



City of Westminster

# Council Agenda

Title: **Council Meeting**

Meeting Date: **Wednesday 20th January, 2016**

Time: **7.00 pm**

Venue: **Porchester Hall, Porchester Road, Bayswater, London W2 5DU**

Members: **All Councillors are hereby summoned to attend the Meeting for the transaction of the business set out.**

**Admission to the public gallery is available from 6.30pm.**

**Please telephone if you are attending the meeting in a wheelchair or have difficulty walking up steps. There is wheelchair access by a side entrance.**



**An Induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, please contact the Committee Officer, Mick Steward, Head of Committee and Governance Services.**

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Corporate Website: [www.westminster.gov.uk](http://www.westminster.gov.uk)**

**10a Additional Item: Community Infrastructure Levy - Approval  
of Charging Schedule**

(Pages 1 - 38)

**Westminster City Hall  
64 Victoria Street  
London SW1  
12 January 2016**

**Chief Executive**

**CITY OF WESTMINSTER**

**COUNCIL MEETING**

**WEDNESDAY 20 JANUARY 2016**

**AGENDA ITEM 10: ADDITIONAL ITEM**

**10. Report of the Cabinet Member for Built Environment**

Westminster Community Infrastructure Levy: Charging Schedule (Appendix C) – Report of the Cabinet Member for Built Environment (To Follow)

Charlie Parker  
Chief Executive  
20 January 2016

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City of Westminster

# Cabinet Member Report

|                           |   |
|---------------------------|---|
| <b>Decision Maker:</b>    | Cabinet Member for the Built Environment  |
| <b>Date:</b>              | 12 January 2016   |
| <b>Classification:</b>    | For General Release   |
| <b>Title:</b>             | Community Infrastructure Levy: Approval of Charging Schedule  |
| <b>Wards Affected:</b>    | All Wards   |
| <b>Key Decision:</b>      | Yes.  |
| <b>Financial Summary:</b> | <p>If the council does not implement a CIL it could forego the substantial income that a CIL could secure to help enable the delivery of infrastructure needed to support development and growth in Westminster (estimates suggest this could on average be around £17.5 million a year) and potentially lose £2.3 million per annum towards the delivery of infrastructure from contributions previously secured through section 106 agreements. On adoption of a CIL the council will be able to retain up to 5% of its CIL receipts to be applied to administrative expenses (including, in the first three year period, any expenses incurred before the CIL is adopted). So whilst preparing and implementing a CIL requires some up front funding by the council in the long term this can be recovered from future CIL receipts.</p> |
| <b>Report of:</b>         | Julia Corkey, Director of Policy, Performance and Communications.   |

## 1. Executive Summary

- 1.1 This report deals with the final stages in the council's work towards adoption of a Westminster Community Infrastructure Levy (CIL) in accordance with the Planning Act 2008 and Community Infrastructure Levy Regulations 2010 (as amended). A CIL can be charged on developments in a local authority's area with the money raised being used to pay for the provision, improvement, replacement, operation or maintenance of infrastructure that is needed as a result of development. Infrastructure funded through a Westminster CIL will be directed towards projects that the council, local community and neighbourhoods consider are required to help accommodate development. CIL rates are formally set through a legal document called a "charging schedule".
- 1.2 The report explains the process that has been followed in accordance with the CIL legislation: consultation on a preliminary draft charging schedule (September-October 2014) and then a draft charging schedule (June-July 2015); appointment of an independent examiner and formal submission of the council's proposals for examination (October 2015); the holding of a public examination (November 2015) and the submission of the examiner's report recommending that the council formally adopts its charging schedule, subject to minor modifications (December 2015).
- 1.3 The report explains that before the council can start charging CIL, its charging schedule must be approved by Full Council, which must also set a date on which charging will start.
- 1.4 Finally, the report asks the Cabinet Member to recommend the proposed Westminster City Council Community Infrastructure Levy Charging Schedule to Full Council for approval (subject to the recommended modifications) at its meeting on 20<sup>th</sup> January 2016, with a view to charging starting on 1<sup>st</sup> May 2016, in accordance with section 213 of the Planning Act 2008 (as amended) and regulation 28 of the Community Infrastructure Levy Regulations 2010 (as amended). Approval is also sought for publication of the examiner's report and for the advertisement and notification of the council's decision, as required by regulation 25 of the 2010 Regulations.

## 2. Recommendations

- 2.1 The Cabinet Member for the Built Environment is asked to:
  1. Consider the report of the Examiner appointed to conduct the examination of the Westminster City Council Community Infrastructure Levy Charging Schedule (attached as **Appendix 1**) and to note: his findings that, subject to a specified minor modification it complies with national policy and guidance; with the relevant legislation (including in respect of the statutory processes and public consultation and consistency with the 'relevant plan' (Westminster's City Plan: Strategic Policies, the saved policies of the Unitary

Development Plan and the London Plan); and is supported by an adequate financial appraisal.

2. Note the recommendation of the Examiner that the Charging Schedule be approved.
3. Recommend approval by Full Council at its meeting on 20 January 2016 of the Westminster City Council Community Infrastructure Levy Charging Schedule (attached as **Appendix 2**) to take effect from 1st May 2016, in accordance with section 213 of the Planning Act 2008 (as amended).
4. Approve arrangements for the publication of the Examiner's report and recommendations and the notification of their publication, in accordance with section 212(8) of the Planning Act 2008 (as amended) and regulation 23 of the Community Infrastructure Levy Regulations 2010 (as amended).
5. Approve arrangements for the advertisement and notification of the council's decision to approve its CIL charging schedule, in accordance with regulation 25 of the Community Infrastructure Levy Regulations 2010 (as amended).
6. Delegate authority to the Director of Policy, Performance and Communications to make any minor corrections to the Westminster City Council Community Infrastructure Levy Charging Schedule that may be required and which may be made under regulations 26 and 27 of the Community Infrastructure Levy Regulations 2010 (as amended) in consultation with the Cabinet Member for the Built Environment.

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

- 3.1 This report asks the Cabinet Member to recommend Westminster City Council's Community Infrastructure Levy Charging Schedule (the legal document that sets out the Council's CIL rates and gives legal authority for charging) to Full Council for approval with a view to it taking effect (and therefore charging starting) on 1<sup>st</sup> May 2016. This is required because section 213 (2) of the Planning Act 2008 (as amended) requires that a CIL charging authority must approve a charging schedule at a meeting of the authority and by a majority of votes of members present.
- 3.2 The reason for this report, and associated decisions, is therefore to approve the remaining formal steps required for the council to bring its CIL into effect.

## 4. Background

### The Community Infrastructure Levy

- 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 choose to develop and charge their own Community Infrastructure Levy (CIL). A CIL is charged on developments in a local authority’s area which involve the creation of new floorspace, with the money raised being used to pay for the provision, improvement, replacement, operation or maintenance of infrastructure that is needed as a result of development. Payments for infrastructure funded through a Westminster CIL would be directed towards projects that the council, local community and neighbourhoods consider are required to help accommodate development.
- 4.2 CIL may be payable on development creating net additional floorspace where the gross internal area of new building exceeds 100 square metres **or** where it comprises new dwellings (unless it is built by a ‘self-builder’). The following do not pay (or can apply for relief from payment of) CIL:
- Development of less than 100 sq m – unless it comprises one or more dwellings
  - Developments that are not buildings, or which are buildings to which people do not usually go or to which they go only occasionally in order to inspect or maintain plant or machinery
  - Houses, flats, residential annexes and residential extensions built by ‘self builders’ for their own use (or in connection with their use) as their sole or main residence
  - Most forms of affordable housing
  - Development by charities for charitable purposes
- 4.3 CIL is charged on new development granted planning permission on or after the date on which a charging authority brings a charging schedule into effect. The charging and collection process is as follows:
- Liability arises on the granting of planning permission (by the Council, by the Planning Inspectorate on appeal or by the Secretary of State).
  - The council issues a CIL Liability Notice.
  - The developer (or anyone else who has notified the council that they will assume responsibility to pay CIL) sends the council a Commencement Notice stating when development is going to start.
  - The council then issues a Demand Notice setting out the payment due dates.



## Westminster's Community Infrastructure Levy

- 4.4 The procedure for setting a CIL is set out in the Planning Act 2008 (as amended) and the Community Infrastructure Levy Regulations 2010 (as amended). In short, this entails two sets of public consultation (on a preliminary draft and then a draft charging schedule) and examination of a council's proposals by an independent person it appoints who can approve adoption of a charging schedule, recommend approval with modifications or reject proposals. If the examiner recommends approval, the charging schedule must be formally approved at a full meeting of the authority. Charging starts on the date specified in the approved schedule.
- 4.5 Westminster started the formal CIL-setting process with consultation on its preliminary draft charging schedule in September 2014. The other stages required by CIL legislation were carried out as follows:

| Stage  | Date                                 |
|--|--------------------------------------|
| Executive decision to publish a Preliminary Draft Charging Schedule  | <b>September 2014</b>                |
| Preliminary draft charging schedule (PDCS) published for consultation (for 6 weeks)  | <b>September/October 2014</b>        |
| Publication of a Draft Charging Schedule (DCS) for consultation, taking account of comments received on the PDCS (for 6 weeks) | <b>June/July 2015</b>                |
| Appointment of an independent examiner and formal submission of proposals to him for examination.                              | <b>October 2015</b>                  |
| Public examination of the charging schedule  | <b>November 30<sup>th</sup> 2015</b> |
| Examiner's recommendations received  | <b>December 23<sup>rd</sup> 2016</b> |

### The Examiner's report

- 4.6 Under section 213 of the Planning Act 2008 (as amended), a charging authority can only approve a charging schedule if the appointed examiner has recommended approval and subject to any modifications the examiner recommends.

- 4.7 The examiner considers whether the charging authority has followed the CIL legislation and national guidance and, in particular, whether it has struck an appropriate balance between the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding, and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.
- 4.8 The council appointed Philip Staddon BSc Dip MBA MRTPI of the Planning Inspectorate as Examiner. He held a public examination hearing on 30<sup>th</sup> November 2015. His report to the council is attached as Appendix 1.
- 4.9 Mr Staddon has concluded: that the council's CIL proposals do comply with national policy and guidance; that subject to the making of a minor modification to its form, the council's Community Infrastructure Levy Charging Schedule complies with the CIL legislation including in respect of the statutory processes, public consultation and consistency with the relevant statutory plan (in our case, Westminster's City Plan: Strategic Policies; the "saved" policies of the Unitary Development Plan; and the Mayor's London Plan); and that it is supported by an adequate financial appraisal. He accordingly recommends (paragraph 62 of his report) that the Charging Schedule be approved.
- 4.10 At the Examination, the council requested the Examiner to recommend a minor modification to the Charging Schedule to add National Grid lines and reference numbers to the maps showing the charging zones (see below). This is necessary to ensure compliance with the CIL Regulations and for clarity and precision. No change to the charging zones is involved. Mr Staddon has made this recommendation and the required change has been made to the Charging Schedule presented for approval with this report.
- 4.11 As modified, the format and content of the Charging Schedule – attached as Appendix 2 - is in accordance with the Community Infrastructure Levy Regulations 2010 (as amended) and the Government's Planning Practice Guidance on the Community Infrastructure Levy (June 2014). It contains only the most essential information including the draft rates (set, as the CIL Regulations require, in pounds per square metre) at which CIL is proposed to be chargeable in Westminster:

| 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   |      |        |

4.12 As differential rates, for different areas of the City and for different land use types, are proposed the Schedule also includes maps to identify the location and boundaries of the different charging zones. An explanation of how the chargeable amount will be calculated is also included.

4.13 The council is, therefore, now in a position to formally approve its CIL Charging Schedule and, in doing so, to set the date at which CIL charging will start. It is proposed that this should be 1<sup>st</sup> May 2016. This will;

- align the commencement of charging with the start of the financial year;
- allow time to ensure developers, their advisers and others concerned are properly notified of the start of charging; and
- allow the council time to put in place arrangements for the governance of CIL (collection, spending, reporting and review) – see below.

4.14 It should be noted that once approved, the Charging Schedule has effect until such time as the council decides formally that it should cease to have effect. The council has made clear its intention that it will formally review its CIL biennially, with the first review in 2018.

4.15 The CIL Regulations also require the council to report each year on the amounts of CIL collected and what it has been spent on.

4.16 There are two formal steps arising from the recommendations in this report that will have to be taken on approval:

- Under regulation 23 of the Community Infrastructure Levy Regulations 2010 (as amended), the council must publish the Examiner's report and make it available at the same places that it made earlier CIL consultation documents available (City Hall and public libraries) and on its website. It must also notify those who asked to be informed of the report's publication (in practice we will notify everyone who commented on our

proposals). Officers will take these steps as soon as the Cabinet Member approves this report.

- Under regulation 25 of the CIL Regulations, as soon as practicable after it has approved it, the council must publish the charging schedule and the examiner's report on its website and make it available at the same places as it made earlier CIL consultation documents available and on its website. It must also notify those who asked to be informed of the report's publication (again, in practice we will notify everyone who commented on our proposals). We must also notify what the regulations call "relevant consenting authorities" (those who may grant planning permission in our area) – in our case the Secretary of State and the Mayor. Officers will take these steps as soon as the Full Council has approved the Charging Schedule.

4.17 The CIL Regulations allow charging authorities to correct some errors in their charging schedules up to six months from the date they are formally approved. "Correctable errors" are those that would not affect the amount of CIL paid by any development in the City. Corrections can be made by a council of its own volition or by request by any person. Where such a correction is made, a council must publish a correction notice specifying the error being corrected, publish both the correction notice and the corrected charging schedule on its website and make them available at the places previous CIL documents have been made available. Given that any corrections would by their nature not involve substantive changes to Westminster's CIL, it is asked that the making of any corrections that may prove necessary is delegated to the Director of Policy, Performance and Communications, in consultation with the Cabinet Member for the Built Environment.

### **Next steps**

4.18 There are a number of further formal steps that will have to be taken to support implementation of Westminster's CIL.

4.19 Instalments policy: Under the CIL Regulations, CIL is payable in full sixty days from the date when development commences unless the charging authority has a policy for payment by instalment in place. 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 (payments of £500,000 or less have to be paid in one lump sum within 60 days of commencement; sums of £500,001 or more can be paid in two instalments of £500,000 or half the value of the total amount payable if greater within 60 days of commencement and the remainder paid within 240 days of commencement). Officers are developing an instalments policy for Westminster that will take account both of the amounts that developers here may have to pay and the amount of time developments of different sizes typically take to complete. The council can put its instalments policy in place (and change it) relatively easily - the only requirement is to publish the policy on the council

website and make it available for inspection. Proposals will be brought forward for consideration by the Cabinet Member in due course.

- 4.20 Regulation 123 list: the CIL Regulations encourage authorities to identify the infrastructure it intends to fund through CIL (and therefore will not seek to support through the use of section 106 agreements) by publishing a list of things it may use CIL to cover (it takes its name from the relevant CIL regulation). The council has used an indicative list for the purposes of CIL-setting, but has made clear that it intends to bring forward a more detailed list which will be regularly updated. This approach has been endorsed by the Examiner. Again, setting and changing the list is straightforward, requiring only consultation and publication on the council's website. Officers are developing proposals for the governance of CIL spending decisions which will include a regulation 123 list; these will be presented to the Cabinet Member for consideration in due course.
- 4.21 The 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 been subject to public consultation and will be the subject of a separate Cabinet Member Report.
- 4.22 Discretionary reliefs: During the CIL-setting process the council has indicated that it will make available a number of discretionary reliefs from the need to pay CIL. These are optional policies which are provided for in the CIL Regulations and are matters that the council can decide to make available (or to withdraw) at any stage. They cover:
- **forms 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.
  - **development by charities for investment purposes**
  - a **further discretionary charitable relief** 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.
  - a relief for what the CIL Regulations term "**exceptional circumstances**". 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.

In each case, the council is required to issue documents giving notice that the relief will be made available in its area, explain the circumstances in which it will be made available and giving the date from which it will apply – and publish them on its website and make them available for inspection. These documents are being prepared and will be presented to the Cabinet Member for approval shortly.

- 4.23 Payment of CIL through “infrastructure payments”: The CIL Regulations allow the council to accept one or more items of infrastructure by a person liable to pay CIL where the value of this infrastructure is equal to the amount of CIL payable. This has to be infrastructure referred to in the regulation 123 list (see above) and it must not be anything that could be dealt with through a section 106 agreement because it is necessary to make the development concerned acceptable in planning terms. Again, to make this available the council must issue a document giving notice that it is willing to accept infrastructure payments and 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.

If these recommendations are approved officers will develop the policies required to make these flexibilities available and will submit them for approval by the Cabinet Member.

- 4.24 Governance of CIL spending: Under the CIL legislation, levy revenue must be spent on supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure. Decisions on spending CIL will have to be integrated with the council’s wider budgeting, resource and performance management procedures in ways that will ensure compliance with the relevant legislation and the monitoring and reporting requirements it imposes. Detailed arrangements to manage this are being prepared and will be the subject to future reports to members.
- 4.25 The legislation and national guidance 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. National guidance suggests that councils set out clearly and transparently their approach to engaging with neighbourhoods; officers are developing such a statement which will be presented to the Cabinet Member for approval in due course.

## **5. Financial Implications**

- 5.1 Since 6th April 2015 the council's ability to leverage funding for infrastructure from section 106 planning obligations (as secured through Section 106 agreements) has been significantly restricted. Although mitigation steps have been put in place, the restrictions on the use of section 106 planning obligations could result in the council potentially foregoing up to £2.3 million per annum towards the delivery of infrastructure. This figure has been based on an average of what was received through financial section 106 planning obligations (not 'in kind'), for infrastructure, during the period 2008 to 2013. Adoption of a CIL would both address this shortfall, and be likely to generate additional resources to help fund the infrastructure required to support development and growth in the City.
- 5.2 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 social housing relief and credits for existing floorspace. This exercise demonstrated that had a CIL been in place at the rates recommended in this report, it would have generated an annual average of circa £17.5 million in receipts. This is a significant increase above the financial receipts received through section 106 planning obligations for infrastructure during the corresponding period.
- 5.3 The retrospective income projection figures should only ever be considered as illustrative, and not as a guaranteed source of funding, as the receipt of CIL funding will always be dependent upon the implementation of developments. The eight year period taken for analysis does however, represent a complete development cycle taking in both recession and recovery. Because of this there were some significant differences from the calculated annual average receipts between the years.
- 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). So whilst preparing and implementing a CIL requires some up front funding by the council in the long term this could be clawed back from CIL receipts.

## **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.
- 6.2 Further legislative reforms to the CIL regulations are expected in 2016 as part of a review of CIL by government.
- 6.3 Under the Equalities Act 2010 the council has a "public sector equality duty". This means that in taking decisions and carrying out its functions it must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act; to advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it; and to foster good relations between persons who share a relevant protected characteristic and those who do not share it. The council is also required to have due regard to the need to take steps to take account of disabled persons' disabilities even where that involves more favourable treatment; to promote more positive attitudes toward disabled persons; and to encourage participation by disabled persons in public life. The 2010 Act states that "having due regard" to the need to promote equality of opportunity involves in particular having regard to: the need to remove or minimise disadvantages suffered by persons sharing a protected characteristic; take steps to meet the needs of persons sharing a protected characteristic that are connected with it; take steps to meet the needs of persons who share a protected characteristic that are different from those who do not; and encourage persons with a protected characteristic to participate in public life or any other activity in which participation by such persons is disproportionately low.
- 6.4 The courts have held that "due regard" in this context requires an analysis of the issue under consideration with the specific requirements set out above in mind. It does not require that considerations raised in the analysis should be decisive; it is for the decision-maker to decide what weight should be given to the equalities implications of the decision.
- 6.5 Officers have carried out an equalities assessment of the proposed approval of the Community Infrastructure Levy Charging Schedule. This has concluded that at the rates proposed, it is unlikely that approval of the Westminster CIL charging schedule will have significant negative impacts for any group with protected



characteristics. Any that do arise will be mitigated by the availability of mandatory or discretionary reliefs and exemptions. On the other hand, use of revenue raised is likely to have positive impacts for the community as a whole, including groups with protected characteristics. These judgements are supported by the fact that none of the respondents to two rounds of public consultation required by the Community Infrastructure Levy Regulations 2010 (as amended) raised any concerns about either the approach taken by the council in considering equalities issues or evidence that its proposals would have any significant effect on any of the groups with protected characteristics. The council will review its CIL charging schedule on a biennial basis. This monitoring will include any evidence of impacts on groups with protected characteristics and this will inform any proposals to change rates or the availability of discretionary reliefs.

## **8. Consultation**

- 8.1 As explained in the body of this report, 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. Infrastructure providers, both within the council and externally, were engaged with in order to inform the update of the council's Infrastructure Development Plan. Reports on the development of a Westminster Community Infrastructure Levy were considered by the council's Environment Policy and Scrutiny Committee in November 2014, April 2014, November 2012 and December 2011.

## **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**

**Appendix 1** Report on the Examination of the Westminster City Council Draft Community Infrastructure Levy Charging Schedule

**Appendix 2** Westminster City Council Community Infrastructure Levy Charging Schedule

## **Background Paper**

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

**If you have any queries about this Report or wish to inspect any of the Background Papers please contact:** Rachael Ferry-Jones / Sara Dilmamode / Andrew Barry-Purssell, Policy, Performance and Communications Department [rferry-jones@westminster.gov.uk](mailto:rferry-jones@westminster.gov.uk) / [sdilmamode@westminster.gov.uk](mailto:sdilmamode@westminster.gov.uk) / [abarrypurssell@westminster.gov.uk](mailto:abarrypurssell@westminster.gov.uk) 020 7641 2418/2888/ 5662

APPENDIX 1



The Planning Inspectorate

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**Report to Westminster City Council**

**by Philip Staddon BSc, Dip, MBA, MRTPI**

**an Examiner appointed by the Council**

**Date: 23 December 2015**

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PLANNING ACT 2008 (AS AMENDED)

SECTION 212(2)

**REPORT ON THE EXAMINATION OF THE WESTMINSTER CITY  
COUNCIL DRAFT COMMUNITY INFRASTRUCTURE LEVY CHARGING  
SCHEDULE**

Charging Schedule submitted for examination on 9 October 2015

Examination Hearings held on 30 November 2015

File Ref: PINS/X5990/429/5

## **Non-Technical Summary**

This report concludes that the Westminster City Council Community Infrastructure Levy (CIL) Draft Charging Schedule provides an appropriate and viable basis for the collection of the levy in the area.

The Council is able to demonstrate that it has sufficient evidence to support the schedule and can show that the levy rates would be set at levels that will not put the overall development of the area, as set out in The London Plan and Westminster's City Plan, at undue risk. The proposals will secure an important funding stream for infrastructure necessary to support planned growth in the City of Westminster. A minor modification is required to update the zoning plans contained in the schedule, for clarity.

### **Introduction**

1. This report contains my assessment of the Westminster City Council Community Infrastructure Levy (CIL) Draft Charging Schedule in terms of Section 212 of the Planning Act 2008 (as amended) and the associated CIL Regulations 2010 (as amended). It considers whether the schedule is compliant in legal terms and whether it is economically viable, as well as reasonable, realistic and consistent with national guidance set out in the National Planning Practice Guidance (PPG).
2. To comply with the relevant legislation and guidance, the local charging authority has to submit a charging schedule that should set an appropriate balance between helping to fund necessary new infrastructure and the potential effect of the proposed CIL rates on the economic viability of development across its area.
3. The basis for the examination, on which Hearing sessions were held on 30 November 2015, is the submitted Draft Charging Schedule (DCS), which was published for public consultation between 12 June 2015 and 24 July 2015.

### **The City of Westminster**

4. At the outset, it is necessary to explain briefly the development context in Westminster, which was described in the Council's opening statement at the Hearing as 'more unique than most'. The City of Westminster is indeed extraordinary. It covers just 2,149 hectares in the heart of central London. About 40% of its area comprises open spaces, principally the Royal Parks of Regent's Park, Hyde Park, Green Park and St James's Park.
5. The remaining 60% constitutes one of the most highly developed and complex urban areas in the world. It contains the seats of Government and the Monarchy and is home to over 50,000 businesses with over 700,000 employees, most of whom commute every day, principally by rail, the Underground and bus. Westminster also includes shopping (notably Oxford

Street, Regent Street, Bond Street and Knightsbridge), entertainment (the West End), visitor attractions and tourist facilities of national and international importance and renown.

6. In addition to these diverse commercial and cultural uses, it is home to a resident population of around 230,000 who live in neighbourhoods ranging from some of the most deprived to the most affluent in London (and indeed the U.K.).
7. Most of the City's area (78%) is covered by Conservation Area designations and there are over 11,000 listed buildings, 21 registered historic parks and gardens, two scheduled monuments and five areas of archaeological priority.
8. All of these factors combine to create a complex urban context, where development pressures, constraints and land / property values can be unprecedented. In terms of new development, there are no vacant sites available for release and most new schemes involve 'recycling' of existing buildings and floorspace for higher value alternatives, often involving mixed uses. It is in this unique context that the Council's CIL proposals have been developed and need to be assessed.

### **The Council's CIL proposals**

9. The Council's CIL proposals include charges for new residential development and for new commercial development.
10. The residential charges would relate to all 'C' Use Class<sup>1</sup> developments. The Council proposes three charging levels based on defined zones termed 'Prime', 'Core' and 'Fringe'. The 'Prime' rate would be £550 per square metre (psm) and this zone includes St John's Wood, Knightsbridge, Belgravia, Mayfair, Strand and St James's. The 'Core' rate would be £400 psm and this zone would include the areas of Bayswater, Paddington, Maida Vale, Marylebone, Soho and most of Pimlico. The 'Fringe' residential CIL charge would be £200 psm and this would apply in Queen's Park, Westbourne Green, Lisson Grove and a small part of Pimlico, the Churchill Gardens estate.
11. The commercial charges would apply to all new developments of "*offices; hotels, nightclubs and casinos; retail (all 'A' use classes and sui generis retail).*" The charges are similarly differentiated by geographical area, but the commercial charging zones do not coincide with the residential zones. The 'Prime' commercial charging zone would have a rate of £200 psm and covers the commercial heart of the city which approximates to (but does not exactly mirror) the area long defined as the Central Activities Zone (CAZ). The CAZ comprises most of the southern half of the city spanning from Kensington Gardens in the west to the Royal Courts of Justice in the east, including Mayfair, Soho, St James's and Covent Garden. 'Core' zone areas, which would attract a £150 psm charge, are defined to the north and south of the Prime zone. A 'Fringe' zone, where a £50 psm rate would apply,

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<sup>1</sup> The Town and Country Planning (Use Classes) Order 1987 (as amended).

would cover the northern parts of the City's area (broadly equating to the area north of the Westway corridor).

12. The DCS specifies that development of 'all other uses' would incur a Nil CIL charge. For the avoidance of doubt, all of the CIL rates quoted above are exclusive of the Mayoral CIL rates.
13. At the Hearing sessions, the Council indicated a desire to modify the DCS by replacing the zoning plans with updated plans containing Ordnance Survey grid lines. As this improves clarity and is a requirement under Regulation 12, I have reflected this minor modification in my recommendations.

### **Background evidence – the relevant plan**

14. The 'relevant plan' for CIL purposes comprises The London Plan 2011 (as revised) and 'Westminster's City Plan: Strategic Policies' (WCPSP), which was adopted in November 2013. These two plans mesh together to provide the development plan framework for managing growth in Westminster. Whilst it is not the role of a CIL examination to revisit development plan issues, it is important to understand fully the "relevant plan's" approach to sustainable growth, in order that a balanced view can be reached on the potential effects of the CIL proposals on the economic viability of that planned development.

#### *The London Plan (as revised)*

15. The London Plan is the Mayor's high level spatial development strategy for the capital city. It sets out an integrated economic, environmental, transport and social framework for the development of London over the next 20-25 years. It seeks to manage growth and change in London to ensure it takes place within the current boundaries of Greater London without encroaching on the Green Belt or London's protected open spaces. It further seeks to ensure that London is a city that meets the challenges of economic and population growth; is internationally competitive and successful; with diverse, strong, secure and accessible neighbourhoods; a world leader in improving the environment; and somewhere it is easy, safe and convenient for everyone to access jobs, opportunities and facilities<sup>2</sup>.
16. The London Plan sets clear strategic priorities to "...enhance and promote the unique international, national and Londonwide roles of the Central Activities Zone"<sup>3</sup> which covers large parts of Westminster. The Plan seeks to enhance the strategic role and functions of the Westminster area in terms of workspace (offices), shopping, cultural, tourism and night-time economies. It also sets a (revised) housing target of 1,068 dwellings per annum. The London Plan also identifies a number of 'opportunity areas' in Westminster.
17. It therefore plays a central role in delivering the ambitions, and the scale and type of growth, set out in the London Plan.

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<sup>2</sup> Policy 1.1 of The London Plan

<sup>3</sup> Policy 2.10 of The London Plan

*The Westminster's City Plan: Strategic Policies (2013)*

18. WCPSP was adopted in November 2013. Informed by the higher tier London Plan, it reflects and articulates the planned growth and ambitions at a Westminster City level. It covers the period 'up to and beyond 2026/27'. The overall vision set out in the Plan is *"to make Westminster the foremost world class sustainable city: A city which values its unique heritage and accommodates growth and change to ensure the city's continued economic success while providing opportunities and a high quality of life for all of its communities and a high quality environment for residents, workers and visitors alike"*.
19. The scale of planned growth is substantial and signals further intensification of uses and development in the plan period to 2027. WCPSP anticipates commercial growth which would include an additional 56,000 new jobs and additional retail floorspace in excess of 200,000 square metres. WCPSP's housing delivery rate target was a minimum average of 770 new homes per annum (now increased by the London Plan revisions to 1,068 p.a.). It seeks to achieve in excess of 30% of new dwellings to be affordable homes over the plan period from all sources.
20. Achieving this scale and level of growth in such a concentrated, highly developed and constrained locality is not straightforward. However, the Plan's spatial strategy identifies three 'opportunity areas' that are planned to deliver substantial numbers of new homes and jobs, each of which is comprised of a number of component 'strategic sites'. The Paddington opportunity area is anticipated to deliver 1,000 new homes and 5,000 new jobs; the Victoria opportunity area, 1,000 new homes and 4,000 jobs and the Tottenham Court Road opportunity area, 420 new homes and 5,000 new jobs. In addition to those falling within the strategic sites in the opportunity areas (which number 13 in total), a further 21 strategic sites are identified in other locations, along with preferred uses. Altogether, these 34 strategic sites will accommodate much of the planned growth. Beyond these sites, other developments anticipated in the Plan period will be smaller scale local developments, typically involving recycling / redevelopment of existing buildings.

**Background evidence - infrastructure needs**

21. The WCPSP evidence base included a detailed Westminster Infrastructure Plan (IP) produced in 2009. The IP undertook a detailed analysis of infrastructure requirements needed to support the planned growth in the period 2006 – 2026. The IP has been refreshed and updated through the production of an Addendum to the IP (AIP), published in August 2014.
22. The AIP has factored in new growth data, the findings of the 2011 Census and has updated the portfolio of infrastructure projects with the latest costs and funding source information. For the period 2012 – 31, the Council assesses that the total cost of necessary infrastructure would be circa £2.6 billion. The highest proportions relate to utilities (46%), public realm (23%), Transport (13%) and Education (7%), with smaller proportions for Health, Sports and Leisure, Parks and Open Spaces, Community Services, Waste

and Emergency Services.

23. The Council has used a shorter time horizon (than the full AIP period) to examine the likely net funding gap i.e. the total cost of infrastructure minus funding from other (non CIL) sources. It has examined the six year period between 2012/13 – 2017/18, which gives a degree of certainty in terms of being part retrospective and part already planned in capital budgets. This calculation gives a gap figure of £645 million for the six-year period (or an annual unfunded gap of circa £107.5 million).
24. The Council has tested the potential CIL revenue by a hypothetical application of its proposed CIL charges against the last eight years of planning permissions (with deductions for existing floorspace and affordable housing). Although such an exercise may not accurately reflect planned future development, it is a reasonably good proxy and has the advantage of covering a full development cycle. The analysis revealed potential CIL revenues ranging from £5m p.a. up to £30m p.a., with the eight year average being £17.5m p.a. Most of this average annual revenue stream would have been from housing (£12.3 m) and offices (£3.3 million) with the balance from hotel, retail and other commercial use developments.
25. The evidence demonstrates that the infrastructure funding gap is substantial and provides a justification for the introduction of a CIL regime. It also demonstrates that CIL receipts would make a modest, but nonetheless important, contribution towards funding Westminster's assessed infrastructure needs. A substantial unfunded gap would remain.

### **The Council's regulation 123 list**

26. The PPG makes clear that a charging authority should set out a draft list (known as a 'Regulation 123 list') of infrastructure projects or types of infrastructure that CIL receipts will be used to fund. This is to provide transparency on what CIL will fund and what may still be sought from S.106 planning agreements. The Guidance makes plain that it is not the purpose of the CIL examination to 'challenge'<sup>4</sup> the list. Notwithstanding the limited remit of Examiners in respect of the list, it is becoming increasingly common for representors to seek to influence it through the CIL consultation and examination processes. That has been the case in Westminster and therefore some commentary is appropriate.
27. The Council's Draft Regulation 123 List clearly sets out the categories of infrastructure the Council intends to fund from its CIL receipts. These include crime and anti-social behaviour infrastructure; educational facilities; health facilities; provision of enterprise space; public realm improvements; social and community facilities; sports and leisure; transport and highways (excluding site specific works); utilities and waste. The list does not set out specific projects nor does it indicate any prioritisation. It also makes plain that the list will be reviewed, amended and updated on a regular basis.
28. Challenges and questioning of the list came from a number of representors.

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<sup>4</sup> Planning Practice Guidance - Paragraph: 017 Reference ID: 25-017-20140612



Some wished to see additional infrastructure types included such as flood defences and fire service facilities. Others wished to see particular types of infrastructure more clearly specified in the list, most notably in terms of pedestrian and cycling infrastructure, biodiversity measures and the identification of specific public realm schemes. Some also questioned the clarity of the interface between CIL funded public realm works and those that may continue to be funded by S.106 Planning agreements on a site specific basis. There were also a number of related representations concerning how the 'neighbourhood portion' of the collected tariff would be governed and applied to local projects.

29. In my view, the Council's Regulation 123 list is clear and provides the transparency required under the Guidance. The Council has also produced a Supplementary Planning Document titled 'The Use of Planning Obligations and Other Planning Mechanisms' (August 2015) that has just completed a consultation stage, which gives further clarity and detail on how the two funding sources will operate, avoiding any 'double dipping' where a developer might otherwise be, potentially, charged twice for the same infrastructure.
30. Although the Hearing provided a useful forum for discussions about the content of the list, given the size of the overall funding gap, there are inevitably going to be some difficult decisions around prioritisation. In my view, the Council has clearly identified the key infrastructure required, drawn from its recent AIP, and provided the necessary transparency and clarity about the use of the CIL receipts. Adding further infrastructure requirements would simply increase the already significant funding gap and further strengthen the justification for introducing a levy.
31. The Council appeared alert to the sensitivities concerning the list content and prioritisation and did not underestimate the governance challenges ahead. It has also agreed to engage with neighbourhood organisations over the governance approach to the neighbourhood proportion.

### **Viability evidence – modelling assumptions and proposed charging zones.**

#### *Methodology*

32. The Council commissioned consultants to undertake a Viability Assessment (VA) to support its CIL proposals. The evidence has evolved in two phases, firstly to inform the Preliminary DCS (PDCS) and, more latterly, to support the DCS. The June 2015 report is the substantive evidence document that consolidates and updates the full range of test results.
33. The VA uses a residual land valuation method whereby the total value of a development scheme is assessed before various assumed development costs (including developer profit) are deducted, to arrive at a 'residual' land value. In essence, this residual value is the amount that the developer would pay to the landowner. The methodology assumes that a landowner will require a 20% premium above the existing use value (EUV), in order to

trigger that sale for development. The use of EUV plus a premium has been widely endorsed in CIL examinations and is, in my view, more appropriate and robust than the use of historic market values (which some have suggested) which will have been the product of different market and policy circumstances from a different time period.

34. Many CIL studies focus on the viability modelling of 'notional' developments and this is usually undertaken separately for residential and various commercial development forms (retail, offices, hotels etc.). Westminster has adopted a sophisticated approach with the methodology skewed heavily towards 'real world' schemes. Altogether, it has tested 156 'proxy' developments, 136 of these are actual development proposals that have progressed through the planning system in recent years. These were supplemented by a smaller number (20) of hypothetical (or notional) schemes. About half (75) of the proxies were residential or 'residential led' schemes, with good samples of retail led (24 proxies), office led (26 proxies), hotels (16 proxies) and lesser number of other schemes (nightclubs, casinos etc.). The testing included 8 strategic sites which typically involved mixed use schemes.
35. I consider the methodology and approach to be rigorous, robust and entirely appropriate to the unique circumstances of Westminster. Indeed, it would be difficult to provide the evidential support for a CIL regime based solely on 'notional' site testing alone, given the absence of 'typical' sites and the often bespoke and mixed-use nature of real world developments.

#### *Modelling assumptions*

36. Although most proxies related to real world schemes, the Council has had to test viability using a range of assumptions about values and costs.
37. Residential sales values in each of Westminster's neighbourhoods were compiled from an extensive trawl of transactions (several thousand over a two-year period). This was supplemented by earlier sales value work commissioned by the Council (in respect of affordable housing) and through consultation with the Westminster Property Association. This enabled average sales values to be computed and the three value areas to be defined. The average sales values defined were £22,400 psm in the Prime area, £15,750 psm in the Core area and £11,000 psm in the Fringe area.
38. A similar approach was adopted in defining the commercial value zones. This used available data on rents and yields to define the Prime, Core and Fringe zones. Although there is some considerable overlap, the zones do not align precisely with corresponding residential zones. That is to be expected as the value considerations (residential sales values and commercial rents / yields) are different. There were some challenges to the precise boundaries in some areas and these are dealt with later in this report.
39. Profit levels were assumed at 20% of Gross Development Value (GDV) on market housing and 6% on GDV of affordable housing. Given the characteristics of the local market, and the generally lower risk profile of development in London, I regard the assumed profit level as more than

sufficient for testing purposes.

40. Affordable housing was modelled in line with policy requirements, in terms of proportion and mix. The modelled 'base' position was 35% (on sites over the size threshold) with sensitivity testing of other (lower) proportions. The affordable housing cost assumptions employed all appear reasonable.
41. Build cost assumptions were one of the few variables that attracted some challenge from representors. For all schemes, the Council adopted 'upper quartile' values drawn from the Building Costs Information Service (BCIS), which is widely used for benchmark purposes in CIL studies. The BCIS data was supplemented with known costs from recent local schemes. The Council confirmed that, in defining its build cost assumptions for different development types, it had factored in additional allowances where schemes were known to include facade retention (an additional 20%) and also included a build cost contingency (5%) and an external works allowance (10%). Furthermore, in response to the challenges expressed, the Council added a sensitivity test where build costs were inflated by 20%. Overall, I consider the build cost assumptions and approach to be reasonable for CIL testing purposes.
42. For the commercial development schemes, the rents and yields employed were well grounded and reasonable, being drawn from respected published sources.
43. Most of the other modelling assumptions conformed to reasonable industry norms. These included the application of Mayoral CIL at the requisite rates and the inclusion of Crossrail S.106 'top up' in line with the rates set out in the Mayor's guidance<sup>5</sup>. Costs associated with professional fees, marketing, finance, stamp duty, legal fees and acquisition costs were all reasonable. Residual S.106 costs were assumed at £20 psm for all development types, although it was accepted that these costs could vary.
44. One further assumption employed was that the tested development sites were treated as having no existing floor space. This differs from the Council's approach to estimating likely CIL revenue (where existing floorspace was deducted from the sampled developments). Given the highly developed context of Westminster and the nature of its identified strategic sites, this is unlikely to be the case. Most sites are likely to have some existing floor space, which would be netted off CIL liabilities. The effect of this seemingly artificial assumption is that, in most cases, there is a hidden viability 'buffer' i.e. less CIL (than that assumed in the modelling) will be payable once the existing floor space on any site is deducted.

### **The viability modelling appraisal outputs and proposed CIL rates**

45. The output from the modelling is a summary spreadsheet of 'maximum' CIL amounts that could be sustained once all of the costs and profit assumptions have been deducted. Results are presented for each of the 156

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<sup>5</sup> London Plan Supplementary Planning Guidance April 2013 - Use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy

proxies setting out the 'base' position, along with sensitivity analyses applying different (lower) affordable housing levels and (higher) build costs. Each of these results is supported by a more detailed scheme specific appraisal. Two general observations are worth noting before exploring the specific development types.

46. First, a third of the proxies generated results where the residual value is negative i.e. the end value of the development is unable to surpass the EUV plus the 20% landowner premium. At first sight, this may appear alarming. However, it is simply a product of the application of the modelling to a (largely) real world sample of development proposals, which will include viable and unviable schemes. Indeed, all of the 'not viable' results were from the 'real world' cohort (the notional schemes all being modelled as viable) and most involved residential development. A curiosity of Westminster is that the Council reported that a number of modelled 'not viable' schemes had actually been built out. This may reflect the relative caution built into the modelling assumptions and /or the fact that some investors are able and willing to take lower returns and a longer term view, given the strength of the Westminster property market.
47. Second, most schemes display positive viability and, in most cases, the ability to sustain CIL charges is significant i.e. schemes appear to be extremely profitable ventures. There are a small number of results where margins are tighter, but the vast majority of maximum CIL rates are well over £1,000 psm and the highest is £8,795 psm (or £7,950 with build costs inflated by 20%).

*Residential CIL – modelled outputs, CIL rates and zones*

48. The Council has averaged the maximum psm CIL rates for the residential led schemes to produce figures for each of the three zones. The results for the 'base' position (35% affordable housing where appropriate) are as follows: Prime - £3,471, Core - £2,769 and Fringe - £1,890 psm. Applying 20% inflated build costs as a sensitivity test reduces these numbers to £3,227, £2,319 and £1,319 psm respectively.
49. The evidence demonstrates that most developments can accommodate a substantial CIL charge without any threat to scheme viability. In terms of setting rates, many councils have used the approach of drawing back from the modelled maximums, usually by a percentage 'buffer'. However, Westminster has preferred to use a benchmark of 5% of total scheme development costs as its upper guide for rate setting. Its proposed residential rates for the Prime, Core and Fringe areas of £550, £400 and £200 respectively, build in substantial buffers (between 83-85%). In practice, once allowances for existing floorspace are deducted (it will be a feature on most sites), the effects of CIL on residential development economics in Westminster will be reduced further.
50. I considered the Council's approach to defining the residential CIL charging zones to be well grounded. Put simply, it is based on sales value intelligence. Unfortunately, whilst the (relatively) lower sales values in the Churchill Gardens estate in Pimlico justified its inclusion in the Fringe zone,

this was widely perceived by residents that there may be some hidden agenda i.e. development proposals that may threaten the estate.

51. From what I heard, this does not appear to have any foundation and there are no such proposals in the Council's development plan. In any event, this special area is rightly protected by its Conservation Area designation and the listing of its key buildings. Furthermore, it is important to recognise that CIL is not a policy tool and setting rates at a particular level is based on viability evidence alone i.e. a relatively low rate does not mean that (any) development will necessarily ensue. The Hearing provided a useful forum for the Council to help allay community concerns.

#### *Strategic sites*

52. Eight strategic sites were tested. These were typically mixed-use schemes on complicated sites. Two of the schemes were not viable under any realistic scenario. The remaining six displayed healthy viability, with maximum CIL rates ranging from £1,266 - £4,836 psm ('base' scenario with 35% affordable housing).

#### *Commercial CIL – modelled outputs, CIL rates and zones*

53. The commercial CIL modelled outputs displayed similar patterns. Offices generated the following average maximum results (the results from the sensitivity test with inflated +20% build costs are given in brackets): Prime - £3,100 psm (£2,625 psm); Core - £2,569 psm (£2,115 psm) and Fringe - £1,996 psm (£1,513 psm).
54. The retail development averages were: Prime - £3,407 psm (£3,034 psm); Core - £3,880 psm (£3,405 psm) and Fringe - £1,075 psm (£600 psm).
55. Hotel development averages were: Prime - £3,289 psm (£2,820 psm); Core - £2,036 psm (£1,797 psm) and Fringe - £454 psm (not viable). Nightclubs and casinos generated average maximum rates of well over £1,000 psm.
56. Although there are some variations between the development types, there is a very clear pattern of substantial surpluses available to fund CIL charges in most cases. The Council's decision to apply one set of commercial CIL charges is simple, sensible and supported by the evidence. The actual commercial rates proposed for the Prime (£200 psm), Core (£150 psm) and Fringe (£50 psm) would build in very substantial buffers (between 89 – 97%) and represent only a small element of development costs.
57. The Council's commercial CIL charging proposals have attracted support, along with some challenge. Support was expressed in particular for the reduction (from the PDCS) in the rate applicable to Prime area office developments. A degree of challenge has been expressed in terms of whether the commercial CIL rates should be set higher, given the demands on infrastructure, along with some fears that the rates may encourage commercial uses into areas where they are not desired (i.e. residential neighbourhoods such as Belgravia).

58. My remit is limited to considerations of threats to viability and I find the Council’s proposals to be robust in this respect. The evidence suggests higher rates could be sustained, but the Council has taken a view that its first CIL regime should be suitably cautious. It has also been cognisant of CIL charges set in neighbouring boroughs, albeit this is not required by the relevant legislation. The future level of charges will be a matter that the Council will no doubt consider in its ongoing review (it proposes a two-year review cycle). I consider it most unlikely that the lower (than residential) commercial CIL rates would create unintended influences on the location of development types. CIL will be a relatively limited development cost and is unlikely to play a determining role in landowner and developer decision making.

**Overall conclusions**

- 59. Westminster is a very diverse and intensively developed urban area. The planned growth and development pressures are substantial and complex. The Council’s CIL proposals have been conceived in this context and the supporting evidence reflects the unique nature of the area.
- 60. The evidence demonstrates that the overall planned development of Westminster, as set out in the combined content of The London Plan and WCPSP, will not be put at risk if the proposed CIL charges are applied. Indeed, the evidence demonstrates that, in most cases, the CIL rates would allow substantial viability headroom, which indicates that CIL will not threaten the progress of residential, commercial and mixed-use development schemes coming forward.
- 61. I conclude that, in setting the CIL rates, the Council has used appropriate and available evidence that has informed assumptions about land and development values and likely costs. The CIL is anticipated to achieve an important income stream that will help to address a well evidenced infrastructure funding gap.
- 62. One modification is required to the DCS. This relates to the updating of zoning plans, for clarity and precision. Subject to this modification, I conclude that the Westminster City Council Draft Community Infrastructure Levy Charging Schedule (June 2015) satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended). I therefore recommend that the Charging Schedule be approved.

| <b>LEGAL REQUIREMENTS</b>  |   |
|----------------------------|---|
| National Policy / Guidance | The Charging Schedule complies with national policy / guidance. |

|   |   |
|---|---|
| 2008 Planning Act and 2010 Regulations (as amended) | The Charging Schedule complies with the Act and the Regulations, including in respect of the statutory processes and public consultation, and consistency with The London Plan and Westminster's City Plan and is supported by an adequate financial appraisal. |
|---|---|

*P.J. Staddon* Examiner

Appendix A (attached) – Examiner's Modifications.

## **Appendix A**

Modifications that the Examiner specifies so that the Westminster Draft Charging Schedule may be approved.

| Modification No. | Modification  |
|------------------|---|
| EM1              | <p data-bbox="539 533 847 568"><u>Update Zoning Plans</u></p> <p data-bbox="539 600 1342 703">Replace zoning plans in the June 2015 Draft Charging Schedule with plans containing Ordnance Survey gridlines.</p> <p data-bbox="539 734 1390 770">For the avoidance of any doubt, the zones are unaltered.</p> |



Planning Act 2008 (as amended)  
Community Infrastructure Levy Regulations 2010 (as amended)

**WESTMINSTER COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE**

**[Date]**

**WESTMINSTER CITY COUNCIL  
 PLANNING ACT 2008 (AS AMENDED)  
 COMMUNITY INFRASTRUCTURE LEVY REGULATIONS 2010 (AS AMENDED)**

**CHARGING SCHEDULE**

**The Charging Authority**

Westminster City Council is a charging authority for the purposes of Part 11 of the Planning Act 2008 (as amended) and may therefore charge the Community Infrastructure Levy in respect of development in the City of Westminster.

**Rates**

Westminster City Council intends to charge the Community Infrastructure Levy at the rates shown in Table 1 (expressed as pounds per square metre) in respect of the different types of development in each of the Charging Zones identified in the area of the City of Westminster, as shown on the maps in Appendix 1. **It is important to note that there are different zones for each type of land use identified as being chargeable in Table 1.**

**Table 1: Westminster CIL charging rates (per square metre)**

| 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   |      |        |

The amount to be charged for each development will be calculated in accordance with regulation 40 of the Community Infrastructure Levy Regulations 2010 (as amended) or any provision which amends or replaces it for the purpose of calculating the chargeable amount of CIL payable. For these purposes, the relevant rate (R) is the rate for each land use and charging zone shown in Table 1 above.

This Schedule has been issued, approved and published in accordance with Part 11 of the Planning Act 2008 (as amended) and the Community Infrastructure Regulations 2010 (as amended).

This Schedule was approved by the Council of the City of Westminster on **[TO BE INSERTED ON APPROVAL TO ADOPT A WESTMINSTER CHARGING SCHEDULE]** and takes effect on **1<sup>st</sup> May 2016**.



# CIL Charging Zones Residential



City of Westminster

Page 34

## City of Westminster Community Infrastructure Levy Charging Schedule, 2016

| Area  | Prime | Core | Fringe |
|---|-------|------|--------|
| Residential (including all residential 'C' use classes) | £550  | £400 | £200   |



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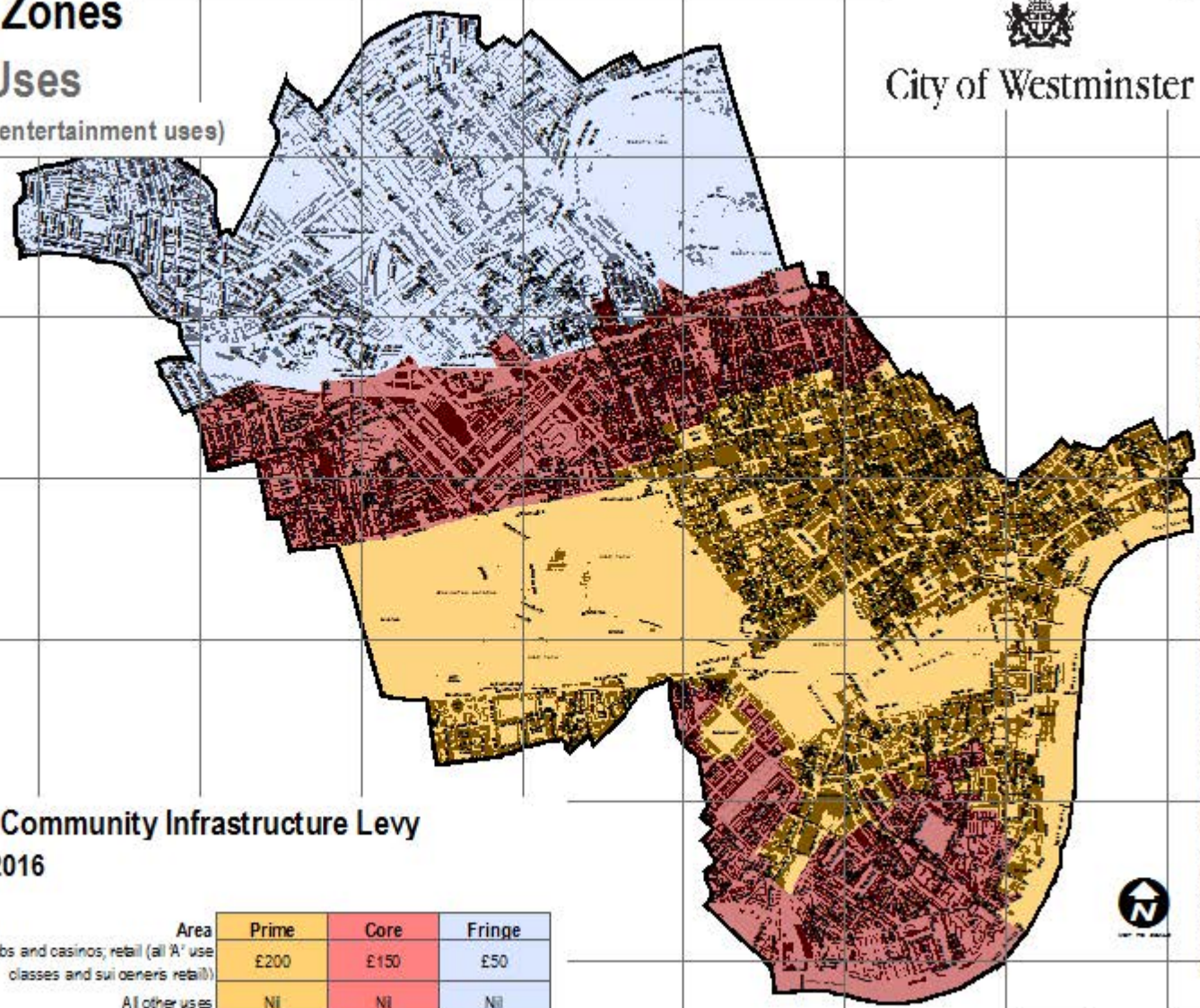
# CIL Charging Zones

## Commercial Uses

(Office, hotel, retail and entertainment uses)



City of Westminster



Page 35

### City of Westminster Community Infrastructure Levy Charging Schedule, 2016

| Area   | Prime | Core | Fringe |
|--|-------|------|--------|
| Commercial (offices, hotels, nightclubs and casinos, retail (all A1 use classes and sui generis retail)) | £200  | £150 | £50    |
| All other uses   | Nil   | Nil  | Nil    |



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## **EXPLANATORY NOTES**

**For the avoidance of doubt, this section does not form part of the Charging Schedule. National government is currently reviewing the CIL legislation and the details given here may change.**

### **Liability to pay CIL**

A chargeable development, for the purposes of determining a CIL liability, is the development for which planning permission is granted. This includes development where planning permission is granted by way of a general consent if it is of a sufficient scale or type which would trigger liability to pay CIL.

CIL will be chargeable on most development of buildings that include an increase of new build floorspace of 100 square metres or more of gross internal (GIA) floorspace. For developments that comprise a residential dwelling the amount of new build floorspace is irrelevant as liability to pay CIL is triggered on any scheme that comprises a residential dwelling whether this is from new build or existing floorspace (although development comprising residential extensions or residential annexes may in some circumstances qualify for an exemption to pay CIL). Notwithstanding, providing that a building has not been left vacant the GIA of any existing buildings on the site which are due to be demolished, or which will form part of the new development, would normally be deducted from the chargeable area (See Regulation 40 of the CIL Regulations 2010 (as amended)).

CIL will not be payable in respect of: development that comprises: buildings in to which people do not normally go; buildings in to which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery; or structures which are not buildings such as pylons and wind turbines.

### **Exemptions, reliefs and payment flexibilities**

Some forms of development are exempt, or can be granted relief, from CIL. In some cases these are mandatory exemptions (for development by charities for charitable purposes, domestic extensions or annexes, for example) or reliefs (for social housing, for instance), all of which must be applied for to the charging authority. There are also a number of discretionary reliefs (for exceptional circumstances, certain types of affordable housing or development by charities for investment purposes, for example) and an option to allow payment of CIL in kind through either the transfer of land or delivery of infrastructure that CIL was intended to fund. The council must decide whether to make these discretionary provisions available in their area and publish policies about how they will be implemented.

### **Calculating the chargeable amount**

The amount to be charged for each development will be calculated in accordance with regulation 40 of the Community Infrastructure Levy Regulations 2010 (as amended) or any provision which amends or replaces it for the purposes of calculating CIL. For the purposes of the formulae in paragraph 5 of regulation 40, the relevant rate (R) is the rate for each specified use in the allocated charging zone as shown in the charging schedule and maps at Appendix 1.

### **Charging Zones**

The charging zones shown in the maps form part of the charging schedule and are included as Appendix 1.

### **How a Westminster Community Infrastructure Levy will be used**

The council will use the sums collected to fund the provision, improvement, replacement, operation or maintenance of infrastructure required to support the development of its area in accordance with the policies set out in its development plan. It will outline the infrastructure projects or types of infrastructure it intends will or may be funded wholly or in part by CIL in a list that will be published alongside the charging schedule. Things on this list, formally published under regulation 123 of the CIL Regulations, may be funded through CIL. Infrastructure not on the list will in general continue to be secured through section 106 planning obligation agreements where appropriate.

### **Indexation**

Cost changes are taken into account when the chargeable amount is calculated as set out in regulation 40 of the CIL Regulations, by reference to the national All-in Tender Price Index figure published by the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors for 1 November of the preceding year.

### **Instalments**

Under the CIL Regulations, the council can decide to put in place a policy allowing payment of CIL by instalment. Such a policy will state the date from which it will operate, the number of instalment payments allowed, the amount or proportion of CIL to be paid in each instalment, the time (to be calculated from the date the development concerned is commenced). It can put a policy in place, replace its policy or withdraw it at any time after it has adopted a CIL.

### **Date of Approval**

This Charging Schedule was approved by the Council of the City of Westminster on **[TO BE INSERTED ON APPROVAL TO ADOPT A WESTMINSTER CHARGING SCHEDULE]** and takes effect on **1<sup>st</sup> May 2016**

### **Legislation**

This Charging Schedule has been published in accordance with Part 11 of the Planning Act 2008 (as amended) and the Community Infrastructure Regulations 2010 (as amended).

### **Further Information**

Further background information on the Community Infrastructure Levy can be found on the council's website (<https://www.westminster.gov.uk/cil>)

Detailed guidance on CIL can also be found on the Government's National Planning Practice Guidance website pages (<http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/>).

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