure need,
    - 2. The evidence on the aggregate infrastructure gap, that proves the need for CIL,
    - 3. The draft regulation 123 list that is now required at examination, that sets out the charging authorities spending plans;
  - (c) Showing that in assessing the impact of the charging rates on the delivery of the plan as a whole, the Council has taken into account:
    - 1. The costs associated with regulatory requirements,
    - 2. Policies on planning obligations, including affordable housing strategic sites;
  - (d) The need to explain, at examination, how CIL and S106 will operate if/when a CIL has been adopted;

(e) Requiring the Council to consult if they change the Regulation 123 CIL spending list, and to review the charging schedule if the change to the list affects viability;

(f) Developers are expected to give the Council support with evidence and the Council is encouraged to engage early with developers and be clear about its infrastructure needs and how they will be paid for.

## **11. ONE TOWER HAMLETS CONSIDERATIONS**

11.1 The proposed CIL could be used to fund appropriate (capital infrastructure) projects 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 was undertaken as part of the preparation of the CIL Preliminary Draft Charging Schedule. The results of this scoping, which indicated that the impact of CIL is neutral, meant that it was not necessary to repeat this process at the Draft Charging Schedule stage.

## **12. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

12.1 A Strategic Environmental Assessment Screening was undertaken at the Preliminary Draft Charging Schedule stage, which concluded that it was not necessary to prepare a Strategic Environmental Assessment. The results of this assessment and the similarity in the consultations mean that it was not necessary to repeat this exercise for the Draft Charging Schedule stage.

12.2 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 in the Borough should be assessed independently. As previously 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.

13.2 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.

13.3 It is considered that that the rates proposed as set out in the Draft Charging Schedule strike an appropriate balance. The viability assessments have been undertaken by experienced experts involving in-depth research based on the appropriate available evidence gathered including ensuring policy compliant provision of affordable housing (35%) is accounted for. We will be further informed of the appropriateness of the rates by the consultation on the Draft Charging Schedule. Overall it is considered that the risk of the proposed CIL rates being found unsound by an independent inspector is low.

#### **14. CRIME AND DISORDER REDUCTION IMPLICATIONS**

14.1 CIL is a new development levy that could 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.

#### **15. EFFICIENCY STATEMENT**

15.1 The operation of both the London Mayor CIL and in future, the Tower Hamlet's CIL may 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 administrating CIL from the levies collected. The Council are also 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 – LBTH Draft Charging Schedule

Appendix 2 – LBTH Infrastructure Planning and Funding Gap Report.

Appendix 3 – Community Infrastructure Levy: Preliminary Draft Charging Schedule - Summary of Consultation Reponses

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

#### **List of “Background Papers” used in the preparation of this report**

LBTH CIL Viability Study, BNP Paribas (updated 2013)  
2010 Adopted Core Strategy  
2012 Adopted Fish Island Area Action Plan  
2012 Managing Development – DPD (Post Examination in Public version)  
2012 CIL Preliminary Draft Charging Schedule Equalities Analysis  
DCLG's "Community Infrastructure Levy Guidance: Charge setting and charging schedule procedures" (March 2010)  
DCLG's "Community Infrastructure Levy – Guidance" (December 2012)  
DCLG's "Use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy" (2013)  
Mayor of London's SPG on the "use of planning obligations in the funding of Crossrail" (July 2010)

Consultation draft SPG on 'Use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy' (2012).

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