

Cabinet 19 December 2017	 TOWER HAMLETS
Report of: Ann Sutcliffe, Actin Corporate Director, Place	Classification: Unrestricted
Consultations on a new Community Infrastructure Levy (CIL) Charging Schedule and submission for examination	

Lead Member	Councillor Rachel Blake, Cabinet Member for Strategic Development and Waste
Originating Officer(s)	Owen Whalley, Divisional Director, Planning and Building Control
Wards affected	All
Key Decision?	Yes
Community Plan Theme	A great place to live

1. EXECUTIVE SUMMARY

- 1.1 The 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.
- 1.2 This document has been prepared in order to seek approval from the Mayor in Cabinet to undertake consultations on a new local Community Infrastructure Levy (CIL) Charging Schedule as well as submit for examination.
- 1.3 The rates proposed in the initial consultation version of the Council's proposed new Charging Schedule, the "Preliminary Draft Charging Schedule" (PDCS) which is attached at Appendix A, have been informed by viability evidence prepared by BNP Paribas Real Estate. This evidence is captured in the "CIL Viability Study", attached at Appendix B.
- 1.4 In accordance with the requirements of the CIL Regulations and associated guidance, a number of other documents support the PDCS including a "Supporting Evidence and Funding Gap Report" which is attached at Appendix C.
- 1.5 A minimum of two consultations on a new Charging Schedule are required, first on a Preliminary Draft Charging Schedule, then on a Draft Charging Schedule (DCS). Following this, a public examination and adoption at a Full

Council meeting are required. Whilst it is difficult to be precise on the timescales for the adoption of a new Charging Schedule, some indicative key timescales can be found below:

Action	Dates
Consultation 1	08/01/2018 - 26/02/2018
Consultation 2	20/06/2018 – 01/08/2018
Examination in Public	05/12/2018
Full Council	04/04/2019
Adoption	14/04/2019

2. **RECOMMENDATIONS**

2.1 The Mayor in Cabinet is recommended to:

1. Approve the *Tower Hamlets CIL Preliminary Draft Charging Schedule* (Appendix A of this report) and supporting evidence (listed below) for a 6 week public consultation.
2. Authorise the Corporate Director of the Place Directorate to:
 - Approve minor modifications to the PDCS following the public consultation;
 - Where no material modifications are required to the proposed Charging Schedule following the consultation on the PDCS, approve the undertaking of a subsequent consultation on a DCS;
 - Where no material modifications are required following the consultation on the DCS, to approve the submission of the Council's proposed Charging Schedule and associated evidence base for public examination.
3. Note that if material modifications to the Charging Schedule following consultation are required, that approval to undertake a subsequent consultation will be referred to the Mayor in Cabinet.
4. Note BNP Paribas Real Estate's *CIL Viability Study* (Appendix B) that forms part of the supporting evidence for the PDCS. The document appended is less its appendices (as they run to 244 pages) – the full document including the appendices is available separately as a background document. The full document will be published for consultation.
5. Note the *Supporting Evidence and Funding Gap Report* attached at Appendix C. This document explains the infrastructure planning criteria the Council must account for in adopting a new CIL Charging Schedule.

6. Note other associated documents that will be published alongside the PDCS, including:
 - An Equality Assurance Checklist (Appendix D – not subject to consultation);
 - A Payment in Kind and Infrastructure Payments Policy (Appendix F);
 - Charging Schedule Explanatory Notes (Appendix G).
7. Approve the adoption of an updated Instalments Policy (Appendix E).

3. REASONS FOR THE DECISIONS

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

4. ALTERNATIVE OPTIONS

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

5. BACKGROUND

What is CIL?

- 5.1 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.
- 5.2 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.
- 5.3 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 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.

- 5.4 Seeking CIL contributions and planning obligations to pay for the same type of infrastructure is generally prohibited (the only exception to this relates to financial contributions from development for Crossrail). The Council has a Regulation 123 List (within Appendix C) which identifies the types of projects on which the Council intends to spend its CIL. The Council will be further reconsidering its Regulation 123 List alongside the Planning Obligations Supplementary Planning Document which will identify what CIL may be spent on and what may be sought through Section 106 Planning Obligations.

How can a Charging Authority spend CIL?

- 5.5 Subject to the restrictions set out in paragraph 5.1 above, it is the authority of the Executive to decide how to spend CIL. All expenditure decisions of the Council are the function of the Council's Executive unless regulatory functions require otherwise. There are no regulatory restrictions on CIL or S106 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?

- 5.6 A requirement of CIL rate setting is the need to demonstrate that the Council needs, in financial terms, to charge a CIL to deliver infrastructure to support development. Therefore, the Council must identify a funding gap in delivering infrastructure to support development. This information is set out in Appendix C.
- 5.7 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 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
- 5.8 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 (Regulation 19 version)*. The Viability Study takes account of all of the policy costs attached to the new draft Local Plan. Please find the Viability Study attached at Appendix B.

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

5.9 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.

5.10 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.

6. PROPOSALS

Proposed rates

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

Development type	Proposed CIL rate per sq. m (GIA) of development			
Residential (Sale)	Zone 1	Zone 2	Zone 3	Large Allocated Sites*
	(£200) £280	(£65) £180	(£35) £85	(Nil) N/A
Offices	City Fringe	North Docklands	Large Allocated Sites	Rest of Borough
	(£90) £100	(Nil) £100	(Nil) N/A	(Nil) N/A
Retail (Except Convenience Supermarkets/ Superstores and Retail Warehousing)	(£70) £90	(£70) £90	(Nil) TBC	(Nil) N/A
	Convenience Supermarkets/ Superstores and Retail Warehousing			Large Allocated Sites*
Convenience Supermarkets/ Superstores and Retail Warehousing	Borough Wide, except Large Allocated Sites			Large Allocated Sites*
	(£120) £130			(Nil) N/A
Hotel	Borough Wide, except Large Allocated Sites			Large Allocated Sites*
	(£180) £190			(Nil) N/A
Student Housing Let at Market Rents	Borough Wide, except Large Allocated Sites			Large Allocated Sites*
	(£425) £450			(Nil) N/A
Student Housing Let at Below Market Rents	Borough Wide, except Large Allocated Sites			Large Allocated Sites*
	(Nil) Nil			(Nil) N/A
All Other Uses	Borough Wide			
	(Nil) Nil			

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

- 6.2 The Council's PDCS attached at Appendix A describes the rates proposed.
- 6.3 Whilst CIL income is very difficult to project, it is estimated that a new Charging Schedule could raise up to an additional £90m for the Council up to the end of the year 2030/31.

Proposed consultations

- 6.4 It is proposed that the consultation on the PDCS will take place from early January 2018 and run for a period of 6 weeks. All consultations carried out will comply with the Council's Statement of Community Involvement.
- 6.5 Following the close of the consultation on the PDCS, representations made will be considered and amendments to the Charging Schedule will be made as necessary. All representations will be published on the Council's website.
- 6.6 A consultation on a DCS will then be carried out, followed by necessary amendments and submission to the Planning Inspectorate for examination.

Modifications to the Charging Schedule following consultation

- 6.7 Section 2 above recommends that the Corporate Director of Place is authorised to approve minor modifications to the PDCS and DCS following consultation and approve the referral of the proposed Charging Schedule for examination.
- 6.8 Minor modifications include any changes made for accuracy and clarity such as changes to terminology or formatting, and includes changes to the rates of 10% or less. Substantial amendments will be referred back to the Mayor in Cabinet for approval.

Adopting a new Instalments Policy

- 6.9 Approval to make minor amendments to the Council's Instalments Policy for the Local and Mayor of London's CIL, from the 1st January 2018, is also being sought.
- 6.10 The main change to the Instalments Policy is to amend the monetary threshold at which payment can be made in two instalments. Currently, if the amount payable to the Council exceeds £500,000 then payment can be made in two instalments. It is proposed to reduce this threshold to £100,000. Please refer to Appendix E for the proposed amended Instalments Policy.
- 6.11 The reason for the proposed change is to reflect a proposed change to the Mayor of London's Instalments policy in respect of the London Mayor's CIL. The change by the Mayor of London which will be adopted from the 1st January 2018 is proposed to assist Small and Medium Sized Enterprises (SMEs) in paying the levy.

- 6.12 Planning and Building Control recommend amending the Council's Instalments Policy because it will support small and medium sized development and will not likely affect the Council's cash flow in any material way. In addition, it is worth noting that the vast majority of other London Local Authorities, particularly those with high levels of development, already have Instalments Policies that allow multiple payments at lower thresholds.
- 6.13 Planning and Building Control will keep its approach to its Instalments Policy under review on an ongoing basis and make amendments if necessary.

7 COMMENTS OF THE CHIEF FINANCE OFFICER

- 7.1 This report seeks approval for amendments to be made to the charging schedule for the Tower Hamlets Community Infrastructure Levy and for a consultation process on the revised schedule to be undertaken. 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 April 2019.
- 7.2 The updated charging schedule has been developed and revised by officers in conjunction with external advisors, and has been prepared in accordance with the Authority's infrastructure needs and development viability assessment. The revised draft charging schedule is attached at Appendix A. Based on the latest development assumptions and the revised charging schedule, it is anticipated that in the period to 2030/31, CIL will generate resources of approximately £331 million. This is a significant increase on the £241 million that would have been received based on the existing charging schedule rates.
- 7.3 The revised likely infrastructure needs within the borough over the period to 2030-31 were assessed as part of the evidence base that was prepared to support the revision of the CIL rates. This assessment is included as Appendix C. These are valued at approximately £1.901 billion, of which indicative funding of £1.011 billion has potentially been identified across the various public agencies. This leaves a funding gap of approximately £900 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.
- 7.4 The infrastructure needs and the likely resources available must be continually reviewed, but based on assessments within the evidence base, the funding gap of £900 million will be partly filled through the estimated CIL income of £331 million, leaving an overall indicative funding need of £569 million across the organisations within the Borough.
- 7.5 The costs of the consultation and inspection processes will be met from within existing resources.

7.6 In addition to the Council's own CIL, the Borough will continue to be responsible for the collection of the Mayor of London's CIL which is independent of the Council's CIL requirement.

8 **LEGAL COMMENTS**

8.1 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 in the Community Infrastructure Levy Regulations 2010 (as amended) ("CIL Regulations"). This report seeks approval from the Mayor in Cabinet to carry out public consultation on the Tower Hamlets CIL PDCS and recommends that the Council adopts a new Instalments Policy.

8.2 The legislation in respect of 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)). Pursuant to section 9D of the Local Government Act 2000, all functions of an authority are executive functions unless they are specified as not, in either the 2000 Act or the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended). Whilst some Planning functions cannot be the responsibility of the executive, the approval of a charging schedule for consultation (or the submission of it for independent examination) is not a specified function and it is therefore a decision for the Council's executive.

8.3 The legal requirements for the preparation of a CIL Charging Schedule are set out in section 211 of the PA 2008. The Council's PDCS must be informed by appropriate available evidence regarding viability and this report confirms that such evidence has been prepared. The Council's PDCS is set out at Appendix A of this report.

8.4 The Council must also have regard to any guidance issued by the Secretary of State under section 221 of the PA 2008 about any matter connected with CIL. The Council has prepared the PDCS and its supporting evidence in the light of the guidance on the Community Infrastructure Levy contained within the Planning Practice Guidance.

8.5 Pursuant to Regulation 15 of the CIL Regulations a charging authority must carry out an initial round of consultation on their PDCS, this includes sending the draft to the consultation bodies set out in the regulations, The Mayor of London, adjoining planning authorities and the Council must invite representations from persons resident or carrying on business in its area, as well as appropriate voluntary bodies. Any representations made must be taken into account before the Council publishes a draft of the charging schedule ("DCS") for examination.

8.6 Before the Council can submit a DCS for examination the Council is required to follow the procedures set out in Regulations 16 and 17. In summary this

requires the Council to publish the DCS, make copies of it available for inspection, send copies of it to the relevant consultation bodies and give notice by local advertisement setting out specified information including how and when representations can be made.

- 8.7 Before adopting the DCS, the Council as charging authority is required to appoint an independent examiner who has the appropriate qualifications and experience to examine the schedule. Upon the Examiner's recommendations being issued, final approval will be required from Full Council to adopt the CIL Charging Schedule, in accordance with s213 of the PA 2008. This report confirms that the relevant statutory requirements will be adhered to.
- 8.8 Section 69B of the CIL Regulations allows a Council who wishes to make provision for the payment of CIL by instalments, to publish an instalments policy on its website. An instalments policy can take effect any time commencing the day after the instalments policy is published on the Council's website. The date which it takes effect must be specified in the policy. There is no requirement for the Council to consult prior to the revision of its Instalments Policy. The proposed Instalments Policy (attached as Appendix E) meets the requirements set out in the CIL Regulations.
- 8.9 In taking decisions, 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. An Equality Assurance Checklist has been completed to assist the Council in their consideration of these matters and this is attached at Appendix D. This assessment did not identify any adverse effects on people who share a protected characteristic and accordingly concluded that no further actions are required at this stage.

9 ONE TOWER HAMLETS CONSIDERATIONS

- 9.1 This report deals with setting rates of CIL to help raise funding to deliver infrastructure. This infrastructure will help the Council meet the objectives of One Tower Hamlets and those of the Community Plan.
- 9.2 It is hoped that the infrastructure projects funded by the Council's CIL will help reduce inequality and foster cohesion in the borough.

10 BEST VALUE (BV) IMPLICATIONS

- 10.1 The proposals set out in this document have been formed with consideration of the Best Value Duty and it's according Strategy and Action Plan.

11 **SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

11.1 It is hoped that the infrastructure delivered using the Council's CIL will help the Council meet its sustainability and environmental objectives.

12 **RISK MANAGEMENT IMPLICATIONS**

12.1 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.

13 **CRIME AND DISORDER REDUCTION IMPLICATIONS**

13.1 The 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.

14 **SAFEGUARDING IMPLICATIONS**

14.1 Not applicable.

Linked Reports, Appendices and Background Documents

Linked Report: None

Appendices:

Appendix A: Proposed Preliminary Draft Charging Schedule

Appendix B: Viability Study (less appendices)

Appendix C: Supporting Evidence and Funding Gap Report

Appendix D: Equality Assurance Checklist

Appendix E: An Instalments Policy

Appendix F: A Payment in Kind and Infrastructure Payments Policy

Appendix G: Charging Schedule Explanatory Notes

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

Full Viability Study, including Appendices

The Council's Infrastructure Delivery Plan (Regulation 19 Local Plan version)

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