

# BIRMINGHAM CITY COUNCIL

## PUBLIC REPORT

<b>Report to:</b>	<b>CABINET</b>
<b>Report of:</b>	<b>Director Planning and Regeneration</b>
<b>Date of Decision:</b>	<b>27th July 2015</b>
<b>SUBJECT:</b>	<b>ADOPTION OF THE COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE</b>
<b>Key Decision: No</b>	<b>Relevant Forward Plan Ref: N/A</b>
<b>If not in the Forward Plan: (please "X" box)</b>	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
<b>Relevant Cabinet Members:</b>	Cllr Tahir Ali, Cabinet Member for Development, Transport and the Economy. Cllr Ian Ward, Deputy Leader
<b>Relevant O&amp;S Chairman:</b>	Cllr Victoria Quinn, Economy, Skills and Sustainability Overview and Scrutiny Committee
<b>Wards affected:</b>	<b>All</b>

<b>1. Purpose of report:</b>
1.1 To seek approval to adopt the Community Infrastructure Levy (CIL) and for the CIL Charging Schedule to take effect on Monday 4 <sup>th</sup> January 2016.

<b>2. Decision(s) recommended:</b> That Cabinet:-
2.1 Approves this report and agrees to recommend the adoption of the Community Infrastructure Levy Charging Schedule.
2.2 Recommends to City Council that the Community Infrastructure Levy Charging Schedule be adopted and commence on Monday 4 <sup>th</sup> January 2016.

<b>Lead Contact Officer(s):</b>	Ian MacLeod/Hayley Anderson
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### **3. Consultation**

#### **3.1 Internal**

The CIL Regulations 2010 (as amended) outlines the stages which must be followed in order to adopt a CIL. As part of a two stage public consultation and an Examination in Public process (set out in Section 5), reports have been presented and approved by Cabinet to allow publication of Preliminary Draft and Draft CIL charges. Officers have also attended Economy and Transport Overview and Scrutiny Committee in relation to the draft charging schedule (17<sup>th</sup> October 2014) and sought comments from services including Education, Leisure, Transportation, Housing and Legal Services involved in current Town and Country Planning Act 1990 (TCPA) Section 106 (S106) processes.

#### **3.2 External**

The CIL Regulations 2010 (as amended) outlines the stages which must be followed in order to adopt a CIL. Both consultations were available online with direct links to an online consultation portal (Objective and Be Heard). Emails were sent notifying statutory consultees such as adjoining authorities as well as interested parties, working groups etc advising them of the consultation processes and dates. Throughout the Examination in Public, a dedicated Programme Officer (in line with the Regulations) acted as a conduit between the City Council and the public and all documents were available on line and in print.

### **4. Compliance Issues:**

#### **4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?**

The CIL is a mechanism to secure funding to contribute to the infrastructure needed to support the growth of the city and the implementation of the Birmingham Development Plan (BDP). CIL will contribute towards the overarching objectives of the Councils Business Plan and Budget 2015 plus specifically a 'Green and Sustainable City' and 'Infrastructure Development and Smart City'.

#### **4.2 Financial Implications**

**(Will decisions be carried out within existing finance and Resources?)**

4.2.1 Once adopted, the CIL, as a mandatory charge, has the potential to generate funds for the City Council which can be used to support the provision of infrastructure required to support growth within Birmingham. The CIL will also generate funds which can be used to provide strategic infrastructure across the whole of the city whilst changes in the law governing TCPA S106 agreements mean, (from April 2015), the City Council can only secure TCPA S106 obligations which relate directly to the development site. The CIL will provide greater flexibility than the existing TCPA S106 mechanism, as it will allow the City Council to utilise the CIL infrastructure funds where there is greatest need. The CIL will be reviewed within three years to ensure charges reflect development viability.

4.2.2 The process for determining where CIL money is spent, in accordance with overall corporate priorities, will be incorporated into the City Council's annual budget report. These priorities will be based upon the Regulation 123 list (CIL Regulations 2010 as amended) which defines the City Council's Infrastructure priorities as reported to Cabinet (see Cabinet report 15<sup>th</sup> September 2014). Revenue from CIL is estimated to be in line with current S106 contributions which are around £3million per annum but CIL provides greater flexibility on where it is spent.

- 4.3 Legal Implications  
Under the Planning Act 2008, a Local Authority is enabled but not required to adopt a CIL. The detailed requirements and procedures which must be followed in preparing a CIL are set out in the Planning Act 2008 (Chapter 29, Part II) and in the Community Infrastructure Levy Regulations 2010, as amended.
- 4.4 Public Sector Equality Duty (see separate guidance note)  
In overall terms the CIL has been assessed as having a positive impact on the promotion of equality. By providing essential investment in infrastructure across the city, it will help create opportunity for all. (EA ref: DE0912CL)  
As stated in Department for Communities and Local Government (DCLG) guidance, Charging Schedules will not require a Sustainability Appraisal.

## **5. Relevant background/chronology of key events:**

- 5.1 CIL is a mandatory charge per square metre on certain developments to support the provision of infrastructure needed to support growth in the city. The CIL Regulations 2010 (as amended) outlines the stages which must be followed in order to adopt a CIL. These regulations also clarified the future role of TCPA S106 agreements, and it became apparent that in order to continue to secure income via planning obligations, the City Council would need to adopt a CIL.
- 5.2 In early 2012, external consultants GVA were appointed to examine the viability of different types of development across the city and propose CIL charges for public consultation. This Preliminary Draft Charging Schedule was approved by Cabinet for public consultation for a period of eight weeks during December 2012 and January 2013. This consultation also included specific meetings with the development sector and public drop in sessions.
- 5.3 Taking account of comments received, a revised set of charges was published for public consultation for six weeks from September 2014 to November 2014. This consultation again followed Cabinet approval.
- 5.4 The charges proposed in the Draft Charging Schedule were more favourably received, and were duly submitted for Examination on 4th February 2015, unaltered.
- 5.5 The Examination in Public was held on 30<sup>th</sup> April 2015 and the City Council has now received the Examiner's report. The report is to be welcomed and concludes that the proposed charges "provide an appropriate basis for the collection of CIL in our area", and that "CIL will secure an important funding stream for infrastructure necessary to support the planned growth in the city". Only two minor modifications are proposed by the Examiner. The first is a clarification that all Use Class C2 development will be zero rated for CIL purposes. The second is to increase the retail convenience size threshold at which CIL would apply, from 2,000 sq.m. to 2,700 sq.m.
- 5.6 The Examiner suggests that the CIL charges are reviewed within three years of adoption to ensure the charges remain appropriate and relevant. It should also be noted that we are one of the first (and few) local authorities to receive approval to commence charging our CIL in advance of an adopted Development Plan which is testament to the detail contained within the draft Birmingham Development Plan.

**5.7 Next Steps**

Section 213 of the Planning Act 2008 (as amended) states that a Charging Authority must approve a Charging Schedule at a meeting of the authority and by a majority of votes of Members present. Following this approval, the City Council intends for CIL to take effect on Monday 4<sup>th</sup> January 2016 and CIL will be charged on all relevant applications at the time planning permission first permits development (i.e. when the Planning Decision Notice is issued), irrelevant of submission date.

**6. Evaluation of alternative option(s):**

- 6.1 To do nothing – This would result in a loss of funding for infrastructure provision across the city as the scope of TCPA S106 agreements will be reduced.

**7. Reasons for Decision(s):**

- 7.1 To secure a source of funding for infrastructure provision to enable Birmingham to grow in line with the Birmingham Development Plan.

**Signatures****Date**

Cllr Tahir Ali  
Cabinet Member for  
Development, Transport and  
the Economy

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Cllr. Ian Ward,  
Deputy Leader

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Waheed Nazir  
Director Planning &  
Regeneration

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**List of Background Documents used to compile this Report:**

- Relevant Officer's file(s) on the matter save for confidential documents.
- Community Infrastructure Levy – Preliminary Draft Charging Schedule Consultation 29 October 2012
- Community Infrastructure Levy – Draft Charging Schedule Consultation 15 September 2014

**List of Appendices accompanying this Report (if any):**

1. CIL Charging Schedule
2. CIL Examiner's Report
3. Equality Analysis

**Report Version****Dated**

15 July 2015

## **PROTOCOL PUBLIC SECTOR EQUALITY DUTY**

- 1 The public sector equality duty drives the need for equality assessments (Initial and Full). An initial assessment should, be prepared from the outset based upon available knowledge and information.
- 2 If there is no adverse impact then that fact should be stated within the Report at section 4.4 and the initial assessment document appended to the Report duly signed and dated. A summary of the statutory duty is annexed to this Protocol and should be referred to in the standard section (4.4) of executive reports for decision and then attached in an appendix; the term 'adverse impact' refers to any decision-making by the Council which can be judged as likely to be contrary in whole or in part to the equality duty.
- 3 A full assessment should be prepared where necessary and consultation should then take place.
- 4 Consultation should address any possible adverse impact upon service users, providers and those within the scope of the report; questions need to assist to identify adverse impact which might be contrary to the equality duty and engage all such persons in a dialogue which might identify ways in which any adverse impact might be avoided or, if avoidance is not possible, reduced.
- 5 Responses to the consultation should be analysed in order to identify:
  - (a) whether there is adverse impact upon persons within the protected categories
  - (b) what is the nature of this adverse impact
  - (c) whether the adverse impact can be avoided and at what cost – and if not –
  - (d) what mitigating actions can be taken and at what cost
- 6 The impact assessment carried out at the outset will need to be amended to have due regard to the matters in (4) above.
- 7 Where there is adverse impact the final Report should contain:
  - a summary of the adverse impact and any possible mitigating actions (in section 4.4 or an appendix if necessary)
  - the full equality impact assessment (as an appendix)
  - the equality duty – see page 9 (as an appendix).

## Equality Act 2010

The Executive must have due regard to the public sector equality duty when considering Council reports for decision.

The public sector equality duty is as follows:

1	<p>The Council must, in the exercise of its functions, have due regard to the need to:</p> <ul style="list-style-type: none"><li>(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Equality Act;</li><li>(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;</li><li>(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.</li></ul>
2	<p>Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none"><li>(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;</li><li>(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;</li><li>(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.</li></ul>
3	<p>The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.</p>
4	<p>Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:</p> <ul style="list-style-type: none"><li>(a) tackle prejudice, and</li><li>(b) promote understanding.</li></ul>
5	<p>The relevant protected characteristics are:</p> <ul style="list-style-type: none"><li>(a) age</li><li>(b) disability</li><li>(c) gender reassignment</li><li>(d) pregnancy and maternity</li><li>(e) race</li><li>(f) religion or belief</li><li>(g) sex</li><li>(h) sexual orientation</li></ul>