

Report of: Director of City Development

Report to: Executive Board

Date: 9th October 2013

Subject: The Community Infrastructure Levy – Draft Charging Schedule

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No ALL
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

- Members are familiar with the Community Infrastructure Levy (CIL), and are aware that in Leeds we are working towards a target of adoption of the CIL by April 2014. Following Executive Board approval, the next stage is to consult on the Draft Charging Schedule from October 2013. The Draft Charging Schedule is effectively the Council's final proposal which will go to examination. Any representations received at the next stage of consultation will therefore not result in the Council making changes to the Charging Schedule but will be discussed during the examination.
- Development Plan Panel on 2nd July 2013 considered a summary of the responses and key issues which arose from the consultation on the CIL Preliminary Draft Charging Schedule. Development Plan Panel on 27th August considered an explanation of the changes which are now proposed following the Preliminary Draft consultation, including reference to further background information and analysis. The recommended changes are outlined at the relevant place in this report.
- The appendices contain the proposed Draft Charging Schedule, the Council's detailed response to all the representations on the Preliminary Draft, further evidence and justification documents including on retail rates and evolution of the housing zones, and the Draft Regulation 123 List.
- This report does not make any recommendations on spending priorities or local apportionment, other than explain the relationship with the Regulation 123 List, as these are separate matters and not directly concerned with the approval of the Charging Schedule itself.

Recommendations

5. Executive Board is requested to:

- i) Agree the content of the Draft Charging Schedule, in order to proceed with publication and 6 weeks of formal public consultation.
- ii) Agree the scope of the evidence base and associated documents supporting the setting of the CIL rates, including the Regulation 123 List.
- iii) Agree to submit the Draft Charging Schedule to the examiner after the close of the consultation in accordance with the CIL Regulations.

1 Purpose of this report

- 1.1 This report gives an explanation of the changes to the CIL Draft Charging Schedule which are now proposed following the Preliminary Draft consultation, including reference to further background information and analysis
- 1.2 The Draft Charging Schedule and associated evidence documents are provided as appendices.

2 Background information

- 2.1 The Community Infrastructure Levy Regulations 2010 (amended 2011, 2012, 2013) set out that a charging authority can choose to charge the CIL on new development in its area. The charges must be set out in a Charging Schedule, and must be based only on viability evidence. The CIL Regulations have also changed the use of S106 planning obligations and from April 2014 it will no longer be possible to secure S106s for District wide requirements such as greenspace, transport schemes and education facilities. There is a strong indication from CLG that this date may be moved to April 2015, however, until formal confirmation of this City Council officers are still aiming for April 2014.
- 2.2 The Leeds CIL Preliminary Draft Charging Schedule consultation closed on 15th May 2013. Development Plan Panel on 2nd July 2013 was presented with a summary of the responses and key issues which arose from the consultation and on 27th August considered the matters in this report.

3 Main issues

- 3.1 During the consultation period 51 written responses were received from a wide range of businesses, community groups, individuals, agencies and residents. Overall the comments received were very useful in requiring officers to look closely at the different components of the Charging Schedule and reaffirm or refine the approaches taken. Officers have completed the detailed responses to the individual representations and the issues raised, and are confident that the overall approach taken by the Council in preparing the CIL is in line with the Guidance and Regulations. The majority of representations are not considered to require any changes to the Draft Charging Schedule. A detailed breakdown of all the representations and the Council's suggested response is included at Appendix 4. The table below gives a summary of the type of respondents.

Type of representor	Total
Community group	2
Consultancy	2
Countryside consortium	2
Developer	15
Developer consortium	3
Infrastructure provider	5
Local authority	3
Parish Council	4
Resident	4
Supermarket	5
Other: English Heritage, Homes and Communities Agency, Environment Agency, Natural England, Yorkshire Wildlife Trust, Leeds Teaching Hospitals Trust	6
	51

- 3.2 As set out in previous reports, the key findings of the CIL Economic Viability Study (GVA, January 2013) are the suggested maximum CIL rates which could be set across a range of development types and areas. Other evidence is then used alongside to justify the appropriate level to set the rates. This is a matter of judgement for the Council, bearing in mind that it must balance the aims to both gain funding to make a contribution towards the infrastructure needed to support growth and thereby contribute positively towards the delivery of the Core Strategy, but to not set the rates so high that they could threaten the viability of growth and development as a whole. "Charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area. Charging authorities should show, using appropriate available evidence... that their proposed charging rates will contribute positively towards and not threaten delivery of the relevant Plan as a whole" (Para. 30, CIL Guidance 2013).
- 3.3 The Community Infrastructure Levy Regulations 2010 (amended 2011, 2012, 2013) set out that a charging authority can choose to charge the CIL on new development in its area. The charges must be set out in a Charging Schedule, and must be based only on viability evidence. The CIL Regulations have also changed the use of S106 planning obligations and from April 2014 it will no longer be possible to secure S106s for District wide requirements such as greenspace, transport schemes and education facilities. There is a strong indication from CLG that this date may be moved to April 2015, however, until formal confirmation of this City Council officers are still aiming for April 2014.

Residential Zones

- 3.3 No changes are proposed to the residential rates except for the £24 psm Outer zone to be £23 psm to reflect a calculation error in the previous 10% reduction.
- 3.4 Executive Board previously agreed the principle of the five residential CIL zones and their general extent. Additional evidence for this is explained in the 'Evolution of Housing Charging Zones' justification paper in Appendix 3. This explains in detail how the boundaries have altered over time, including why they differ from the zones used for previous studies and affordable housing boundaries. In considering the consultation responses, including assessment by GVA, some

changes are now proposed to the residential zone boundaries. These are discussed in greater detail in the justification paper. In summary:

- Land to east of Garforth and Micklefield now in South (£45 psm) with boundary with the North (£90 psm) moved northwards along the M1/A1.
- South (£45 psm) extended to include all of the former Outer Central area to the west and north of the City Centre/Inner Area i.e. Pudsey around to Roundhay.
- Outer (£23 psm) boundaries around Middleton extended outwards to the A6110 / railway line to the southwest, and the M62 / M1 to the southeast.
- East Leeds Extension (ELE) moved into Outer (£23 psm) from Outer North (£90 psm).

- 3.5 In particular, in recognition of the significant S106 costs for the ELE which will remain over and above any CIL charge, although it was previously in the £90 psm Northern zone, it is now proposed to move it into the adjoining £23 psm Outer zone. Alongside the CIL the ELE is envisaged to include a S106 contribution (potentially via a roof tax) to the East Leeds Orbital Road estimated in total as £65m, other highways works, two to three primary schools, new bus stops and bus routes, and travel plan requirements including Metrocards. As an example, the Northern Quadrant scheme for 2,000 houses is to provide a two form entry primary school, a £3.56m secondary school contribution, a contribution to the ELE Integrated Public Transport Strategy, new bus stops, travel plan requirements including a co-ordinator post of £192k, Metrocards, a new bus subsidy of up to £1.2m, works to a number of junctions on the existing outer ring road, and longer term improvements to Junction 46 of the M1. As a consequence the CIL rate needs to reflect these costs, which is why it is set at £23 psm otherwise there is the possibility that it would undermine this key area of housing growth for the City.

Retail rates

- 3.6 We are in a rapidly changing retail market including the continuation of chains going into administration, an increasing move to online stores including a greater use of the internet for supermarket shops; a reduction in the weekly supermarket spend, and the sector overall rationalising its store presence. The major food retailers have cut back on their requirements in 2013 as a result of the recession (i.e. since the publication of the Viability Study), and LCC Asset Management consider that there has been a general drop of about 30% of the prices that they are now prepared to pay. This is borne out by the 2012 annual reports showing e.g. a drop in pre-tax profits of 14.5% for Tesco, 7% for Morrisons, and 1.4% for Sainsbury's. In particular this is the first drop in annual profits for Tesco since the 1990s, which has also written down £804m of its UK property portfolio.
- 3.7 The Council needs to await the impact of Trinity and Victoria Gate in the City Centre, and recognise that supermarkets often function as enabling development for other uses. A number of representations also asserted that the proposed rates would be unviable. The Guidance does recognise that not all developments will be viable under a CIL regime and that rates should not be set by reference to individual developments. However, in particular for town and City Centre brownfield sites unless the CIL is set at a reasonable rate, it may continue to be more profitable to maintain a site in other uses such as parking. The relationship with business rates also needs to be considered; the rates for City Centre offices range from £66 psm to £132 psm per year, with a King Street office paying £16k

per year and an office in 1 Wellington Place paying £95k per year. Examples of large format retail rates are £71 psm for the Holt Park Asda (£360k per year) and £66 psm for the City Centre Primark (£456k per year).

- 3.8 Taking all these considerations into account it is therefore considered appropriate and necessary to provide more of a viability cushion to this sector as a whole. The Preliminary Draft Charging schedule proposed rates for any new retail above 500 sqm of £158 in the City Centre and £248 outside it. The 'Further Evidence on Retail Rates' justification paper provided in Appendix 3 sets out the modelling and calculations which has been undertaken for specific schemes such as Victoria Gate and the Middleton Asda to determine what revised rates would be appropriate. It is now proposed to respond to the concerns by separating out the different retail categories into convenience and comparison, increasing the minimum size for comparison retail from 500 sqm to 1,000 sqm, and reducing the rates especially for comparison retail.

City Centre Office Rates

- 3.9 The City Centre office rate was reduced from the potential maximum of £100 psm suggested in the Viability Study down to £40 psm in the Preliminary Draft. Following representations received and again such factors as the current office market, in considering the balance it is proposed to slightly reduce it to £35 psm.

Other Changes

- 3.10 Appendix 4 contains the full table of 'Leeds City Council Responses to Representations on the CIL Preliminary Draft Charging Schedule'. The only other change as a result of specific comments made is that the instalments policy provides an additional bracket for CIL payments of over £500,000 and spreads payment over a longer period for larger developments.

Proposed Draft Charging Schedule

- 3.11 Appendix 1 is the Draft Charging Schedule which includes an explanation of the CIL. For clarity, the charges and the residential zone map are set out below.

Type of development in Leeds	CIL Charge per square meter
Residential – City Centre	£5
Residential – Inner	£5
Residential – Outer	£23
Residential – South	£45
Residential – North	£90
Convenience Retail ≥ 500 sqm in City Centre	£110
Convenience Retail ≥ 500 sqm outside of City Centre	£175
Comparison Retail ≥ 1,000 sqm in City Centre	£35
Comparison Retail ≥ 1,000 sqm outside of City Centre	£55
Offices in City Centre	£35
Development by a predominantly publicly funded or not for profit organisation, including sports and leisure centres, medical or health services, community facilities, and education	Zero
All other uses not cited above	£5 /sqm

Comparison with Other Authorities

3.12 To aid comparison the table below gives examples of proposed rates in some other authorities. Harrogate is the only authority in the LCR to have published proposed rates, although Bradford and Kirklees are close to publishing their Preliminary Draft rates. Of the core cities Preliminary Draft rates have not yet been published for Liverpool, Manchester, or Nottingham. Although the CIL does not have the same legal 'Duty to Cooperate' requirement as the Core Strategy, since 2011 there have been officer meetings with neighbouring authorities/LCR on progress, joint working, and cross-boundary implications. This work is ongoing and officers are confident that the draft rates are appropriate for each authority.

	Stage	Retail	Residential	Office
Leeds	<i>Preliminary</i>	<i>Above 500 sqm £248 in CC, £158 elsewhere</i>	<i>£5, £24, £45, £90</i>	<i>£40 CC</i>
Leeds	Proposed Draft	Convenience above 500 sqm in CC £110, elsewhere £175 Comparison above 1000 sqm in CC £35, elsewhere £55	<i>£5, £23, £45, £90</i>	<i>£35 CC</i>
Harrogate	Preliminary	£200 supermarkets, £120 retail warehouse	£45 and £85	Zero
Birmingham	Preliminary	£380 supermarkets over 5000 sqm, £150 all other retail	£115 and £55	£55 CC core, £25 CC fringe, £15 elsewhere
Plymouth	Adopted	£100 superstores, all other exempt	£30 and £zero	zero
Bristol	Adopted	£120	£50 and £70	zero
Portsmouth	Adopted	£53 and £105	£105 per square metre	zero
Sheffield	Preliminary	£60 in CC, Meadowhall, major schemes	£20, £30, £50, £100	zero
Newcastle	Preliminary	zero, £80, £128	zero, £16, £88	£64 CC
Liverpool	-	Not yet commenced	-	-
Manchester	-	Not yet commenced	-	-
Nottingham	-	Not yet commenced	-	-

Spending and Apportionment and the Regulation 123 List

3.13 It should be noted that all detailed decisions on spending and priorities are not the subject of this report. There are various options available to the Council in deciding such matters, which need to be discussed in more detail and with a greater range of partners. This will be a separate workstream to the adoption of the CIL Charging Schedule.

3.14 A broad projection of possible future CIL revenue has been undertaken which shows it to be around £6.8m per year for the first few years. Of this figure, new housing (at full Core Strategy targets) could raise approximately £3.14m in 2014 going up to £7.05m in 2019 (due to the level of extant permissions which exist prior to the CIL being adopted). This is higher than current S106 average receipts of £3.5m per year. However, it does not take into account where schemes would not be liable for CIL due to conversion or demolition, which would reduce the total

accordingly. For non-residential floorspace the annual CIL could be £1.75m (based on projecting forwards the completions as set out in the Authority Monitoring Report 2012) although again this does not reduce revenue to take into account where CIL will not be liable due to conversion/ demolition.

- 3.15 As required by the Regulations, a 'funding gap' has been demonstrated for which the CIL would be suitable to contribute towards. This is based on the Infrastructure Delivery Plan and in summary an overall funding gap of £1.24 billion is identified for the Leeds District up to 2028. This is provided in Appendix 3 and is an update of the funding gap paper which supported the Preliminary Draft Charging Schedule.
- 3.16 Clearly therefore the CIL is only a modest contributor, and the entire CIL revenue will not fund even the necessary new school places from new development, let alone all the other infrastructure needs across the District such as greenspace. Spending expectations therefore need to be managed at both Council and community level. The CIL will be a part of the wider Council funding package that also includes New Homes Bonus and retained business rates. It must however be noted that at present the current S106 regime also does not cover the full infrastructure costs of new development. Using education as an example, S106 payments are only taken on schemes above 50 dwellings, which only contribute to school requirements from new growth not to the growth from the existing population which is the key current pressure, and the payments are negotiable if there are viability issues. Whereas under the CIL all sized schemes will contribute, and it is non-negotiable.
- 3.17 The spending issue relating to the Charging Schedule is the Regulation 123 List, which following revised guidance in April 2013 is now required to be presented for consultation at the Draft Charging Schedule stage. Currently the Council requires developments to pay a 'tariff style' S106 contribution for greenspace, education, and public transport improvements. Under the CIL this will no longer be possible (other than up to five S106 obligations which could pay for one infrastructure item). Therefore CIL Regulation 123 requires the Council to set out a list of those projects or types of infrastructure that it intends will be, or may be, wholly or partly funded through the CIL. In order to ensure that individual developments are not charged for the same infrastructure items through both S106 and the CIL, a S106 contribution cannot then be made towards an item already on the List.
- 3.18 The proposed Draft Reg123 List is attached in Appendix 2. The CIL can only be spent on infrastructure identified on the List. However, it should be noted that the Reg123 List does not identify priorities for spending within it, or any apportionment of the CIL funds across the District. Inclusion on the List does not mean that the Council must fund all the items listed. Actual spend can be determined on an ongoing basis and it is in theory open to the Council to concentrate CIL funds on a single area of infrastructure. The List can be changed and updated as necessary, with appropriate justification.

Next Steps

- 3.19 Subject to approval by Executive Board the intention is to commence the formal 6 weeks of public consultation by the end of October in order to start consultation on the Draft Charging Schedule before amended Regulations come into force. This would be followed by Examination in early 2014 (subject to progress of the Core Strategy and capacity of the Planning Inspectorate). It is currently intended to adopt the CIL by April 2014 following resolution by Full Council, although this may move back slightly if the Government announces its intention to move back the deadline from which S106s can no longer be pooled. This would allow the property industry and the Council more prior notice to determine outstanding planning applications/S106s ahead of adoption of the CIL.

4. Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Executive Board agreed to implement a CIL for Leeds in December 2011, and Members have been kept aware of ongoing work since then, particularly through specific Member briefings in December 2012 and various meetings of the Development Plan Panel.
- 4.1.2 Executive Board on 15th February 2013 approved consultation on the Preliminary Draft Charging Schedule, which was undertaken in accordance with the City Council's adopted Statement of Community Involvement (SCI) and the CIL Regulations and ran from 27th March to 15th May 2013. This included directly notifying all Members of the proposals. Appendix 4 sets out the Council's detailed response to all the consultation representations.
- 4.1.3 The Economic Viability Study as the key piece of evidence to inform the CIL included informal consultation with the development industry with a stakeholder workshop in September 2012, and with neighbouring authorities through ongoing meetings and discussions. There will be a further 6 week public consultation period on the Draft Charging Schedule from October 2013 following approval by Executive Board.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 An Equality Impact Assessment Screening was undertaken for Executive Board in February 2013 to help determine the recommendations for the CIL Preliminary Draft Charging Schedule. A draft of the Screening Report was also attached to the Development Plan Panel report December 2012 for front loading of information. The screening has been updated in August 2013 for the current stage of the CIL and is attached in Appendix 5; there have been no changes in its conclusions since the previous version.
- 4.2.2 The Screening set out that there are three elements in considering equality in the Community Infrastructure Levy (CIL) charge setting process:
- 1) Equal and fair consultation throughout the charge setting process.

- 2) Equality for those who will have to pay the charge.
- 3) Equality as a result of decisions on spending the CIL and subsequent service and infrastructure delivery (which links back to a certain extent to the geographical locations where it is charged).

4.2.3 The consideration of most relevance to equality, diversity, cohesion, and integration will be relating to the choices to be made in spending the CIL, based to a large extent on geographical differences including infrastructure needs. This includes the 'meaningful proportion' to be given to the community for spending. The impacts would arise at the point at which money has been secured through CIL and new or improved infrastructure is actually delivered; they would not arise directly as a result of the Charging Schedule itself. Such matters will also involve consultation and agreement with a wide range of stakeholders, and equality and cohesion will need to be fully integrated into decision making as there will likely be disproportionate impacts and mitigation. Therefore as the decisions to be taken on governance, spending, and service delivery are to be considered as a separate process to the approval and adoption of the CIL Charging Schedule, the Screening was primarily concerned with the first two elements set out above. Another formal Screening is likely to be required at the point of decision making on spending.

4.2.4 The conclusions in relation to the screening are that overall the CIL will be a benefit for the people of the District, and that no impacts are identified that cannot be mitigated against. The key mitigation was in considering whether to set a nominal CIL charge against all types of development in all locations to ensure that every community can benefit from local growth, and this was agreed. The public consultation stages ensure that interested parties have an opportunity to comment and to influence the Draft Charging Schedule.

4.3 Council policies and City Priorities

4.3.1 The CIL is a process which local authorities can use, as supported by the CIL Regulations 2010 (and Amendment Regulations 2011 and 2012). The CIL will be a document within the Local Development Framework. The intention to develop the CIL broadly reflects Council policies and City priorities in that it emphasises incentivising growth, both to the development industry and local communities.

4.4 Resources and value for money

4.4.1 Executive Board gave agreement in December 2011 to progress work on the CIL, including the release of the necessary funds. The Government recognises that costs will be incurred and so the Regulations allow set up and administration costs to be reclaimed from future CIL receipts. The implementation of the CIL in Leeds is expected to result in increased funding for strategic infrastructure across the District, alongside the context of a reduction in the current use of S106s from April 2014. The impetus to deliver the CIL prior to April 2014 therefore provides the most value for money.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The Community Infrastructure Levy Regulations (2010 as amended 2011, 2012, and 2013) set out that a charging authority can choose to charge the CIL on new development in its area. The charges must be set out in a Charging Schedule, and must be based on viability evidence. The CIL Regulations have also changed the use of S106 planning obligations. From April 2014 it will no longer be possible to secure S106s for District wide requirements such as greenspace, transport schemes and education facilities.
- 4.5.2 This report is a key decision and would therefore normally be subject to call-in following Executive Board. However, it is recommended that Executive Board should declare the decision exempt from call-in as it is an urgent decision and any delay would seriously prejudice the Council's interests in generating infrastructure funding.
- 4.5.3 The reason for this urgency is that CLG has indicated that revised Regulations will come into force in November 2013. While going forwards the Leeds CIL would comply with these Regulations in terms of collection of monies etc, it is expected that some requirements of the Regulations will only apply to those authorities who have not yet started consultation on their Draft Charging Schedule. The date of Executive Board approval would therefore allow the Council to commence such consultation by the end of October. If this is not possible because of a delay due to call-in then aspects in the revised Regulations which would apply are expected to include a requirement for further evidence, a more stringent test of the evidence and spending arrangements at examination, and generally a need to 'retro-fit' the Draft Schedule. Having got so far with the charge setting process to be days away from consultation on the Draft Schedule only to have to effectively 'go back' a step would be disproportionate to the amount of work which has been undertaken in Leeds so far. Undertaking the new requirements would therefore lead to delay, in which case objectors may then be able to argue that the original evidence produced is out of date and this could cause further delay and expense.
- 4.5.4 In recognition of the valuable role of the Scrutiny Board despite the request for the decision not to be subject to call-in, this report is therefore to be discussed in advance of Executive Board at the Sustainable Economy and Culture Scrutiny meeting on 17th September. The outcome of the Scrutiny discussion will be presented to Executive Board to help them in their decision making.

4.6 Risk Management

- 4.6.1 If the CIL is not brought forward in Leeds, then the Council is at risk of losing out on monies which under the present system are gained through the S106 mechanism, as this system will no longer be available. In order to manage this risk it is recommended that Officers continue to progress the CIL to Draft Charging Schedule stage as outlined in this report. The preparation of the CIL is a challenging process within the context of ongoing national changes to the Regulations, limited precedents nationally, and in responding to local issues and priorities. Consequently at the appropriate time advice is sought from a number of

sources, including legal and that from the Planning Advisory Service, Planning Officers Society, and neighbouring authorities as a method to help manage risk and to keep the process moving forward.

5 Conclusion

- 5.1 Following the CIL Preliminary Draft consultation this report suggests a number of proposed changes to the CIL Draft Charging Schedule, supported by further background information and analysis. It is considered that the rates now proposed are an appropriate balance based on sound evidence, and contribute positively to the development plan by gaining new infrastructure funding and not threatening the viability of growth and development as a whole.
- 5.2 The Draft Charging Schedule, the Regulation 123 List, and associated evidence documents including the full response to the individual representations are provided as appendices

6 Recommendations

- 6.1 Executive Board is requested to:
- i) Agree the content of the Draft Charging Schedule, in order to proceed with 6 weeks of formal public consultation.
 - ii) Agree the scope of the evidence base and associated documents supporting the setting of the CIL rates, including the Regulation 123 List.
 - iv) Agree to submit the Draft Charging Schedule to the examiner after the close of the consultation in accordance with the CIL Regulations.

7 Background documents¹

- 7.1 There are no background documents associated with this report.

APPENDICES

1. Draft Charging Schedule
2. Draft Regulation 123 List
3. Justification for the Leeds CIL:
 - Evolution of Housing Charging Zones (August 2013).
 - Further Evidence on Retail Rates (August 2013).

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

- Achievement of Affordable Housing Targets (August 2013).
 - Infrastructure Funding Gap (Update) (August 2013)
4. Leeds City Council Responses to Representations on the CIL Preliminary Draft Charging Schedule
 5. Equality Impact Screening for the Leeds CIL Draft Charging Schedule (August 2013)