

Committee/Meeting: Cabinet	Date: 09 October 2013	Classification: Unrestricted	Report No: CAB 035/134
Report of: Aman Dalvi, Corporate Director of Development and Renewal Originating Officer(s) Owen Whalley Service Head (Planning and Building Control)		Title: Revised Community Infrastructure Levy (CIL) 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 charge on most types of new development to pay for supporting infrastructure. The Council already collects the Mayor of London's CIL for Crossrail but in order to establish its own CIL is required to develop a CIL Charging Schedule.
- 1.2 The Mayor in Cabinet approved a CIL Draft Charging Schedule for consultation on 10 April 2013. This report updates Cabinet on the responses to the consultation on the Draft Charging Schedule and seeks approval for further revisions to this document and a further stage of public consultation ahead of a submission to the Planning Inspectorate, in light of detailed comments received.
- 1.3 The revisions to the Draft Charging Schedule are limited to a reduction in the level of certain commercial rates. The Revised Draft Charging Schedule responds to specific matters raised through the consultation and to ensure the rates set enable development whilst providing funding for much needed infrastructure, to support development.
- 1.4 It should be noted that the consultation on the Revised Planning Obligations Supplementary Planning Document (SPD) was agreed at Cabinet in April 2013 as a separate Agenda item. This has only been subject to minor and editorial changes. The final version will be reported to Cabinet for approval for adoption. It is anticipated that this will take place after an Examination in Public on the Revised Draft Charging Schedule, for the borough's own CIL. The draft SPD forms a background document in relation to this report.

2. **DECISIONS REQUIRED**

The Mayor in Cabinet is recommended to:-

- 2.1 Approve the *Tower Hamlets Community Infrastructure Levy (CIL) Revised Draft Charging Schedule* (Appendix 1 of this report) for a 6 week public consultation.
- 2.2 Note the *Summary of Consultation Responses October 2013* Report attached at Appendix 2.
- 2.3 Note the *Infrastructure Planning and Funding Gap Report* attached at Appendix 3. This document explains the infrastructure planning criteria Tower Hamlets must meet in order to implement a CIL 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 Authorise the Corporate Director of Development and Renewal to make any minor modifications to the Revised Draft Charging Schedule following the public consultation and to submit the Revised Draft Charging Schedule, the representations made and evidence base 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 to ensure that the proposed CIL rates are set at an appropriate level, to allow the mitigation of the impacts of development and lead to the provision of much needed supporting infrastructure.
- 3.2 Further consultation on the Revised Draft Charging Schedule will ensure the changes are appropriately consulted upon prior to the submission of this document to the Planning Inspectorate for an Examination in Public.

4. **ALTERNATIVE OPTION**

- 4.1 To not proceed with a Tower Hamlets CIL Charging Schedule would mean the Council would be unable to levy a CIL on developments in the borough. The scope for securing infrastructure funding through Section 106 agreements will become far more constrained due to the restrictions on pooling financial contributions in the Community Infrastructure Regulations 2010 (as amended). This restriction will take effect from April 2014 (or more likely April 2015 if proposals to extend this deadline are accepted by Government). Therefore, not proceeding with a CIL will severely limit the Council's ability to raise funds to pay for the additional demands for infrastructure arising from development.

5. **BACKGROUND**

- 5.1 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. CIL is intended to replace the use of Section 106 agreements for securing most types of wider infrastructure (as explained in paragraph 4.1 above).
- 5.2 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 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 where the development would not be viable.
- 5.3 In order to implement a CIL for Tower Hamlets, the Community Infrastructure Levy Regulations 2010 (as amended) require that a Charging Schedule setting out CIL rates must be prepared. It must be the subject of at least two stages of consultation (Preliminary Draft and Draft Stage) and in setting its rates, Tower Hamlets Council ('the charging authority') must: *'aim to strike what appears to the charging authority to be an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across area'*. (Community Infrastructure Levy Guidance, CLG, 2013, paragraph 7).
- 5.4 Before the Charging Schedule can be adopted it will need to be approved at an independent examination in public where the examiner will seek to establish that:
- *the charging authority has complied with the requirements set out in Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations*
 - *the charging authority's draft charging schedule is supported by background documents containing appropriate available evidence*
 - *the proposed rate or rates are informed by and consistent with, the evidence on economic viability across the charging authority's area; and*
 - *evidence has been provided that shows the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole*
- (Community Infrastructure Levy Guidance, CLG, 2013, paragraph 9).*
- 5.5 The CIL Regulations 2010 also empower the Mayor of London to charge a CIL for Strategic Transport such as Crossrail. London boroughs are legally required to take account of it in setting their own CIL. The Mayor of London's

CIL came into effect in April 2012. The Tower Hamlets charge is £35 per square metre for all developments in Tower Hamlets with the exception of health and education facilities which have a zero charge. In addition, the Mayor of London continues to charge certain commercial developments a Section 106 Crossrail Charge. However, the Mayor of London allows the Crossrail Section 106 payment to be discounted by any Crossrail CIL paid so developers only pay the difference –i.e. the Mayor of London’s CIL plus the ‘top up’.

- 5.6 Once a CIL is in place, seeking CIL contributions *and* planning obligations to pay for the same type of infrastructure will be generally prohibited (the only exception to this relates to financial contributions from development for Crossrail). The Regulation 123 list alongside the Planning Obligations Supplementary Planning Document will identify what CIL may be spent on and what may be sought through Section 106 Planning Obligations.

6. DRAFT CHARGING SCHEDULE CONSULTATION

- 6.1 The Council resolved to develop a CIL for Tower Hamlets with the publication of the Preliminary Draft Charging Schedule which was approved by Cabinet on the 7th November 2012. Following this, further viability work was undertaken, the rates were revised, and a Draft Charging Schedule was approved by Cabinet on 10 April 2013 for consultation.
- 6.2 Consultation on the Draft Charging Schedule ran between 22nd April 2013 and 5th June 2013. It was advertised locally to neighbouring boroughs, local stakeholders, and developers and their agents (including all of those who responded to the consultation on the Preliminary Draft Charging Schedule).
- 6.3 The Charging Schedule and supporting evidence documents were published on the Council’s website and copies were made available at the Council’s Town Hall planning reception and at the borough’s Idea Stores and Libraries. In addition, two separate public consultation events and an event for Members were held to provide information to interested parties during this period.

7. COMMENTS ON THE DRAFT CHARGING SCHEDULE AND PROPOSED MODIFICATIONS

- 7.1 The Council received 38 responses to the consultation on the Draft Charging Schedule. Appendix 2 includes a summary of issues raised in the consultation. This included the following key issues which were raised by the way of objections:
1. Impacts on the delivery of the development plan (that is the London Plan and the Council’s own Local Planning Documents) in particular housing delivery and affordable housing need to be considered further.
 2. Inadequate justification is provided for the assumption of the payment of the Mayor of London’s CIL but not the full additional amount required

under the Mayor of London’s Crossrail Supplementary Planning Guidance (this includes the additional S106 ‘top-up’ payment).

3. The assumptions used in the viability assessments - particularly strategic site appraisals - require further consideration.
4. No data is provided on historic Section 106 receipts and the degree to which affordable housing and other targets have been met. This is required as ‘background evidence’ in CLG’s Community Infrastructure Levy Guidance, 2013.

7.2 In response to the representations received the evidence base has been reviewed and the Viability Study has been updated. This additional work included clarification and justification of the viability appraisal inputs including Section 106 assumptions, particularly in relation to Strategic Sites and the Mayor of London’s Crossrail Supplementary Planning Guidance. In addition, background data on the level of historic section 106 receipts and the degree to which we have met our housing targets has been prepared for publication.

7.3 As a result of this additional work, it is proposed that a reduction is made to the rates for offices and convenience-based supermarkets, superstores and retail warehousing. In addition, the retail definition set out in the Draft Charging Schedule has been clarified. It is recommended that amendments to the Draft Charging Schedule, as set out in Appendix 1 and Table 1 below, are made.

TABLE 1: Revised Draft Charging Schedule

Development type	Proposed CIL rate per sq. m (GIA) of development		
Residential	Zone 1	Zone 2	Zone 3
	£200	£65	£35
Student Housing	£425		
Hotel	£210		
Offices	City Fringe	North Docklands	Rest of Borough
	£215-£120	£100-£60	£0
Retail (Except Convenience-based supermarkets, superstores and retail warehousing)	Elsewhere in Borough		City Fringe/North Docklands
	Nil		£70
Convenience-based supermarkets, superstores and retail warehousing	£195-£135		
All other uses	Nil		

- 7.4 Minor updates and factual corrections have also been made to the Infrastructure Planning and Funding Gap Report and Revised Planning Obligations Supplementary Planning Document. The final version of the Supplementary Planning Document will be reported to Cabinet for approval for adoption. It is anticipated that this will take place after an Examination in Public on the Revised Draft Charging Schedule.

8. PROPOSED REVISED DRAFT CHARGING SCHEDULE CONSULTATION

- 8.1 Subject to approval, the Revised Draft Charging Schedule and the associated updates to supporting documents will be published and subject to a further stage of consultation for 6 weeks.
- 8.2 This further consultation will be carried out to satisfy the requirements set out in paragraph 52 of the government's statutory CIL Guidance (April 2013) which indicates that a charging authority should sufficiently consult on technical changes and any additional supporting evidence, which are used to inform modifications to the Draft Charging Schedule, before submission to the Planning Inspectorate for an Examination in Public. Therefore, in order to ensure that the Revised Draft Charging Schedule is published with appropriate authority, an additional six-week public consultation is required to be undertaken in accordance with regulation 16 of the CIL Regulations 2010 (as amended).
- 8.3 This consultation will be advertised locally and to neighbouring boroughs, local stakeholders, and developers and their agents - including all of those who responded to the previous consultations. The Charging Schedule and supporting evidence documents will be published on the Council's website and copies will be made available at the Council's Town Hall planning reception and at the borough's Idea Stores and Libraries.

9. FUTURE PROCESSES

- 9.1 Following this consultation, it is intended that the Revised Draft Charging Schedule is submitted to the Planning Inspectorate for an Examination in Public. This is likely to take place in early 2014. Subject to the outcome of this examination process the Charging Schedule could be submitted to full Council in mid-2014 for approval. This means it is likely that a CIL Charging Schedule will be in place and levied on developments by mid-2014. The Planning obligations SPD will be taken to Cabinet for approval following any approval of the CIL Charging Schedule by full Council.
- 9.2 There will be a time delay between implementation of CIL and receipt of CIL payments as CIL is only payable when a development starts which could be any time within the life of a planning permission. However, beyond the early stages of implementation, it will be an important funding stream for capital infrastructure that supports growth arising from development in Tower Hamlets. CIL will become an integral part of the Council's capital resource, necessitating the integration of annual capital programming and infrastructure planning cycles.

- 9.3 The Community Infrastructure Levy Regulations (2010) require that 15% (up to a maximum of £100 per council tax dwelling) of CIL receipts will be spent in neighbourhoods, in consultation with the community on any projects which support growth. In areas where there is an adopted neighbourhood plan this proportion rises to 25%.
- 9.4 The impacts of the Charging Schedule, once adopted, will be monitored annually. It is intended that a review of the adopted Charging Schedule will take place, at the latest, by 2016.

10. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 10.1 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. An update report was submitted to Cabinet in April 2013, with the amended Schedule that was approved at that meeting being submitted for further public consultation.
- 10.2 Following the completion of the second consultation process and consideration of the responses received, this further report seeks Mayoral approval to amend elements of the schedule, as laid out in paragraph 7.3 and Table 1. Approval is also sought to now undertake further consultation into the amended Charging Schedule.
- 10.3 It is intended that the Council's CIL will come into effect in mid-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.
- 10.4 As outlined in previous reports, the Community Infrastructure Levy will replace elements of the current Section 106 planning process which will continue in a reduced capacity. The Authority currently generates substantial resources via the Section 106 system, and this will continue under the CIL. 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.
- 10.5 The 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. The revised Draft Charging Schedule is attached at Appendix 1. Based on the latest development assumptions and the revised charging schedule, it is anticipated that in the period to 2026/27, CIL will generate resources of approximately £148.3 million. The Charging Schedule will ultimately be subject to an independent examination by the Planning Inspectorate, following which the Charging schedule will be submitted to full Council for implementation in mid-2014.

- 10.6 The revised likely infrastructure needs within the borough over the period to 2026-27 have been assessed as part of the evidence base that has been prepared to support the introduction of the CIL. These are valued at approximately £529 million of which indicative funding of £151 million has potentially been identified across the various public agencies. This leaves a funding gap of approximately £377 million before CIL charges. It should be noted that these are the infrastructure needs of all the major public sector organisations within the borough, and it is not solely the Council which must seek additional resources to meet the assumed infrastructure need.
- 10.7 The infrastructure needs and the likely resources available must be continually reviewed, but based on assessments within the evidence base, the funding gap of £377 million (paragraph 10.6) will be significantly filled through the estimated CIL income of £148 million (paragraph 10.5), leaving an overall indicative funding need of £229 million across the organisations within the Borough.
- 10.8 The costs of the consultation process are being met from within existing resources.

11. CONCURRENT REPORT OF LEGAL SERVICES

- 11.1 This report seeks approval to publicly consult and submit for examination a revised Draft Charging Schedule (DCS). Legal comments were provided in the previous report to Cabinet and are not altered by this report. The statutory framework for CIL generally 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 (as amended).
- 11.2 The legal requirements for the preparation of a CIL Charging Schedule are set out under s211 of the PA 2008 and are the same for a revised DCS. The Council's DCS must be informed by appropriate available evidence regarding viability and this report confirms that such evidence has been prepared. The Council's DCS is set out at Appendix 1 of this report.
- 11.3 Charging authorities must consult on their proposed CIL rates before they submit the DCS for examination (section 211(7) of the PA 2008 and Regulation 16, CIL Regulations 2010). Following a 6 week statutory consultation, the Draft Charging Schedule is submitted for independent examination (see paragraph 8.2-9.1 of this Report). Upon the Examiner's recommendations being issued, final approval will be required from full Council to adopt the CIL Charging Schedule, in accordance with s 213 of the PA 2008. This report confirms that the relevant statutory requirements will be adhered to.
- 11.4 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.

- 11.5 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 DCS for consultation and for examination, which is to seek approval from Cabinet.
- 11.6 Accordingly, Cabinet members are authorised to approve the Council's DCS for public consultation and to authorise the Director of Development and Renewal to submit the DCS to the Planning Inspectorate for public examination. The final decision as to adoption of the CIL Charging Schedule will be for Full Council.
- 11.7 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 already been carried out to assist the Council to consider these matters (see paragraph 12.1 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.
- 11.8 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 Council has considered the Charging Schedule in the light of the "Community Infrastructure Levy – Guidance", published in December 2012. The DCS and its supporting evidence take account of these considerations.

12. ONE TOWER HAMLETS CONSIDERATIONS

- 12.1 An Equalities Analysis was undertaken as part of the preparation of the CIL Preliminary Draft Charging Schedule. The results of this scoping indicated that the impact of CIL is neutral and means it was not necessary to repeat this process for later iterations of the Charging Schedule.
- 12.2 There is the potential for CIL receipts to be used to fund appropriate projects that will contribute to the One Tower Hamlets objectives of reducing inequalities; ensuring community cohesion; and strengthening community leadership.

13. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 13.1 A Strategic Environmental Assessment Screening was undertaken at the Preliminary Draft Charging Schedule stage of preparing the Schedule, which concluded that it was not necessary to prepare a Strategic Environmental

Assessment. Government guidance is clear that CIL is not required to be subject to a Sustainability Appraisal (Community Infrastructure Levy Guidance, CLG, 2013, paragraph 7).

- 13.2 There is the potential for CIL receipts to be applied to infrastructure which support a greener environment and aid sustainable development.

14. RISK MANAGEMENT IMPLICATIONS

- 14.1 CIL rates need to be set at a level that, along with other funding sources, enables the delivery of infrastructure. If the CIL rates are set too high they will prejudice the delivery of the development plan for Tower Hamlets (that is the London Plan and the Council's own Local Planning Documents). It is considered that the rates set out in this report strike an appropriate balance based on the viability evidence and will enable the delivery of the development plan as a whole. However, it is within an Examiner's remit to reduce the rates or reject the whole Charging Schedule. In the event of the latter the Council can still continue to collect under the current Section 106 approach until the restrictions on Section 106 take effect. These restrictions would mean we would need to move quickly to establishing and producing a new Charging Schedule.
- 14.2 A consultation on a Revised Draft Charging Schedule is sought to minimise the risk of the Tower Hamlets' Charging Schedule being significantly reduced or rejected at an Examination in Public.

15. CRIME AND DISORDER REDUCTION IMPLICATIONS

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

16. EFFICIENCY STATEMENT

- 16.1 The preparation of the charging schedule and its eventual implementation alongside the Mayor of London's CIL collection work will continue to give rise to staff costs. The CIL Regulations enable the Council to recoup the costs of establishing the Charging Schedule from CIL from the levies collected. The Council are also able to retain up to 4% from the London Mayoral CIL receipts to and up to 5% from LBTH CIL receipts to fund the administrative costs of collecting CIL.

17. APPENDICES

Appendix 1 - Revised Draft Charging Schedule, October 2013

Appendix 2 - Summary of Consultation Responses to the Draft Charging Schedule, October 2013

Appendix 3 - Infrastructure Planning and Funding Gap Report, October 2013

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

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

- CIL Viability Study, BNP Paribas, October 2013
- Revised Draft Planning Obligations Supplementary Planning Document, October 2013
- Section 106 Background Report, October 2013
- Table of detailed responses to DCS consultation representations, October 2013

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