

Committee(s): Planning, Resources and Economic Development Committee	Date: 9 March 2022
Subject: Community Infrastructure Levy Update	Wards Affected: All
Report of: Phil Drane, Corporate Director (Planning and Economy)	Public
Report Author/s: Name: Thom Hoang, Senior Policy Planner Telephone: 01277 312530 E-mail: thom.hoang@brentwood.gov.uk	For Decision

Summary

This report updates members on the progress of preparing Community Infrastructure Levy (CIL) in the borough. It provides an overview of CIL and how Section 106 agreements can continue to be used alongside.

Before a CIL Charging Schedule can be adopted it must be subject to two rounds of consultation followed by an independent examination. The first stage of consultation, the Preliminary Draft Charging Schedule was undertaken in October 2016. The second stage is the publication of a final Draft Charging Schedule.

Following examination of the Brentwood Borough Local Plan 2016-2033, the Council is now in a position to progress work to finalise the Draft Charging Schedule for the second stage of consultation.

Recommendations

Members are asked to:

R1. Approve that further work be undertaken to introduce the Brentwood Borough Community Infrastructure Levy (CIL) Charging Schedule, including updating viability evidence and the production of a final Draft Charging Schedule, to be brought to committee prior to examination submission.

R2. Approve that work begin to consider options for setting up a local panel that would decide on the priorities and spending of CIL and Section 106 monies, to be brought to committee in due course.

R3. Approve that options be considered and presented to a future committee for the creation of a CIL Officer role to lead on the administration and negotiation of development contributions.

Main Report

Introduction and Background

1. The Community Infrastructure Levy (CIL) was first introduced by the Planning Act 2008, as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. For the purposes of CIL, infrastructure is defined at section 216 of the Planning Act 2008 to include:
 - a. Roads and other transport facilities;
 - b. Flood defences;
 - c. Schools and other education facilities;
 - d. Medical facilities;
 - e. Sporting and recreation facilities; and
 - f. Open spaces.
2. CIL is a charge which can be levied by local authorities on new development in their area. The levy rates are set out within a CIL Charging Schedule, where the local authority can set various rates for a range of different development types and locations.
3. Local authorities can choose to introduce a CIL depending on the local circumstances of the area.
4. The regulatory process for producing a CIL Charging Schedule is set out within the CIL Regulations (as amended) 2010, which came into force on 6 April 2010, requiring public consultation and an independent examination of the Schedule to be undertaken before it can be adopted. Regulation 16 of the CIL Regulations requires public consultation to be undertaken on the draft CIL Charging Schedule. This is the only public consultation required prior to its submission for independent examination.
5. The CIL rates should be set at a level which ensures that they will not render new development in the area financially unviable, and once adopted the rates set are non-negotiable. Exemptions and discretionary relief can be applied in certain circumstances. Funding obtained through the Levy should be used to deliver infrastructure needed to support development in the area.
6. The Council consulted on a CIL Preliminary Draft Charging Schedule in 2016, which was not subsequently progressed. Following the examination of the new Brentwood Borough Local Development Plan 2016-2033, the Council is now in a position to progress the production of a CIL Charging Schedule. To support the production of the local plan the Council produced the Brentwood Infrastructure Delivery Plan (IDP), which sets out the key infrastructure projects

required in the borough and identified how developer contributions and other funding sources could be used to support the delivery of new infrastructure projects. The IDP highlights the need for additional sources of funding to support the delivery of new infrastructure in the area. CIL provides a mechanism to obtain additional infrastructure funding, alongside other funding such as Section 106 agreements (S106).

7. The use of S106 and CIL can operate together. The Council must outline how developer contributions and CIL funds are proposed to be used in its annual Infrastructure Funding Statement. A new development, for example, may trigger the need for a new school and a planning obligation may apply to the development to provide the school. CIL could also then be applied to other development in the area to also contribute towards the delivery of the school.
8. The production of a CIL Charging Schedule requires a viability study to be undertaken to determine the impact of the imposition of a levy on the financial viability of new development in the area.
9. Throughout the plan-making process, the Council has been working closely with infrastructure providers to support the production of the IDP and viability studies, and to ensure that these documents appropriately supported the production of the new local plan and the preliminary CIL Charging Schedule.
10. A recent example of this work is a Memorandum of Understanding with Essex County Council to receive a grant of £60,000 for use towards preparing CIL (Appendix A). The county council has identified funding to support the implementation of CIL in the borough as a mechanism to increase the overall level of developer contributions received. The grant will contribute towards the completion of a viability study and provide necessary resources to support the introduction of CIL. The grant would then be paid back by qualifying development after the adoption of CIL through reinvestment into county council specific infrastructure in the borough (for example roads or schools etc).

Issue, Options and Analysis of Options

The need to introduce CIL in Brentwood Borough

11. In comparison to the current approach of collecting developer contributions towards new infrastructure through S106 agreements, CIL provides a simpler, complementary and more transparent process to collect funds. There are a range of benefits to an area provided by the introduction of a levy, such as:
 - a. CIL collects contributions from a wide range of developments, including smaller developments which may not ordinarily provide any contributions

towards new infrastructure. This provides additional funding towards infrastructure projects that support growth and benefit the local community.

- b. CIL gives local authorities greater flexibility to set their own priorities on projects benefitting the wider community affected by development, unlike S106 funds which require a direct link between a contributing development and an infrastructure project.
 - c. CIL provides developers with clarity about the level of contributions which are required from any development and provides transparency for local people.
 - d. CIL is non-negotiable and therefore does not require the production of complex agreements.
 - e. CIL is fair as it relates the contribution required to the size of the development in terms of new floorspace.
12. While there are many benefits provided by the introduction of CIL, a levy may not be needed or appropriate in all areas of the country. The introduction of a levy should therefore be evidenced by the identification of an aggregate infrastructure funding gap that demonstrates a need for the levy. National Planning Practice Guidance outlines that any significant funding gap identified should be considered sufficient evidence of a need for the introduction of CIL¹.
13. The Brentwood IDP Part B (January 2021) identified an infrastructure funding need of approximately £278.5 million in the borough over the plan period. The IDP refers to this as the minimum current funding gap for the provision of infrastructure to support existing and future needs. S106 contributions associated with site allocations in the new local plan are estimated to provide around £228 million towards this funding gap. This means a funding gap of just over £50 million is identified, which would require CIL (and potentially other funding sources) to support the delivery of needed infrastructure. Therefore, the need to introduce CIL in the borough can clearly be demonstrated.

¹ Planning Practice Guidance Paragraph: 017, Reference ID: 25-017-20190901

Implementation of CIL

What development will be liable to pay the levy?

14. The Council will set the parameters for what development will be liable to pay the levy in line with regulations and guidance. Usually, most buildings that people normally use are liable to pay the levy. The development of a new building or an extension which results in 100 sqm or more of net increase in gross internal floor space would usually be liable to pay the levy. Development which is less than 100 sqm but which involves the creation of an additional dwelling would also be liable. The conversion of a building that has not been in use for some time would be liable for the levy.
15. The following types of development are typically not required to pay the levy:
 - a. Development of less than 100 square metres, unless this consists of one or more dwellings and does not meet the government's self-build criteria;
 - b. Buildings into which people do not normally go;
 - c. Buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery; and
 - d. Structures which are not buildings, such as pylons and wind turbines;
 - e. Specified types of development which local authorities have decided should be subject to a 'zero' rate as outlined in the Draft Charging Schedule.

How the levy works alongside Section 106 contributions

16. In September 2019, the restrictions on using five or more S106 contributions to fund a single infrastructure project was lifted, and greater flexibility was provided in relation to how CIL funding could be used alongside S106 contributions. Charging authorities can now use both CIL and S106 contributions to fund the same infrastructure item.
17. The IDP sets out the key infrastructure projects required in the borough, and identifies the use S106 funding sources to assist in the delivery of a large proportion of identified new infrastructure projects. It is likely that essential infrastructure items which are directly related to supporting the delivery of new development proposals will continue to be funded through S106 agreements. The use of this approach has been assessed within the Viability Assessment (2018) to ensure that strategic sites remain viable with the imposition of both S106 requirements and a CIL charge.

Infrastructure projects which could be funded through CIL

18. The CIL will be used in combination with S106 agreements to obtain additional funds for a wide range of community infrastructure projects throughout the borough, and to obtain infrastructure funding from smaller developments where S106 agreements may not usually be produced.
19. The IDP identified several infrastructure projects that are not expected to be funded through S106 contributions, and could therefore be funded through the CIL, including green infrastructure, open spaces, sports facilities, and transport improvement projects where the needs are not directly attributable to specific new development schemes.

How the levy will be collected

20. Liability to pay CIL is triggered by commencement of the development. Following the adoption of a CIL Charging Schedule, planning applications in the area will be expected to include a completed CIL Information and Liability Form, which will help the Council calculate the CIL liability associated with the development and issue a CIL Demand Notice. The notice will be issued upon the commencement of development.
21. The levy should usually be paid within 60 days of the commencement of development. However, to support the financial viability of new development in the area an instalments policy can be proposed within the CIL Charging Schedule. An instalments policy allows levy charges over an identified amount to be paid in over a set period of time. The Council will consider having an instalments policy and will seek views on this through the Regulation 16 consultation.

Potential infrastructure funding which could be obtained through the CIL

22. Allocated development sites in the new local plan and any further residential development in addition to the allocations in the plan, and specific types of retail development, would also be subject to a CIL charge. These would provide further CIL funding towards new and improved infrastructure in the borough.

How the CIL funds are distributed

23. Brentwood Borough Council is the relevant 'charging authority', and it is the responsibility of the charging authority to collect and distribute all CIL funds. The Council may retain up to 5% of CIL receipts to cover the costs of administering CIL.

24. In the first instance, the Council must pass up to 15% of receipts arising in an area to the relevant parish council for any homes built in that parish. This 15% is capped. The cap was set at £100 per dwelling in 2013 but has been increased since then due to indexation. In those areas where there is no parish council, then the same level of funding per dwelling should be spent specifically on projects in the area local to sites, e.g. at the ward level (this is referred to as the 'neighbourhood portion').
25. Having set aside any administrative costs and the local element of the receipt, the Council can determine how funds are distributed between organisations and projects. Funding obtained through the levy must be used towards infrastructure which supports growth in the area and should be used based on the needs for new and improved infrastructure in the borough.
26. An Infrastructure Funding Statement will be produced by the Council annually to outline the extent of CIL funds which have been received, how received CIL funds are being used, and how future CIL funds are proposed to be used in the future.
27. Beyond the minimum provision of funds which would be provided through the 'neighbourhood portion' for chargeable development within that area, there is no further regulatory requirement to correlate the location of CIL funding received to the spending of the funds. CIL rates are calculated based on the financial viability of new development, and not based on the geographical needs for new infrastructure. While the Council could consider an area based approach to distributing CIL funds based on the location where funds were obtained, it cannot be guaranteed that the borough-wide infrastructure needs will correlate with areas where the majority of CIL funding has been obtained. It is likely therefore that the most effective approach for the distribution of CIL funds would be based on an assessment of the overall Borough-wide infrastructure needs and priorities. The approach to spending CIL funds is determined by the Council as the charging authority, and can be amended at any time depending on the particular needs of the area at the time.

The CIL Viability Studies

28. Practice guidance currently states that "when deciding the levy rates, an authority must strike an appropriate balance between additional investment to support development and the potential effect on the viability of developments"².

² Planning Practice Guidance Paragraph: 010, Reference ID: 25-010-20190901

29. The rates outlined within the Preliminary Draft CIL Charging Schedule, informed by the Whole Plan and CIL Viability Assessment (May 2016), CIL Land and Property Value Appraisal Study (April 2016), and CIL Viability Construction Cost Study (March 2016)³, seek to maximise the potential for CIL funding to be obtained from all types of development, whilst also ensuring that the proposed Levy rates will not render new development financially unviable.
30. The afore mentioned studies were undertaken in 2016. During the period between 2016 and 2019 when the new local plan was submitted, there were further changes to the draft Plan. As such, the plan Viability Assessment (October 2018) was undertaken to update the Council's 2016 Whole Plan and CIL Viability Assessment, taking into account representation made on the preliminary draft charging schedule; the local plan site portfolio, policy considerations and infrastructure costs
31. However, since then the COVID-19 pandemic has had a major impact on the economic circumstances and the long-term implications are still uncertain. As such, there is a need to undertake an update to the CIL Viability Assessment to determine the impact of a CIL charge, in addition to normal development costs and policy and infrastructure requirements outlined within the local plan, on the financial viability of new development in the area.

Other considerations

Recent changes to the Use Classes Order

32. In addition to CIL rates for all residential development, the Preliminary Draft CIL Charging Schedule also proposed a levy on new convenience and comparison retail development within the borough.
33. In September 2020 the Government introduced changes to the Town and Country Planning (Use Classes) Order 1987 (as amended) to create a Class E, which includes a wide range of uses such as retail, financial services, indoor sports, medical or health services, creche, offices, and uses associated with research and industrial processes. CIL applies to permitted development, as well as development permitted through planning applications and appeals.
34. Recent changes to the Use Classes Order will allow more retail related permitted development from existing uses contained within Class E. However, this will not affect the Council's ability to charge a levy on retail uses. Where a

³ Available to view at: <https://www.brentwood.gov.uk/-/community-infrastructure-levy>

Class E(a) use is created through permitted development, there is an obligation placed upon the site owner to submit to the Council a 'notice of chargeable development' form, and failure to submit the form can result in the Council imposing penalty charges through enforcement action.

Instalments policy

35. As mentioned above, the CIL Regulations state that a charging authority can implement and amend an instalments policy at any time following appropriate consultation, allowing CIL payments to be made by instalments often based on the progression of development and /or the time since the approval of the development. An instalments policy allows CIL payments to be spread out throughout the life of a project and can therefore assist the financial viability of the development. An instalments policy can be included within the final draft Charging Schedule to be considered during consultation and examination.
36. Practice guidance details that the levy may be payable on development which creates new or additional internal area, and where the gross internal area of new build is 100 sqm or more. This limit does not apply to new houses or flats, and a charge can be levied on a single house or flat of any size⁴. The CIL Regulations allow charging authorities to provide relief or exemptions from the levy to specified types of development. Practice guidance outlines that this can include exemptions and relief to minor development, residential annexes, self-build, social housing, and charitable development.

Potential changes to CIL from the Government White Paper, Planning for the Future

37. In August 2020 the Government published for consultation the 'Planning for the Future' White Paper, which proposed reforms of the planning system in England. The consultation document proposed a mandatory nationally set charge to be placed on development as a fixed proportion of the development value above a threshold, which could replace the current CIL process and S106 planning obligations. The proposed 'national infrastructure levy' may also seek to go further than existing CIL requirements to capture changes of use, to support the delivery of affordable housing, and to provide more freedom to local authorities in how the levy is spent.
38. The proposed reforms relate to long term proposals which are currently subject to a first stage of consultation. Any potential changes to the existing CIL

⁴ Planning Practice Guidance Paragraph: 004, Reference ID: 25-004-20190901

process are therefore at an early stage of consideration, and where taken forward following consultation, are unlikely to impact how local authorities obtain infrastructure funding in the short term.

Reasons for Recommendation

39. Given the amount of CIL revenue potentially available through allocation sites in the new Brentwood local plan, and the long-term nature of the proposals in the White Paper, it is recommended that the Council progress with the production of a CIL Charging Schedule. This will enable the Council to obtain additional infrastructure funding while any future changes to the CIL process, and the wider planning system, are considered, agreed, and implemented accordingly.
40. The introduction of a CIL Charging Schedule will maximise the potential for new development to generate income for the delivery of new infrastructure, while also ensuring that proposed rates do not render new development in the borough financially unviable.
41. It will be important to identify how CIL funds are collected and monitored alongside S106 contributions. For this reason, options should be presented on how members and key partners can take part in decisions through a form of panel arrangement. In addition, administrative functions can be part funded by CIL and so options should be presented to a future committee on the potential for creating a new officer role to lead and monitor wider developer contributions.

Consultation

42. Before the submission of a draft Charging Schedule for independent examination, the CIL Regulations require a draft Schedule to be published for consultation to invite representations to be made. The Regulations do not specify a required consultation time period, or how the consultation should be undertaken. Practice guidance notes that there is an expectation that consultation on a new Charging Schedule will take place for a minimum of four weeks. The approach to consultation can therefore be determined by the Council, in accordance with the Councils Statement of Community Involvement.
43. As required within the CIL Regulations, the Council will consult directly with neighbouring local authorities and the County Council on the draft Charging Schedule. Other infrastructure/service providers such as the NHS, Essex Police and the Environment Agency will also be directly notified.
44. Further update reports will be brought to committee on progress, and the Council would need to approve the draft Charging Schedule prior to public

consultation pursuant to Regulation 16 the CIL Regulations 2010 (as amended).

References to Corporate Strategy

45. CIL provides a source of funding for the Council and its partners to deliver infrastructure projects in the borough. Funds would be secured from development in an agreed and transparent manner. This directly contributes towards the corporate priority to grow the economy, and objectives to support and promote major infrastructure improvements.

Implications

Financial Implications

Name/Title: Jacqueline Van Mellaerts, Corporate Director (Finance & Resources) and S151 Officer

Tel/Email: 01277 312500/jacqueline.vanmellaerts@brentwood.gov.uk

46. The Council has an agreement with Essex County Council to fund £60,000 towards the cost of preparing the Community Infrastructure Levy in return for them being able to access the first £60,000 worth of CIL receipts for a county led project/projects in the borough (see Appendix A).
47. The CIL Regulations allow for the remaining costs for preparing CIL, of the order of £50,000, to be recovered from CIL income in later years. Therefore, whilst the preparation of CIL carries an in-year cost, it will be cost neutral to the Council overall if it chooses to recover the investment.
48. There is a cost associated with implementing and managing CIL. Experience from other authorities indicates that this could require at least one dedicated CIL Officer to administer the levy and procurement of a suitable supporting software system/database. It is estimated that the cost of an officer would be approximately £40,000 per annum (not including pension contributions etc). Software systems could cost around £30,000 for set-up and around £15,000 per annum thereafter, although this is liable to change and would need to be procured in line with the Council's Procurement Strategy. Funds will need to be confirmed and agreed within a future budget, although charging authorities can utilise funds from the levy to recover the costs of administering the levy, with the regulations permitting use of up to 5% of their total receipts on administrative expenses.

Legal Implications

Name & Title: Amanda Julian, Corporate Director (Law & Governance) and Monitoring Officer

Tel & Email: 01277 312500/amanda.julian@brentwood.gov.uk

49. The Council must ensure that the approach to progressing the CIL Charging Schedule is in accordance with the CIL Regulations and the national Planning Practice Guidance, otherwise there could be a risk of legal challenge.
50. Following the adoption of a CIL in an area, there would be a legal requirement on a developer to pay the levy for liable development. The adoption of CIL could reduce the use of Section 106 agreements in the area.

Economic Implications

Name/Title: Phil Drane, Corporate Director (Planning & Economy)

Tel/Email: 01277 312500/philip.drane@brentwood.gov.uk

51. The production of a CIL will enable the Council to require mandatory financial contributions from various forms of development to help fund supporting infrastructure.
52. Delays in progressing a CIL could result in a lack of funding, and therefore a failure to deliver new infrastructure projects in the borough. Ideally, the Council would seek to ensure a CIL is in place as soon as possible to maximise the receipt from local plan allocated sites, many of which are coming forward in early years of the plan period.

Equality and Diversity Implications

Name/Title: Kim Anderson, Partnerships, Leisure & Funding Manager

Tel/Email: 01277 312634/kim.anderson@brentwood.gov.uk

53. The Public Sector Equality Duty applies to the council when it makes decisions. The duty requires us to have regard to the need to:
 - a. Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - b. Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - c. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

54. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for b. or c., although it is relevant for a.
55. The proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

Human Resources

56. Experience from other authorities who have implemented CIL indicates that whilst generating a source of funding for infrastructure projects, its administration can be burdensome. It requires the monitoring, enforcement and the constant tracking of numerous development projects that may be underway across an area in order to identify when to issue notices and expect (or otherwise chase) receipts.
57. It also requires the preparation of a statement setting out how CIL, alongside S106 receipts, have been spent in any given year. This confirms the importance of collecting funds for identified services within the organisation or other organisations such as Essex County Council or the NHS to deliver projects, and ensure that those projects are being delivered.
58. Therefore, a CIL Officer role (or similar) would be useful to implement CIL, alongside an appropriate software system.

Background Papers

- National Planning Practice Guidance, Community Infrastructure Levy (<https://www.gov.uk/guidance/community-infrastructure-levy>)
- Community Infrastructure Levy Regulations (2010) (as amended)
- Brentwood Borough Local Development Plan, Submission version (2019)
- Infrastructure Delivery Plan, Part B: Schedule (2021)
- Brentwood Borough Community Infrastructure Levy, Preliminary Draft Charging Schedule (2016)
- Brentwood Borough Local Plan Viability Assessment (2018)

Appendices to this report:

- Appendix A: Memorandum of Understanding with Essex County Council regarding CIL uptake (January 2022)