



<b>Decision Maker:</b>	Cabinet Member for the Built Environment
<b>Date:</b>	29 April 2016
<b>Classification:</b>	For General Release
<b>Title:</b>	Westminster Community Infrastructure Levy: Approval of Instalment, Relief and Infrastructure Payment Policies and list of relevant infrastructure for the purposes of regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended).
<b>Wards Affected:</b>	All Wards
<b>Key Decision:</b>	Yes
<b>Financial Summary:</b>	It is estimated that the Westminster CIL will generate £17.5 million in receipts on average annually. The provision of discretionary reliefs may lead to some reduction in CIL received by the Council. But in practice applications for such reliefs will only be available to a limited number of developments – limiting its potential impact on receipts.
<b>Report of:</b>	Julia Corkey, Director of Policy, Performance and Communications.

## 1. Executive Summary

- 1.1 The Community Infrastructure Levy is a charge that applies to most new development. The money raised is used to pay for the provision, improvement, replacement, operation or maintenance of infrastructure that is needed as a result of development.
- 1.2 Westminster's Community Infrastructure Levy Charging Schedule (CIL) was adopted by the Council on 20 January 2016 and takes effect on 1 May 2016. It sets out the rates at which Westminster's CIL will apply to development in the City.

- 1.3 The Community Infrastructure Levy Regulations 2010 (as amended) are prescriptive about how CIL must be calculated and paid, but they do also provide some limited measures to allow flexibility. These include the ability for CIL charging authorities to allow payment of CIL by instalments and to make further discretionary reliefs from payment of CIL available alongside the mandatory reliefs that the Regulations provide must be made available - for certain types of affordable housing development and developments for and occupied by charities.
- 1.4 This report seeks approval to provide these additional flexibilities provided for under the CIL Regulations (2010) by publication and implementation of policies related to:
- payment of CIL by instalments
  - making discretionary relief for certain discounted sales housing, charitable relief for development for investment purposes, exceptional circumstance relief and; and
  - payment of CIL by infrastructure.
- 1.5 Defining a list of the infrastructure which *may* be funded by CIL (known as a 'Regulation 123' list) was a requirement of the CIL charge setting and examination process. An initial Regulation 123 list has already been subject to consultation as part of the preparation of the CIL Charging Schedule. It will now be published alongside it. As indicated during the consultation on the Charging Schedule this initial list will be reviewed after the Westminster CIL takes effect and is likely to be reviewed and consulted on thereafter on a regular basis.

## **2. Recommendations**

- 2.1 The Cabinet Member for the Built Environment is asked to:
1. Approve the Westminster Community Infrastructure Levy Instalment Policy (Appendix 1) for publication and then implementation from 1 May 2016
  2. Approve the 'Discretionary Charitable Relief' and 'Exceptional Circumstances Relief' (Appendix 2) for publication and then implementation from 1 May 2016
  3. Note the publication of the initial CIL Infrastructure for the purposes of regulation 123 of the Community Infrastructure Levy regulations 2010 (as amended) (the "Regulation 123 list") (Appendix 3)
  4. Approve the Westminster Community Infrastructure Levy statements related to 'Infrastructure Payments Policy' (Appendix 4) for publication and implementation from 1 May 2016

5. Delegate authority to the Director of Policy, Performance and Communications to determine applications made for reliefs, payment in kind and infrastructure payments

### **3. Reasons for Decision**

- 3.1 The council considers that adopting a CIL instalment policy, making discretionary reliefs available and providing for the option to make CIL infrastructure payments is an appropriate response to the very diverse circumstances that characterise development in the Westminster. The Council has already indicated that it is minded to make these discretionary reliefs and flexibilities. Publication of a regulation 123 list will provide the council with flexibility about the use of section 106 agreements alongside the CIL.

### **4. Background**

#### **The Community Infrastructure Levy – Implementation in Westminster**

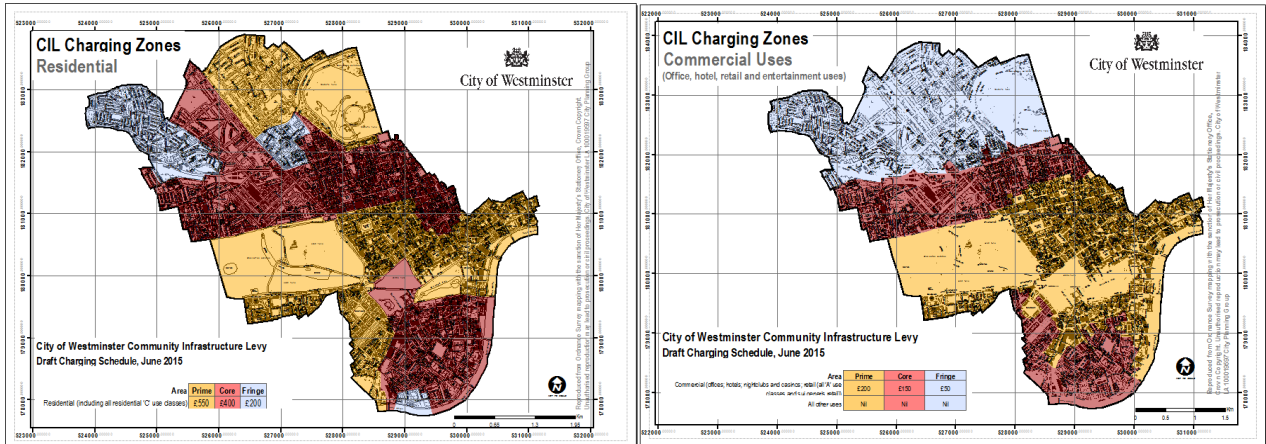
- 4.1 The Planning Act 2008 and Community Infrastructure Levy Regulations 2010 (both as amended) provide the powers for “charging authorities” (in London the London boroughs and the Mayor of London) to develop and charge their own Community Infrastructure Levy (CIL).
- 4.2 CIL is charged on developments in a local authority’s area which involve the creation of more than 100 sqm of new floorspace or which comprise a residential dwelling. The CIL collected can be used to pay for the provision, improvement, replacement, operation or maintenance of infrastructure that is needed as a result of development in the area.
- 4.3 Westminster’s Community Infrastructure Levy Charging Schedule was formally adopted by the Council on 20 January 2016 and it takes effect (and therefore charging starts) on 1 May 2016. This means that developments granted planning permission on or after 1 May 2016 will in certain circumstances be liable to pay CIL on commencement of the relevant development.
- 4.4 Adoption of the Westminster CIL followed two stages of consultation - on a ‘preliminary’ then ‘draft’ Charging Schedule. An independent examination of the council’s CIL Charging Schedule and the associated viability and infrastructure evidence was undertaken by an independent examiner appointed through the Planning Inspectorate and a public hearing scrutinising the proposals was held on 30 November 2015.
- 4.5 The examination process concluded with the provision of the examiner’s report on 23 December 2015. The examiner’s report found that the council’s CIL rates and

charging areas (set out below) provided an appropriate and viable basis for the collection of CIL in Westminster.

- 4.6 The Westminster CIL will be charged alongside the Mayor of London's CIL for strategic transport which has been in effect since April 2012 and is being used to fund Crossrail 1. The council's CIL rates are shown in Table 1 below.
- 4.7 The CIL Regulations (2010) (as amended) allow for policies to be adopted by Charging Authorities related to discretionary reliefs, payment of CIL by instalments and infrastructure payments. The council proposes to implement these reliefs to provide some flexibility of developers and, in the case of infrastructure payments in particular, to aid delivery.

Table 1: Westminster CIL Rates (from 1 May 2016)

Area	Prime	Core	Fringe
Residential (including all residential 'C' use classes)	£550	£400	£200
Commercial (offices; hotels, nightclubs and casinos; retail (all 'A' use classes and sui generis retail))	£200	£150	£50
All other uses	Nil		



Source: Westminster CIL Charging Schedule, 2016 (Maps not to scale)

## Relief from Payment of CIL

- 4.8 The CIL Regulations allow a charging authority to set the rates by use or area, but they prescribe the types of development CIL may be payable on. There is no discretion how CIL is calculated or the stages in the process for application of the rates to a development. Any development creating net additional floorspace where the gross internal area of new building exceeds 100 square metres **or** where it comprises new dwellings may be liable to pay CIL.
- 4.9 The Community Infrastructure Levy Regulations make a number of provisions for charging authorities to give relief from payment of CIL (this is different from allowing payment by instalment). Some types of relief are mandatory; others are offered at the charging authority's discretion. Community Infrastructure Levy relief means any exemption or reduction in liability to pay the levy. The '**mandatory reliefs**' that must be provided (and apply therefore to both the Westminster and Mayor of London's CILs) are:
- Mandatory charitable relief (Regulations 43, 47 & 48)** A charitable institution which owns a material interest in the land (a charity landowner) will get full relief from their share of the liability where the chargeable

development will be used ‘wholly, or mainly, for charitable purposes’ and they meet further detailed requirements in Regulation 43 relating to occupation of the development.

- b. **Mandatory social housing relief (Regulations 49,49C, 50, 51, 52, 53 & 54)** Social housing relief is a mandatory discount that will benefit most social rent, affordable rent, intermediate rent and shared ownership housing provided by a local authority or Private Registered Provider (and the associated communal areas). Social housing relief can also be granted on qualifying dwellings that meet the set criteria of the legislation but which are not let by a person who is local authority housing, a private registered provider of social housing or a registered social landlord. In such circumstances a Section 106 agreement must have been entered in to ensure such dwelling meet detailed criteria set out in Regulation 49.
  - c. **Self-build exemption for a whole house (Regulations 54A, 54B, 54C and 54D)** This exemption will apply to anybody who is building their own home or has commissioned a home from a contractor, house builder or sub-contractor. Individuals claiming the exemption must own the property and occupy it as their principal residence for a minimum of three years after the work is completed.
  - d. **Self-build exemption for a residential annexe or extension (Regulations 42A & 42B)** People who extend their own homes or erect residential annexes within the grounds of their own homes are exempt from the levy, provided that they meet the criteria laid down in Regulations 42A and 42B. It must be the self-builder’s principal residence and they must have a material interest in it.
- 4.10 There are also addition ‘**discretionary reliefs**’ a charging authority has to decide whether they should be made available in their area, these include the following.
- a. **Discretionary social housing relief (Regulation 49A)** for a form of social housing commonly known as “discount market sale” (dwellings sold for not more than 80% of market value) and in accordance with a policy published by the council setting out how that housing is to be allocated in its area.
  - b. **Discretionary charitable relief (Regulation 44)** for development by charities for investment purposes where the whole or greater part of that institution’s share of the chargeable development will be held as a charitable investment. Government guidance indicates that the scope of this relief may be narrowed by a council through its written relief policy; this can include criteria it considers suitable to assess eligibility for discretionary relief and flexibility to develop the criteria it considers suitable to assess eligibility for discretionary relief and specify the amount of relief that may be granted.

- c. A further ‘**other discretionary charitable relief**’ (**Regulation 45**) which covers development by charities for charitable purposes in cases that do not qualify for the compulsory exemption from CIL because relief might amount to state aid under European Union law. This discretionary relief applies where the council considers the exemption would be a state aid, but is satisfied that this would not be of a nature requiring notification and approval by the European Commission.
  - d. **Discretionary relief for “exceptional circumstances” (Regulations 55)**  
This allows a claim for relief from payment of CIL to be made where a section 106 planning obligation has been entered into in respect of a development and independent evidence is presented that satisfies the council that to require payment of the CIL would have an unacceptable impact on the economic viability of the development. The council will also have to be satisfied that granting the relief would not constitute a notifiable state aid under EU law.
- 4.11 The council can choose to operate one, or more, of the discretionary reliefs but must publish, in accordance with the relevant regulations, a policy for each relief that it chooses to make available. A collecting authority must not consider claims for discretionary relief where a policy has not been published.
- 4.12 A number of respondents commenting on the preliminary and draft Westminster CIL charging schedules called on the council to make these discretionary reliefs available. In response to this the council indicated that it was minded to do so. It is considered that allowing these types of reliefs is an appropriate response to the very diverse circumstances that characterise development in Westminster.
- 4.13 Accordingly, the notices that all of discretionary reliefs set out in 4.12 above will be made available in Westminster, including where relevant, the circumstances in which they will be made available, which are required by the Regulations have been prepared and are included at **Appendix 2**. It is proposed that these will apply from 1 May 2016 (or as soon thereafter as this report is formally approved).
- 4.14 For some types of discretionary reliefs, such as exceptional circumstances relief, the mere fact that an authority has made it available in its area is not sufficient to guarantee relief being granted. In this example each case would be considered individually by the authority and it is at their discretion whether the relief should be applied or not in light of the circumstances of each case and the detailed provisions in the CIL Regulations. The grant of any CIL reliefs is further limited by state aid rules under European Union law (with the exception of affordable housing which has a ‘block exemption’ from these rules).

- 4.15 State aid rules are intended to prevent public authorities from distorting trade within the EU by giving enterprises a selective advantage (such as a subsidy or favourable tax treatment). They can be extremely complicated and there is relatively little government guidance or directly relevant case law about how these provisions might impact on the operation of an authority's CIL. Whilst the state aid requirements do allow small amounts of public funding (i.e. exceptional circumstances relief) to a single recipient, the de minimis threshold is set at €200,000 euros over a rolling three fiscal year period (gross before tax or any other charge). The threshold applies cumulatively to all public assistance received by the organisation from all sources, i.e. local and national government. Therefore the threshold does not just apply to each individual development.
- 4.16 In assessing reliefs, the council will be required to have particular regard to the fact that as a collecting authority it must satisfy itself that by granting relief or an exemption it is not breaching European Union State aid rules. Given that many of Westminster's developers bring forward multiple developments the effect of this is that the opportunities to provide relief may in practice be limited.
- 4.17 It is important to note that discretionary forms of relief can be activated and deactivated at any point after the charging schedule is approved subject to giving appropriate notice (14 days) and publicising the withdrawal of relief. They are quite separate from the charging schedule, and the council can make decisions about whether to make them available at any time, without the need for public examination or formal consultation. Accordingly the effect of the application of these reliefs on CIL receipts to pay for infrastructure and the additional administrative requirements will be kept under review.

### **Payment of CIL by Instalments**

- 4.18 Under the CIL Regulations, CIL is payable in full 60 days from the date when development commences unless the charging authority has a policy for payment by instalment in place although for phased development each phase is effectively treated as a separate planning permission.
- 4.19 In London, a borough charging authority that has no instalments policy of its own defaults to the one set by the Mayor for his CIL. But a council can implement its own instalments policy, which will override the instalment policy of the Mayor of London (see Table 2). The Regulations require that to implement (or amend such a policy) the charging authority has to publish the policy on the council website and make it available for inspection.



**Table 2: Instalment approaches identified by Charging Authorities in central London**

<b>Charging Authority</b>	<b>Instalment Approach</b>
<b>Greater London Authority (GLA)</b>	<ul style="list-style-type: none"> <li>• &lt;£500,000 – 60 days</li> <li>• &gt;£500,001 – Greater of £500,000 or half within 60 days remainder 240 days.</li> </ul>
<b>City of London</b>	<ul style="list-style-type: none"> <li>• &lt;£500,000 – 60 days</li> <li>• &gt;£500,001 – Greater of £500,000 or half within 60 days remainder 240 days.</li> </ul>
<b>Wandsworth</b>	<ul style="list-style-type: none"> <li>• &lt;£20,000 – 60 days</li> <li>• &lt;£500,000 – Greater of 25% or £20,000 60 days, Balance three instalments 120, 180 and 240 days</li> <li>• &lt;£2,000,000 - £250,000 60 days, balance three instalments 120, 180 and 240 days</li> <li>• &lt;£8,000,000 - £500,000 60 days, balance three instalments 180, 360 and 540 days</li> <li>• &gt;£8,000,000 - £2 m 60 days, balance three instalments 180, 360 and 540 days</li> </ul>
<b>Islington</b>	<ul style="list-style-type: none"> <li>• &lt; £500,000 – 60 days</li> <li>• &gt; £500,000 but less than £2,000,000: First instalment the greater of £500,000 or 50% of the value of the total payable amount 60 days after commencement and; Second instalment: remaining balance payable within 240 days of the commencement of the development.</li> <li>• &gt; £2,000,000 but less than £8,000,000: First instalment: the greater of £1,000,000 or 33% of the value of the total payable amount 60 days after commencement Second instalment: the greater of £1,000,000 or 33% of the value of the total payable amount 240 days after commencement. Third instalment: Remaining balance payable within 420 days of the commencement of the development.</li> <li>• £8,000,000: First instalment: the greater of £2,640,000 or 25% of the value of the total payable amount 60 days after commencement. Second instalment: the greater of £2,640,000 or 25% of the value of the total payable amount 240 days after commencement. Third instalment: the greater of £2,640,000 or 25% of the value of the total payable amount 420 days after commencement. Fourth instalment: Remaining balance payable within 600 days of the commencement of the development.</li> </ul>
<b>Camden</b>	<ul style="list-style-type: none"> <li>• &lt;500,000 - 100% payable within 60 days of the commencement of development.</li> <li>• &gt;£500,000 but less than £1,000,000 - £ 500,000 payable within 60 days of commencement of development. - Balance payable within 120 days of commencement of development</li> <li>• £1,000,000 but less than £2,000,000 - £ 500,000 payable within 60 days of commencement of development. Balance payable in a further two instalments within 120 days and 180 days of commencement of development.</li> <li>• £2,000,000 but less than £4,000,000 - £ 500,000 payable within 60 days of commencement of development. Balance payable in a further three instalments within 180, 360 and 540 days of commencement of development.</li> <li>• Amounts equal to or more than £4,000,000 - £ 500,000 payable within 60 days of commencement of development Balance payable in a further three instalments of equal amount within 360, 540 and 1020 days</li> </ul>
<b>Lambeth</b>	<ul style="list-style-type: none"> <li>• &lt;£500,000 – 60 days</li> <li>• &gt;£500,001 – Greater of £500,000 or half within 60 days remainder 240 days.</li> </ul>

- 4.20 The application of an instalment policy was strongly advocated by the Westminster Property Association in responses to consultation on the Council's draft CIL proposals in July 2015. They suggested the following approach:
- ***“For developments where the total CIL payable is less than £500,000, CIL should be paid within 90 days of commencement of development.***
  - ***For developments where the total CIL payable is between £500,000 and £9,999,999, CIL may be paid in four equal instalments, as follows:***
    - *One payment, of 25% of the total payable, within 90 days of commencement;*
    - *One payment, of 25% of the total payable, within 180 days of commencement;*
    - *One payment, of 25% of the total payable, within 270 days of commencement;*
    - *A final payment, of 25% of the total payable, within 360 days of commencement.*
  - ***For developments where the total CIL payable is £10,000,000 or higher, CIL may be paid in four equal instalments as follows:***
    - *One payment, of 25% of the total payable, within 90 days of commencement;*
    - *One payment, of 25% of the total payable, within 360 days of commencement;*
    - *One payment, of 25% of the total payable, within 540 days of commencement;*
    - *A final payment, of 25% of the total payable, within 720 days of commencement.”*
- 4.21 The viability evidence that underpins the Westminster CIL and has been subject to examination in public assumes immediate payment of CIL, with no instalment policy. Therefore, the application of an instalment policy should in no way be construed as a response to the impact the viability of the CIL. The rates have been tested on the basis that CIL will be paid on commencement of development. However, it is considered that a Westminster specific instalment policy would provide extra flexibility for developers. This goes hand in hand expectation of prompt payment and reduced need for (time consuming) chasing and enforcement measures.
- 4.22 The proposed approach is set out in Table 3 below. It has been informed by evidence about the time development typically takes to implement in Westminster, in the circumstances of a very dynamic land market. The instalment policy will apply to the combined value of the Mayor of London's CIL and Westminster CIL and the instalment apportioned between the two. It is worth noting that where very large scale development is permitted (with a CIL liability in excess of £10 million) these are typically phased developments, i.e. with one or more consents and the instalment policy will apply to each individual phase of the development, as clearly identified, not the development in its entirety.

**Table 3: Proposed Westminster CIL Instalment policies**

Value of CIL payment due	WCC Instalment amount
£50 - £999,999.99	<ul style="list-style-type: none"> <li>• Payment due in 90 days from commencement (3 months)</li> </ul>
£1,000,000- £2,999,999	<ul style="list-style-type: none"> <li>• Greater of £1 million or 50% due in 90 days (3 months)</li> <li>• Remainder: 180 days (6 months)</li> </ul>
£ 3,000,000 +	<ul style="list-style-type: none"> <li>• 50% due in 90 days (3 months)</li> <li>• 25 % 180 days (6 months)</li> <li>• 25 % 360 days (12 months)</li> </ul>

- 4.23 The main payment bands mirror those proposed by Westminster Property Association with some modifications to the instalment approach namely to reduce the number of instalments and reduce the length of the payment period for the highest payment band to ease implementation for both the council and developers... These changes will make the policy clearer and more easily understood and implemented (see below).
- 4.24 The first payment band increases the threshold for instalments will apply to payments of £500,000 to £999,999 compared to the Mayor’s policy. But also increases the length of the first payment period from 60 to 90 days. This is appropriate as it reflects the higher CIL receipts in Westminster, relative to the rest of London, which the instalment regime was designed to apply (and which includes lower value/ lower CIL charge areas such as Barking and Dagenham). It also has the additional effect of benefitting smaller developers i.e. those with CIL liabilities of less than £10,000 by lengthening the payment periods for these schemes. The third payment band has been set to apply to payments of £3,000,000 or more – a threshold that has been set to take account of larger schemes involving demolition and clearance of a site which can involve developers bearing higher costs for longer periods.
- 4.25 The instalment approach has been designed to take into account of the following factors: the need for simplicity, balancing the need to ensure infrastructure is funded in a timely fashion and aligning the payment period with construction phases.

- 4.26 Firstly, there is a need for a simple payment structure which easy to understand and avoids the unnecessary administrative burden of multiple instalment stages for both parties.
- 4.27 Secondly, the instalment approach has to be balanced against Transport for London's requirement to ensure that funding for Crossrail from the Mayor of London's CIL is not unduly delayed by either setting thresholds for payment levels too low – or making payment periods too protracted. In addition, the need for a lower threshold is less applicable in Westminster, given the nature of development activity.
- 4.28 Finally, ensuring CIL payment periods are not pushed beyond the construction phases of development is a prudential measure to strengthen the council's position should immediate enforcement action be considered expedient prior to development completion. Construction phases for new build development in Westminster vary but extended construction periods are not common and are typically clustered for major development around the 12 – 18 months accordingly, payment periods beyond 360 days are not recommended.

### **Regulation 123 List**

- 4.29 The list of the types of infrastructure Westminster *may* fund through CIL (and therefore will not seek to support through the use of section 106 agreements) known as the Regulation 123 list (after the relevant CIL regulation) has been developed and was consulted upon and approved as part of the process of developing the CIL Charging Schedule. This indicative list was endorsed by the Independent Examiner and this initial Regulation 123 list can now be formally be published alongside the CIL (see Appendix 3). The only change that has been made to the list since then is removal of provision of enterprise space; this is to enable a number of projects reliant on agreement through use of planning obligations to go ahead without scope for confusion or disruption from the introduction of Westminster's CIL.
- 4.30 As stated previously, it is intended that after the Charging Schedule comes into effect, the list will be subject to a further review. As the council moves towards accruing sufficient receipts for the funding of infrastructure, it is its intention that this Regulation 123 list will be amended to provide details of specific infrastructure projects that will be the priority for CIL funding at that time, probably on an annual basis to reflect changing priorities and circumstances.
- 4.31 Amending the Regulation 123 list is does not require a further examination process, but it requires consultation to be undertaken and publication on the council's website. The current list has been subject to consultation as part of the statutory CIL-setting process.

- 4.32 This list will be complemented by publication of a supplementary planning document on “Use of Planning Obligations and Other Planning Mechanisms” which will explain what use will be made of section 106 agreements in future (largely to address site-specific requirements, affordable housing and non-infrastructure issues like training and employment initiatives). This has also been subject to public consultation and will be the subject of a separate Cabinet Member Report shortly.

### **Infrastructure Payments**

- 4.33 The CIL Regulations (Regulation 73B) allow for the council, at its discretion, to accept a CIL liability payment through the transfer of land or the delivery of infrastructure instead of money. Payment of CIL in kind can also enable developers, users and the Council to have more certainty about the timescale over which certain infrastructure items will be delivered.
- 4.34 Payment delivered in this way must be for infrastructure that has been included in the council’s Regulation 123 list (see above) and can only be for delivery of infrastructure which is not necessary to make the development concerned acceptable in planning terms. It cannot therefore be used by developers to offset their CIL liability where infrastructure is required as part of a development in line with adopted planning policy requirements. Nor can it be used to link the delivery of infrastructure, which is a CIL priority, with the consideration of a specific planning application.
- 4.35 As part of the consultation on the Preliminary Draft Charging Schedule the council invited comments on the payment of CIL in kind. Many respondents were keen to encourage the council to pursue this opportunity by making them available as an alternative to paying a CIL liability in cash. This could enable the faster delivery of infrastructure that the council has agreed is a priority to help support the development of its area. This may be because of land availability, development mix or that a developer has a proven track record of delivering such infrastructure.
- 4.36 To make CIL infrastructure payments available the council must issue a document giving notice that it is willing to accept payment of CIL by infrastructure and state the date from which this will apply. It must also publish a policy statement explaining the infrastructure projects or types of infrastructure that will be accepted. This statement is provided in Appendix 4.

### **Allocation and expenditure of Westminster CIL**

- 4.37 CIL will come into force on 1 May 2016 and on this date the Council will have not have collected any payments in respect of on this date. CIL is *only* payable on commencement of a development and the minimum proposed payment window of

90 days means that the first possible CIL receipts will not be received until August 2016, and it is likely to take several more months to build appreciable levels of Westminster CIL receipts. Because of this any consideration of projects to allocate CIL receipts to infrastructure projects will not take place before April 2017.

- 4.38 Under the CIL legislation, levy revenue must be spent on supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure. The legislation and national guidance also requires the council to allocate a specified proportion of CIL proceeds generated by development in each neighbourhood that is to be spent on priorities agreed with the local community. This proportion is 15% in neighbourhoods without a neighbourhood plan in place (capped at £100 per dwelling in the neighbourhood), rising to 25% uncapped in neighbourhoods with a neighbourhood plan. In areas with a parish council (in Westminster, Queen's Park), this sum is paid directly to them; in other areas the sum is retained by the council which will engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding.
- 4.39 Officers are developing governance and engagement proposals and these will be presented to the Cabinet Member for approval shortly.

## **5. Financial Implications**

- 5.1 In considering the income that may be projected from levying a Westminster CIL officers have looked retrospectively at completed developments in the period 2005/2006 to 2012/2013. The recommended CIL rates have been applied to completed developments that, had a CIL been in place, would have triggered liability to pay CIL. Discounts have then been applied to take account of mandatory social housing relief and credits for existing floorspace which are provided for under the CIL Regulations 2010 (as amended). This exercise demonstrated that had a CIL been in place at the rates set in the Charging Schedule, it would have generated an annual average of circa £17.5 million in receipts.
- 5.2 The provision of these reliefs may lead to some reduction in CIL receipts received (and no administration costs are specifically provided for in determining reliefs – which may result in zero CIL being payable). They only apply in the circumstances and to the development types prescribed in the regulations and in practice applications for such reliefs will only be available to a limited number of developments *and* the grant of any relief (mandatory or discretionary) is subject to an application and assessment of that application. It *is not* automatic. These reliefs apply only to Westminster's CIL and do not affect the Mayor of London's Levy.
- 5.3 There may be a greater impact from discount market homes but there is limited historic data that allows this to be modelled. Furthermore, the emerging provisions of the Housing and Planning Bill in relation to starter homes suggest that this

category of affordable housing may soon benefit from mandatory relief from payment of CIL anyway.

- 5.4 On adoption of a CIL the council will be able to retain up to 5% of its CIL receipts (plus the additional 4% for collecting the Mayoral CIL) to be applied to administrative expenses, and for the first three years of implementation may apply this to any expenses incurred before the CIL was adopted (on the basis of the annual average referred to above these could amount to around £1 million each year). The costs of processing any applications for reliefs will have to be met from this source – as there is no additional fee provided for under the Regulations for the assessment of applications for relief.

## **6. Legal Implications**

- 6.1 The legislation governing the development, adoption and administration of a Community Infrastructure Levy (CIL) is contained within the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended). The associated Government National Planning Policy Guidance is also important in guiding this process. There are other areas of law which should be considered when assessing certain developments for CIL liability and determining the appropriate sum due. These include matters relating to social housing, procurement, charitable institutions and state aid as noted above.
- 6.2 Further legislative reforms to the CIL regulations are expected in 2016 as part of a review of CIL by government.
- 6.3 The Director of Law has considered this report and is satisfied that the proposed arrangements for the adoption of the various reliefs and exemptions referred to herein are consistent with the relevant provisions set out in the CIL Regulations 2010.

## **7. Consultation**

- 7.1 The recommendations have been informed by the responses to two rounds of public consultation. These have been reinforced by meetings between officers and the Westminster Property Association and with representatives of the Mayor of London and Transport for London. There has been considerable engagement with the development industry and others throughout the process of CIL preparation.

## **9. Staffing Implications**

- 9.1 We are currently developing a CIL through the use of existing resources.

9.2 In terms of future staffing there will be a requirement on adoption of a Westminster CIL to ensure that there are sufficient resources allocated to both the collection and spending of CIL funding. A monitoring post for the collection of the Mayoral CIL is currently being funded through the 4% admin fee retained from the Mayoral receipts collected. Further resources are however likely to be required as the council moves forward to implement its own CIL. These additional resources can be funded through the 5% administration retained by the council from the collection of its own CIL.

## Appendices

<b>Appendix 1</b>	Instalment Policy
<b>Appendix 2</b>	Discretionary Reliefs Statements
<b>Appendix 3</b>	Infrastructure List for the Purpose of Regulation 123 of the Community Infrastructure Levy Regulations (2010) as amended
<b>Appendix 4</b>	Infrastructure Payment Policy

## Background Papers

Westminster Community Infrastructure Levy Charging Schedule, 2016

Equality Impact Assessment: Community Infrastructure Levy: Approval of Charging Schedule, 2015

Information and evidence to support the development of the City of Westminster's Draft Charging Schedule, June 2015

**If you have any queries about this Report or wish to inspect any of the Background Papers please contact:** Rachael Ferry-Jones / Andrew Barry-Purssell, Policy, Performance and Communications Department [rferry-jones@westminster.gov.uk](mailto:rferry-jones@westminster.gov.uk) / [abarrypurssell@westminster.gov.uk](mailto:abarrypurssell@westminster.gov.uk) 020 7641 2418/5662



For completion by the **Cabinet Member for the Built Environment**  
**Declaration of Interest**

I have <no interest to declare / to declare an interest> in respect of this report

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

NAME: **Councillor Robert Davis MBE, DL** \_\_\_\_\_

State nature of interest if any .....

.....  
*(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)*

For the reasons set out above, I agree the recommendation(s) in the report entitled:

**Westminster Community Infrastructure Levy: Approval of Instalment, Relief and Infrastructure Payment Policies**

Signed .....

**Cabinet Member for the Built Environment**

Date .....

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment: .....  
.....  
.....

If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law , City Treasurer and, if there are staffing implications, the Director of Human Resources (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.