



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