



City of Westminster

Cabinet Member Report

Decision Maker:	Cabinet Member for the Built Environment
Date:	1 October 2015
Classification:	For General Release
Title:	Approval to appoint an independent examiner and submit to them Westminster's Draft Community Infrastructure Levy (CIL) Charging Schedule for examination in accordance with the CIL Regulations 2010 (as amended)
Wards Affected:	All Wards
Key Decision:	This report requires an executive decision and is therefore included in the publication of the council's statutory executive list of Cabinet Member-level decisions.
Financial Summary:	<p>A charging authority which appoints an independent person for the purposes of an examination must defray the fees and expenses of that person (CIL Regulations 2010 as amended).</p> <p>Upon 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 any expenses incurred prior to the CIL being adopted. To cover CIL set-up costs the council can apply the 5% to the amount collected across the first three years of charging; after this it is applied to the amount collected each year). 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>
Report of:	Julia Corkey, Director of Policy, Performance and Communications.

1. Executive Summary

- 1.1 The Community Infrastructure Levy (CIL) is the government's preferred mechanism for funding, through the planning system, infrastructure that is needed to support development and cumulative growth. It is intended that CIL will replace, in part, the use of Section 106 planning obligations to secure contributions for such infrastructure from new development.
- 1.2 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 would be directed towards projects that the council, in consultation with business organisations (including business improvement districts), local communities and neighbourhoods, considers are required to help accommodate new growth from development.
- 1.3 The council is working towards the adoption of a Westminster CIL in accordance with the Planning Act 2008 and Community Infrastructure Levy Regulations 2010 (as amended). CIL rates are formally set through a legal document called a "charging schedule". The second formal stage in the CIL setting process – consultation on a Draft Charging Schedule (DCS) - closed on the 24th July 2015.
- 1.4 The purpose of this report is to summarise the comments that have been received in response to the DCS, set out the council's proposed response to the DCS and to seek approval for the next formal stage in the process of setting a Westminster CIL – appointment of, and submission of the DCS to, an independent examiner. Under the CIL legislation, before a charging schedule can be adopted the council must appoint an independent person to conduct a public examination of its CIL proposal ("the Examiner"). If the Examiner concludes there are few points of substance involved, the examination may be conducted in writing.
- 1.5 It is likely that the examination of Westminster's CIL will take the form of a public hearing. Anyone commenting on the DCS has the legal right to be heard at the examination. The Examiner must recommend whether the DCS should be approved, approved with specified modifications or rejected. Should the examiner recommend approval of the schedule a Full Council decision is required before the Charging Schedule can be adopted by the council and charging starts.

2. Recommendations

- 2.1 The Cabinet Member for the Built Environment is asked to:
 1. Acknowledge the representations that have been made during consultation on Westminster's Community Infrastructure Levy Draft Charging Schedule

alongside the detailed considerations on the issues raised as summarised in **Appendix 1**.

2. Approve the appointment of an independent examiner from the Planning Inspectorate Service to conduct the examination of the council's Draft Charging Schedule and supporting evidence in accordance with the Community Infrastructure Levy Regulations 2010 (as amended).
3. Agree that, subject to (1) above, no further modifications to the Draft Charging Schedule are required and that the following documents and information now be submitted to an independent examiner in accordance with Regulation 19 of the Community Infrastructure Levy Regulations 2010 (as amended):
 - (i) The Draft Charging Schedule (**Appendix 2**);
 - (ii) A statement setting the number of representations made during public consultation on the Draft Charging Schedule and a summary of the main issues raised by the representations (**Appendix 1**);
 - (iii) Copies of the representations made and;
 - (iv) Copies of the relevant evidence that has informed the preparation of the Draft Charging Schedule (a schedule setting out the documents comprising the relevant evidence is included as **Appendix 3**).
4. Agree that in the event that the Cabinet Member decides to make modifications to the Draft Charging Schedule that delegated authority is granted to the Director of Policy, Performance and Communications to:
 - (i) Make the required modifications to the Draft Charging Schedule;
 - (ii) Publish the statement of modifications in accordance with the Community Infrastructure Levy regulations 2010 (as amended);

3. Reasons for Decision

- 3.1 The council is pursuing the development of a Westminster Community Infrastructure Levy (CIL). It recognises that the CIL Regulations 2010 (as amended) have placed limitations on a local authority's ability to secure funding for infrastructure from development through planning obligations as secured through Section 106 agreements. Because of these restrictions officers have estimated a loss of income in Westminster of up to £2.3 million per annum for infrastructure that would have otherwise been secured through planning obligations. A Westminster CIL on the other hand is estimated to raise approximately £17 million per annum from development to fund infrastructure that is required to support development in the area. Like planning obligations a future CIL income is dependent on developments being implemented and therefore the estimated annual average should be treated with caution given that it could fluctuate significantly in any given year. Notwithstanding, a Westminster CIL will undoubtedly raise more funding over time for infrastructure than has typically been achieved through planning obligations.

- 3.2 The Planning Act 2008 and the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) set out the stages which the charging authority must go through to set their local CIL. Following consultation on a Draft Charging Schedule a charging authority must appoint an independent person ('the Examiner') to examine the draft before it can be formally approved. To move towards the next stages of adopting a Westminster CIL it is therefore imperative that the Council now makes the necessary arrangements to appoint an Examiner.
- 3.3 The charging authority must appoint someone who in the opinion of the authority is independent of the charging authority and has appropriate qualifications and experience. National government guidance suggests that a planning inspector appointed by the Planning Inspectorate (PINS) "is likely to meet these criteria" and in practice most authorities have used this route. Officers have tested the market for other providers but have been unable to find one that could provide an examiner within a reasonable timescale or acceptable cost.

4. Background

Consultation on Westminster's Draft Charging Schedule

- 4.1 To charge a CIL on development in their area a charging authority must produce, and formally approve, a 'charging schedule' (the legal document setting out the CIL rates that will be charged per square metre for different types of land uses and in different parts of the authority's area). This schedule must be supported by evidence to show that a balance has been struck 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. In doing this it must demonstrate that the rates proposed will not have an undue impact on development in the authority's area as envisaged in the local plan. The charging schedule must be the subject of thorough consultation and finally an examination in public by an independent examiner.
- 4.2 On the 4th June 2015 the Cabinet Member for the Built Environment approved the second stage of the development of a Westminster Community Infrastructure Levy (CIL) through the publication of a draft CIL charging schedule (DCS) and supporting evidence for consultation. A copy of the Cabinet Member report that supported this decision, and which set out further detail on the legislative context and process for adopting a CIL, is listed as a background paper.
- 4.3 The DCS sets out the City Council's proposals for charging a Westminster CIL, and was published for consultation in accordance with regulation 16 of the Community Infrastructure Levy Regulations 2010 (as amended). It was informed

by responses to consultation on the preliminary draft charging schedule (PDCS), which was issued for consultation in September 2014. .

- 4.4 In accordance with the CIL Regulations, the council consulted on the DCS for a six week period ending on 24 July 2015. The consultation documents were made available on the council's website, at its main offices and at council libraries. All relevant stakeholders were provided with details on how to access the publications and were invited to make comments.
- 4.5 Some 38 consultation responses were received from interested stakeholders, including the Mayor of London, and a number of landowners and property developers within Westminster, including the Westminster Property Association.
- 4.6 The nature of the responses were varied, however there were some common issues and points raised. It is noted that, unlike the responses to the PDCS, there have been no specific objections to the viability methodology used in determining the CIL rates received by the Council. Some respondents proposed amendments to the charging zone boundaries or rates but no viability evidence has been put forward in support of these changes. The Mayor of London has issued a 'holding response' pending further discussions with the Council. It is anticipated that these will be held imminently but it is not thought that the Mayor will raise any matters for objection that will be required to be dealt with at the examination.
- 4.7 Full details of the consultation responses received, along with officer's considerations on the matters raised, is included at Appendix 1. In summary this includes:
 - Westminster Property Association and business groups (including NVEC, Heart of London) have not raised any significant concerns but have emphasised the desire to be involved in discussions around the governance of CIL expenditure including, in the case of Business Improvement Districts, in relation to neighbourhood CIL funding.
 - Berkeley Group (represented by Turley), Grosvenor and Great Western Developments (represented by Dentons) and The Church Commissioners (represented by Deloitte) are the only respondents that have explicitly suggested lower or zero rates for different types of development or changes to the charging zones proposed. However, none of these representations include any viability evidence in support of the points they have raised.
 - The Mayor's officers have submitted a holding response. This confirms that our rates take account of the Mayor's CIL (a legal requirement) but suggests that they need to give further consideration of the viability evidence to ensure compliance with London Plan policies. Transport for London have not raised

any objections and expressed a desire to continue to work collaboratively in transport infrastructure delivery.

- Neighbourhood forums have highlighted that they want the council to 'agree' with them the allocation of any neighbourhood proportion of CIL funding (which is up to 25% of CIL in neighbourhoods with an adopted neighbourhood plan and 15% capped at £100 per dwelling for other neighbourhoods). For areas that are not covered by a Parish Council government guidance advises the CIL charging authority should engage with local communities and agree with them how this neighbourhood portion of CIL should be spent. There is not however a legal duty to transfer the funding to the neighbourhood as there is for areas covered by a Parish Council, nor does the guidance either explicitly or implicitly give neighbourhoods the final decision on how the funds are spent.
- Churchill Gardens is currently located within the 'fringe' charging zone and residents have raised concerns about the impact that they consider this could have on their estate. Residents are concerned that this could act as an incentive to development in their area and believe that the value of property should determine that the estate is located in a higher value zone. CIL rates must be dictated by viability evidence and cannot be set against whether an authority is seeking to encourage or discourage development in a particular location. In light of this officers have considered further evidence on residential values in this area which support the proposals to include the area within the 'fringe' charging zone.
- Although Westminster Property Association have not made any substantive points on the DCS they have suggested that CIL charging should start from the 1st April 2016 as "seeking to introduce this at the end of the year, over the Christmas period, is likely to cause considerable uncertainty for schemes that have been developed, and appraised, in a pre-Westminster CIL environment. Targeting the 1st April 2016 would provide a smoother path to implementation".
- Concerns were raised about the clarity and certainty of the likely extent of planning obligations once CIL is adopted: A number of respondent raised concerns about the lack of certainty on the 'residual' section 106 requirements and the potential for double dipping. A number of respondents elected to reserve comment on this issue pending the consultation on the planning obligations Supplementary Planning Document (SPD). Since consulting on the DCS the council has published a 'Draft Supplementary Planning Document: Use of planning obligations and other planning mechanisms'. The consultation on the draft SPD ended on the 25th September 2015 and any proposed changes to it will be made available alongside an examination of the DCS.

- Several respondents have urged the council to adapt the current system of public realm credits to enable operation in a CIL context. The public realm credit system has allowed developers to forward fund priority public realm improvement works, which are then reimbursed by the council (where agreed by a planning committee) by offsetting the contribution against a future requirement (linked to the grant of planning permission) to contribute towards public realm improvements in the same area as those funded through their original contribution. Whilst this issue is not relevant to the determination of CIL rates the council has indicated that it intends to investigate bringing forward a process which would allow a developer to either deliver or forward fund a piece of CIL infrastructure and be reimbursed from CIL receipts.

4.8 In taking account of the matters that have been raised in response to the consultation on the DCS officers are of the view that no further modifications to the DCS are required prior to its submission to an independent examiner. This is because no substantive issues have been raised that evidence that the council has failed to set its CIL rates in accordance with the CIL regulations 2010 (as amended). Those points that have been made are not supported by viability evidence.

4.9 In updating the relevant evidence to support the development of the DCS the council has already sought to address the issues that were raised in the first round of consultation. There have been no new substantive matters brought forward that undermine the council's evidence base or that dictate the CIL rates proposed would have an undue impact on the viability of development across Westminster. Officers consider, therefore, that the relevant evidence supporting the DCS will enable an examiner to determine that the council has struck the required 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 and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.

4.10 On the basis of the above the Cabinet Member for the Built Environment is asked to agree that no further modifications to the Draft Charging Schedule are required and that the following documents and information can now be submitted to an independent examiner in accordance with Regulation 19 of the Community Infrastructure Levy Regulations 2010 (as amended):

- The Draft Charging Schedule (**Appendix 2**);
- A statement setting the number of representations made during public consultation on the Draft Charging Schedule and a summary of the main issues raised by the representations (**Appendix 1**);
- Copies of the representations made and;
- Copies of the relevant evidence that has informed the preparation of the Draft Charging Schedule. A schedule of the relevant evidence is included as

Appendix 3 and comprises documents that have previously been approved by the Cabinet Member for the Built Environment for consultation.

- 4.11 Should the Cabinet Member for the Built Environment decide that modifications are required prior to the submission of the DCS to an examiner the following further stages of preparation would need to be undertaken before the charging schedule could be formally submitted:
- Produce a statement of modifications setting out the changes that have been made to the DCS since it was published for consultation.
 - The statement of modifications must be published on the council's website and issued to consultation bodies along with a notification that they may request to the charging authority that they be heard by the examiner on the modifications. This request must be made within 4 weeks of the date that the DCS is submitted to the Examiner. The practicality of this is that the statement of modifications must be issued to consultation bodies before all documents are submitted to the Examiner.

The publication of a statement of modification therefore presents the opportunity for new matters to be raised by consulting parties prior to the examination of the schedule.

- 4.12 In the event that the Cabinet Member for the Built Environment is minded to include modifications to the DCS it is recommended that delegated authority is granted to the Director of Policy, Performance and Communications to make the required modifications, publish the statement of modifications and to appoint an independent examiner to examine the schedule. This is required to ensure that an examiner can be appointed at the earliest opportunity and that the timetable for adoption of a Westminster CIL is not put at risk.

The appointment of an independent 'Examiner'

- 4.13 In order to move to the next stage in the development of a Westminster CIL the council must now make the necessary arrangements to appoint an examiner to undertake the examination of the DCS (with or without modifications). The council must appoint someone who in the opinion of the authority is independent of the charging authority and has appropriate qualifications and experience.
- 4.14 The Examiner must consider any representations made on the DCS alongside the relevant available evidence. In taking account of the information submitted the Examiner must recommend whether the schedule be approved, approved subject to recommendations or rejected. The authority may then only approve a charging schedule if the Examiner recommends approval or, where modifications are recommended, the authority has had regard to them. Subject to the representations received the Examiner may choose to undertake the examination in writing or at a public hearing where those who have made representations may be heard.

- 4.15 Officers have liaised with parties who have the necessary qualifications and experience of undertaking CIL examinations. In addition to the Planning Inspectorate officers identified one private sector supplier - Trevor Robert Associates. Whilst Trevor Robert Associates did have an examiner with relevant central London experience he was not available for a hearing until mid to late January 2016. Officers consider that this would involve an undue delay in progressing towards the adoption of a Westminster CIL and that it would inevitably push an adoption date beyond April 2016. Officers have also explored the appointment of a barrister from chambers who specialises in this field however they have indicated that they would require a specialist viability assessor to sit alongside the examiner, which would both increase the cost and delay.
- 4.16 On the basis of the above it is recommended that an examiner from the Planning Inspectorate is appointed to undertake the examination of Westminster's DCS. The DCS and supporting documentation will then be formally submitted. Under the CIL Regulations the council will then make copies of the submitted documents available for public inspection and publish them on its website. Officers will also notify all of those who made comments on the DCS that it has been submitted for examination.
- 4.17 After submission, the timetable for holding the examination is in the hands of the Examiner. The Planning Inspectorate's service level agreement suggests that they will aim to ensure that an examination is held approximately ten weeks after submission.
- 4.18 Before a CIL Schedule can be adopted it must be considered and approved at a meeting of Full Council. It is anticipated that, subject to a timely examination and that the schedule is not rejected, the schedule could be presented to a meeting of Full Council on either the 20th January or the 2nd March 2016.

5. Financial Implications

- 5.1 From 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 future 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.
- 5.2 Adoption of a CIL would both address this shortfall, and be likely to generate significant additional resources to help fund the infrastructure required to support

development and growth in the City. The yield from CIL is dependent upon planning applications and work starting on site. It has been estimated that had the proposed CIL been applied to the previous 8 years implemented developments that the impact would have been to generate an annual average of £17.5 million in receipts. This is a significant increase above the financial receipts received through Section 106 planning obligations for infrastructure.

- 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 8 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 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, including any expenses in the three year period incurred before the CIL is adopted. This includes costs associated with the examination of the Council's Draft Charging Schedule. The estimated administrative proportion of a Westminster CIL is £875k and the Mayoral CIL £125k, giving a total amount of around £1 million each year. Some of the basic machinery for CIL collection has already been put in place to implement the Mayoral CIL. 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 (both as amended). The associated Government National Planning Policy Guidance is also important in guiding this process.
- 6.2 Further legislative reforms to the CIL regulations are expected in 2015/16 as part of a whole scale review of CIL by government.
- 6.3 The Director of Law has considered this report and is satisfied that the proposed arrangements for the appointment of the Examiner comply with the requirements of the Community Infrastructure Levy Regulations 2010 (as amended)

8. Consultation

- 8.1 As explained in the body of this report, the recommendations have been informed by the responses to consultation on the CIL

8.3 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 CIL have been 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 A Westminster CIL is being developed 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 number of liable applications increase and the council moves forward to adopt its own CIL. It is most likely that any additional resources could be funded through the 5% administration retained by the council from the collection of its own CIL.

Appendices

Appendix 1 Summary of the main issues raised in the representations to the Draft Charging Schedule (CIL Regulation 19 statement)

Appendix 2 Westminster Community Infrastructure Levy: Draft Charging Schedule (2015)

Appendix 3 Schedule of relevant evidence that has informed the preparation of Westminster's Community Infrastructure Levy Draft Charging Schedule

Background Papers

1. Report to the Cabinet Member for the Built Environment dated 19th May 2015 and entitled 'Approval to publish and issue for consultation a Draft Charging Schedule (DCS) as part of the process for setting Westminster's Community Infrastructure Levy (CIL)'

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 / 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: _____

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:

Approval to appoint an independent examiner and submit to them Westminster's Draft Community Infrastructure Levy (CIL) Charging Schedule for examination in accordance with the CIL Regulations (2010 and as amended)

and reject any alternative options which are referred to but not recommended.

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.