

CEO DECISION – CD 190

Title: Community Infrastructure Levy (CIL) Examination and Adoption Activities

Executive summary

Approval is sought for expenditure for a series of activities to support the examination and adoption of OPDC's Community Infrastructure Levy (CIL) Charging Schedule. CIL is a planning charge that can be used to fund essential infrastructure to support development.

The CEO's approval is sought into four related activities, comprising:

1. an amount of up to £40,000, which contemplates £20,000 to be allocated to each of the appointments of an independent CIL examiner and programme officer to run a CIL examination in accordance with the Community Infrastructure Levy Regulations 2020 (as amended).
2. an amount of up to £10,000 for external consultancy support through the examination on the viability of the proposed CIL rates. DD137 previously approved expenditure of £50,000 for external consultancy support, such that in the event that approval is provided for this additional amount, total expenditure in relation to this engagement will be up to £60,000, and
3. an amount of £10,000 for publication requirements to notify respondents about the examination and subsequently the adoption of a CIL Charging Schedule.

Decision

That the Chief Executive approves:

- i. Expenditure of £60,000 across the 2022/23 and 2023/24 Planning Policy budget for CIL examination and adoption activities, with the commitment of expenditure in 2023/24 subject to approval of the Mayor's consolidated budget in February 2023, and
- ii. That procurement of the external consultancy support through the examination of the proposed CIL rates be carried out by way of a single source exemption from the requirements of the Authority's Contracts and Funding Code, specifically on the recommended basis of previous involvement in the production of an associated viability report which cannot be separated from this new work.

Chief Executive Officer

I do not have any disclosable interest in the proposed Decision. It is consistent with OPDC's priorities and has my approval.

Signature:**Date:** 9 March 2023**PART 1: NON-CONFIDENTIAL FACTS AND ADVICE****1. Background and context**

- 1.1 The Community Infrastructure Levy (CIL) is a planning charge levied on new development. The levy is based on the size and type of development and once set, is mandatory to pay and non-negotiable. Income from CIL is used to help deliver infrastructure to support the development of an area. As the local planning authority, OPDC is the charging and collecting authority for the Old Oak and Park Royal area and is required to consult on a Draft CIL Charging Schedule and then submit for examination.
- 1.2 It is considered that the introduction of a CIL would provide an important mechanism to support the effective implementation of infrastructure essential to the successful regeneration of Old Oak and Park Royal. It would help OPDC to optimise developer contributions. Projections produced in 2022 show that OPDC could expect to receive CIL contributions in the range of £130m to £185m over the Local Plan period (to 2038) based on the Draft CIL Charging Schedule, compared to a range of £65m to £120m in Section 106 contributions, based on the Section 106 contributions secured on planning applications to date.
- 1.3 Viability is a key factor in the process for setting CIL rates. The CIL Regulations require rates to be set at a level which strikes an appropriate balance between the desirability of funding the infrastructure required to support the development of the area, taking into account other actual and expected sources of funding, and the potential effects of CIL on the economic viability of development in the area. It is important that CIL levels do not render development unviable.
- 1.4 DD137 approved expenditure of up to £50,000 on external consultancy services to produce a CIL Viability Report and provide ongoing support to OPDC in setting and adopting an appropriate CIL Charging Schedule.
- 1.5 Through a competitive tendering process, BNP Paribas was commissioned to provide the CIL Viability report and ongoing support. To date £26,487 has been spent on this work meaning that there is £23,513 remaining approved spend.
- 1.6 OPDC published the Draft CIL Charging Schedule and CIL Viability Study on 28 November 2022 under Regulation 16 of the Community Infrastructure Levy Regulations 2020 (as amended). An eight-week public consultation ran from 28 November 2022 to 23 January 2023 where representations were sought on the published draft. 16 stakeholders responded to the consultation making 189

comments. Following on from the public consultation there is a need to update the key CIL Viability Report inputs such as construction costs, inflation, and sales values to ensure that they reflect current market evidence.

- 1.7 Following on from the consultation and subject to the approval of the Board, OPDC intends to submit the Draft Charging Schedule, evidence and representations received and OPDC's responses to them for examination by an independent examiner under Regulation 19 of the CIL Regulations 2030 (as amended). The examiner will review the Draft Charging Schedule, consider the representations received through the consultation, ask questions to test the soundness of the proposed rates and the evidence behind them and should a representor request the right to be heard, conduct examination hearing sessions.
- 1.8 This will require the appointment of an independent examiner and programme officer to undertake the examination. OPDC also needs to be supported through the process by viability consultants to assist in answering questions from the examiner on the viability of the Draft CIL Charging Schedule. There will also be a requirement to place notices in the local press about the examination and make examination materials available for inspection in local venues.
- 1.9 Following the examination, the independent examiner will issue a report of recommendations which OPDC will have to consider before deciding to formally adopt the CIL Charging Schedule.

2. The proposal and how it will be delivered

The proposal

- 2.1 A series of activities are required to support the examination and adoption of the Draft CIL Charging Schedule. These comprise:
 - Appointment of a suitably qualified independent CIL examiner to assess the Draft CIL Charging Schedule and representations through a statutory CIL examination. This appointment will be procured by way of a competitive process based on the receipt of three written quotations.
 - Appointment of a suitably qualified programme officer to manage the CIL examination and be the main point of contact between the examiner, OPDC as the CIL Charging Authority and representors. This appointment will be procured by way of a competitive process based on the receipt of three written quotations.
 - Appointment through a single source justification of external consultants (BNP Paribas) to support OPDC in answering the examiners' questions relating to the viability of the proposed rates and attending any examination hearing sessions. OPDC considers a single source procurement to be justified in the circumstances as this work relates to the work previously carried out by BNP Paribas in preparing the CIL viability report. Engaging BNP Paribas also provides value for money as they are well placed to deliver on the arrangements contemplated in the report and will allow OPDC to avoid unnecessary expenditure in re-briefing another entity.

- Publication activities for Draft CIL Charging Schedule examination and subsequent adoption. These would include public notices in local newspapers and printing of documents for community inspection in local venues. The publication activities may be facilitated through the GLA's existing supplier, Wavemaker.

2.2 The timing of the examination itself will be subject to agreement with the appointed examiner but is expected to take place in Spring to Summer 2023. When the examination has been completed OPDC will receive a report of recommendations which will need to be considered before making a decision to adopt the CIL Charging Schedule.

Costs

2.3 The associated costs for the above proposals are as follows:

- £20,000 for appointment of independent CIL examiner to undertake the examination. This is expected to take place in quarter 4 2022/23 to quarter 1 2023/24.
- £20,000 for appointment of programme officer to manage the examination. This is expected to take place in quarter 4 2022/23 to quarter 1 2023/24.
- £60,000 for appointment of viability consultants to support OPDC during the examination. DD137 approved expenditure of up to £50,000 and this decision is seeking an additional £10,000. £26,487 has already been spent. £33,513 expenditure is expected to take place in quarter 4 2022/23 to quarter 1 2023/24.
- £10,000 for publication activities including public notices. This is expected to take place in quarter 2 to quarter 3 2023/24.

3. Objectives and expected outcomes

3.1 The objective is to facilitate the forthcoming examination and adoption of the CIL Charging Schedule. The outcome of the examination and adoption will enable OPDC to charge CIL on new development which will help to fund essential infrastructure required to support the development capacity and policies and objectives in the Local Plan to deliver a high-quality neighbourhood in Old Oak and Park Royal.

4. Strategic fit

4.1 Undertaking the defined activities will support a number of existing and future OPDC workstreams including:

- delivering policies SP2, SP5, SP6, SP8, SP10, DI1 and DI3 within OPDC's Local Plan.
- providing essential infrastructure identified in OPDC's Infrastructure Delivery Plan 2021 including new public realm, public transport and social infrastructure such as schools and health facilities.

5. Project governance and assurance

Appointment of CIL examiner and programme officer

- 5.1 The appointment of a suitably qualified independent CIL examiner and programme officer will be in accordance with OPDC's Contracts and Funding Code. This will be managed by the Principal Housing Officer with oversight from the Director of Planning and Head of Planning Policy.

External viability consultancy support for examination

- 5.2 The external consultancy advice would be subject to a single source justification being agreed to retain the consultants who produced on the evidence to support the Draft CIL Charging Schedule and any contract would be managed by the Principal Housing Officer Policy Officer with oversight from the Director of Planning and Head of Planning Policy.

Publication activities

- 5.3 Wavemaker is the approved GLA supplier for press notices and act as a liaison between OPDC and the local press. This will be managed by the Principal Housing Officer with oversight from the Director of Planning and Head of Planning Policy.

Risks and issues

- 5.4 Delays in securing the above defined activities will impact on the timeline for adopting the CIL Charging Schedule and impede OPDC's ability to secure sufficient funding for essential infrastructure to support the development identified in the Local Plan.
- 5.5 Government plans to introduce a new Infrastructure Levy (IL) which will eventually replace CIL. However, this will require new legislation, regulation and transitional arrangements and is not likely to come into effect before the end of the current parliament. This means that OPDC can proceed with adopting CIL now.

6. Equality comments

- 6.1 OPDC must have 'due regard' to the need to eliminate unlawful discrimination, harassment, and victimisation as well as to the need to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not.¹
- 6.2 OPDC has already conducted an extensive public consultation exercise on the Draft CIL Charging Schedule from 28 November 2022 to 23 January 2023 in accordance with OPDC's Statement of Community Involvement. This included

The protected characteristics and groups are: age, disability, gender reassignment, pregnancy and maternity, race, gender, religion or belief, sexual orientation and marriage/ civil partnership status. Fulfilling this duty involves having due regard to: the need to remove or minimise any disadvantage suffered by those who share a protected characteristic or one that is connected to that characteristic; taking steps to meet the different needs of such people; and encouraging them to participate in public life or in any other activity where their participation is disproportionately low. Compliance with the Equality Act may involve treating people with a protected characteristic more favourably than those without the characteristic. The duty must be exercised with an open mind and at the time a Decision is taken in the exercise of the OPDC's functions.

information on OPDC's consultation website, an online question and answer session and in person surgery. Comments received through this consultation will be passed onto the independent examiner for their consideration in recommending the CIL Charging Schedule for adoption.

- 6.3 The activities in this decision will further facilitate an inclusive examination process which will provide an opportunity for stakeholders and representors to attend and take part in hearing sessions. The exact format of the hearing sessions will be agreed in consultation with the appointed examiner and are likely to be hosted online. Through publication notices local communities will be informed about the progress of the CIL Charging Schedule through examination to adoption.

7. Other considerations

- 7.1 There are no other considerations that need to be considered in the taking of this decision.

8. Conflicts of interest

- 8.1 No one involved in the preparation or clearance of this Form, or its substantive proposal, has any conflict of interest.

9. Financial comments

- 9.1 Expenditure of up to £60,000 as detailed in section 2.3 (notwithstanding that already approved in DD137) is to be funded from the 2022/23 (approx. £20,000) and 2023/24 (approx. £40,000) Planning Policy budgets within the Planning directorate. There is sufficient headroom within the 2022/23 budget, factoring in recent forecasts and proposed virements, to meet these costs; the expected timeframe of Q4 2022/23 to Q1 2023/24 as noted in section 2.2 therefore does not pose a budgetary concern in either year.
- 9.2 Any further expenditure is subject to the Corporation's decision-making process, and would need to be kept within budget per section 2.3. TfL's responsible procurement process will be adhered to to ensure value for money.

10. Legal comments

- 10.1 The foregoing sections of this report indicate that the decisions requested of the CEO fall within OPDC's object of securing the regeneration of the Old Oak and Royal Park area and its powers to do anything which it considers appropriate for the purposes of its objects or purposes incidental to those purposes, as set out in the Localism Act 2011.
- 10.2 In taking the decisions requested, the CEO must have due regard to the Public Sector Equality Duty; namely the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010, and 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; sexual orientation) and persons who do not share it and foster good relations between persons who share

a relevant protected characteristic and persons who do not share it (section 149 of the Equality Act 2010). To this end, the CEO should have particular regard to section 6 (above) of this report.

- 10.3 The procurement of the services from BNP described above are valued at up to £60,000, including work previously completed. Section 9 of the GLA's Contracts and Funding Code (the "Code") requires that the GLA and its Functional Bodies undertake a formal tender process or make a call off from an accessible framework for procurements with a value between £10,000 and £150,000. However, section 10 of the Code also provides that an exemption from this requirement may be justified on the basis that a supplier has been previously involved in a specific current project or is continuing involvement in existing work which cannot be separated from the new project/work. The officers have set out at paragraph 2.1 above the reasons why the procurement of the services from BNP falls within the said exemption. Accordingly, the CEO may approve the exemption, if they be so minded.

11. Summary timeline

- 11.1 Appoint independent CIL examiner between March 2023 and May 2023
- 11.2 Appoint programme officer between March 2023 and May 2023
- 11.3 Appoint external viability consultants via a single source justification March 2023
- 11.4 Examination between May 2023 and July 2023
- 11.5 Adoption of CIL Charging Schedule between September 2023 and December 2023
- 11.6 Publication activities before examination and at adoption

Appendices

- None

Other supporting papers

- None

PUBLIC ACCESS TO INFORMATION

Information in this Form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA). OPDC aims to publish the Form within three working day of approval.

If immediate publication risks compromising the implementation of the Decision (for example, impacting a procurement process), it can be deferred until a specific date (when it will be published). Deferral periods are kept to the shortest length strictly necessary.

Part 1 – Deferral

Publication of this Part 1 is to be deferred: **Yes**

The deferral is until: 31 March 2023

This is because: This decision includes a budget for procuring consultants and could impact the procurement process. This decision should not be published until the consultant has been appointed.

Part 2 – Confidential information

Only the facts or advice that would be exempt from disclosure under FoIA should be included in or attached to any separate Part 2 Form, together with the rationale for withholding the information at this time.

There is a separate and confidential Part 2 Form: **No**

DECLARATIONS

Drafting officer: Chloe Horner has drafted this Form in accordance with OPDC procedures, including for handling conflicts of interests, and confirm that:



Advice: The Finance and Legal teams have commented on the proposal.



CONFIRMATIONS

Section 106 funding: N/A

SMT review: This Decision was circulated to the **Senior Management Team** for review on Monday 20th February 2023.

Chief Finance Officer

Financial and legal implications have been appropriately considered in the preparation of this Form.

Signature:

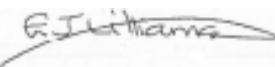


Date: 08/03/2023

Director Emma Williamson, Director of Planning

I do not have any disclosable interest in the proposed Decision. It is consistent with OPDC's priorities and can be referred to the CEO for final approval.

Signature:



Date: 07/03/2023