

DATED

30 January 2022

MEMORANDUM OF UNDERSTANDING

Between

ESSEX COUNTY COUNCIL

And

BRENTWOOD BOROUGH COUNCIL

IN RELATION TO THE COMMUNITY INFRASTRUCTURE LEVY (CIL) UPTAKE

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THIS AGREEMENT is dated

30th January 2022

PARTIES

The parties to this Memorandum of Understanding (MoU) are:

(1) **ESSEX COUNTY COUNCIL** of County Hall, Market Road, Chelmsford, Essex, CM1 1LX (**Authority**)

(2) **BRENTWOOD BOROUGH COUNCIL** whose principal address is at: Brentwood Town Hall, Ingrave Road, Brentwood, Essex CM15 8AY (**BBC**)

BACKGROUND

- (A) The Authority has identified funding available to support the implementation of (Community Infrastructure Levy) CIL in the borough of Brentwood. The Authority is supportive of CIL as a mechanism to enable developer contributions to be obtained from smaller housing developments, which are known to provide low contributions to infrastructure, thus increasing the overall level of developer contributions received.
- (B) This Project is being progressed because the developer contributions received by BBC and by the Authority are low and struggle to fund the required mitigating infrastructure, facilities and services required to support high quality planned growth across Essex.
- (C) As such, the Authority has agreed to pay a Grant to BBC to assist the Council to complete a viability study and to provide staffing resources to support the introduction of CIL, 'the Project' as described in Schedule 1.
- (D) This Agreement sets out the terms and conditions on which the Project will be implemented.
- (E) The Authority recognises that the final decision to implement CIL lies with the elected Councillors of BBC and that the completion of this Project does not guarantee the implementation of a CIL.

1. AGREED TERMS

1.1 DEFINITIONS

Agreement: means this Memorandum of Understanding

Bribery Act: means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

Charging Authority: means Brentwood Borough Council

Charging Schedule: means the schedule issued by a Charging Authority which proposes to charge CIL setting rates, or other criteria, by reference to which the amount of CIL chargeable in respect of development in its area is to be determined as outlined in Schedule 3.

CIL Contributions: means the developer contributions (which are charges applied on most new developments) received from the adoption of CIL as set out in Schedule 2.

Data Protection Legislation: means all applicable data protection legislation and privacy legislation in force from time to time in the UK including the GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); any other directly applicable European Union regulation relating to privacy; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data and the privacy of electronic communications.

GDPR: means the General Data Protection Regulation ((EU) 2016/679).

Grant: means the sum up to £20,000 (twenty thousand pounds), to be paid to the Recipient in accordance with this Agreement and the provision of Staffing Resources through a grant agreement in accordance with this Agreement

Environmental Information Regulations 2004 (EIR): means the Environmental Information Regulations 2004 (EIR) as amended or re-enacted from time to time and any Act substantially replacing the same;

Freedom of Information Act 2000 (FOIA): means the Freedom of Information Act 2000 (FOIA) as amended or re-enacted from time to time and any Act substantially replacing the same;

Information: has the meaning given under Section 84 of the Freedom of Information Act 2000 (FOIA), which shall include (but is not limited to) information in any form whether relating to the past, present or future and may in particular consist of data, documentation, programs, (including the source code of any programs which the Authority has the right to use), computer output, voice transmissions, correspondence, calculations, plans, reports, graphs, charts, statistics, records, projections, maps, drawings, vouchers, receipts and accounting records and may consist of or be stored in any form including paper, microfilm, microfiche, photographic negative, computer software and any electronic medium and references herein to information shall include reference to the medium in which it is stored.

Intellectual Property Rights: means all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions;

Know-How: means information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale;

Officer(s): means the employees of the Authority assigned to deliver the Project described in Schedule 1 of this agreement;

Prohibited Act: means:

- a) offering, giving or agreeing to give to any servant of the Authority any gift or consideration of any kind as an inducement or reward for:
 - i. doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Authority; or
 - ii. showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Authority;
- b) entering into this Agreement or any other agreement with the Authority where a commission has been paid or has been agreed to be paid by the BBC or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Authority;
- c) committing any offence:
 - i. under the Bribery Act;
 - ii. under legislation creating offences in respect of fraudulent acts; or
 - iii. at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Authority ; or
- d) defrauding or attempting to defraud or conspiring to defraud the Authority.

Project Commencement Date: means 30/01/22

Project Completion Date: 01/07/2023 or no later than 3months after the adoption of the CIL Charging Schedule, whichever is later.

Project Period: means the period from the Project Commencement Date to the Project Completion Date.

Staffing Resources: means the provision of staffing resources as per the agreed project plan from DAC Planning Ltd or other suitably qualified consultants commissioned by the Funder to support the project valued at up to £45,000 to undertake the project as described in Schedule 1.

1.2 The parties wish to record the basis on which they will collaborate with each other on the Project. This MoU sets out:

- a) the key objectives of the Project;
- b) the principles of collaboration;

- c) the governance structures the parties will put in place; and
- d) the respective roles and responsibilities the parties will have during the Project.

2. KEY OBJECTIVES FOR THE PROJECT

- 2.1** The parties shall undertake the Project to achieve the key objectives set out in Schedule 1 to this MoU (**Key Objectives**).
- 2.2** The parties acknowledge that the current position with regard to the Project and the contributions to be made (financial and otherwise) are as detailed in the Schedule 1 to this MoU.
- 2.3** The Parties acknowledge that the Project requires the provision of Staffing Resources by the Authority to BBC, to prepare and support the delivery of CIL in Brentwood Borough Council as described in Schedule 1.
- 2.4** The Authority shall provide Grant funding to BBC to contribute to support a viability study which shall be paid to BBC and the provision of Staffing Resources on the understanding that this is an investment and at the end of the Project Period, this investment is expected to be returned through the spending of CIL Contributions paid by developers to BBC upon categories of future projects identified by the Authority as set out in Schedule 2. This clause 2.4 shall survive the termination and /or expiry of this Agreement.
- 2.5** The Parties shall enter into a separate Grant Agreement to allow the Authority to passport the Grant to BBC in the form set out in Schedule 4.

3. PRINCIPLES OF COLLABORATION

- 3.1** The parties agree to adopt the following principles when carrying out the Project (Principles):
 - a) collaborate and co-operate - establish and adhere to the governance structure set out in this MoU to ensure that activities are delivered, and actions taken as required;
 - b) be accountable - take on, manage and account to each other for performance of the respective roles and responsibilities set out in this MoU;
 - c) be open - communicate openly about major concerns, issues or opportunities relating to the Project;
 - d) learn, develop and seek to achieve full potential - share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions,

eliminate duplication of effort, mitigate risk and reduce cost;

- e) adopt a positive outlook - behave in a positive, proactive manner;
- f) adhere to statutory requirements and best practice - comply with applicable laws and standards including EU procurement rules, data protection and freedom of information legislation.
- g) act in a timely manner - recognise the time-critical nature of the Project and respond accordingly to requests for support;
- h) manage stakeholders effectively;
- i) deploy appropriate resources - ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this MoU. and
- j) act in good faith to support achievement of the Key Objectives and compliance with these Principles.

3.2 BBC shall have a duty of care to any of the Officers (provided by the Authority) working within their premises, in line with their own internal policies and shall provide appropriate office accommodation, IT and communications facilities to enable the Officers to deliver an effective service.

4. PROJECT GOVERNANCE

4.1 Overview

The governance structure defined below provides a structure for the development and delivery of the Project.

4.2 Guiding principles

The following guiding principles are agreed. The Project's governance will:

- a) provide strategic oversight and direction;
- b) be based on clearly defined roles and responsibilities at organisation, group and, where necessary, individual level;
- c) align decision-making authority with the criticality of the decisions required;
- d) be aligned with Project scope [and each Project stage] (and may therefore require changes over time);
- e) leverage existing organisational, group and user interfaces;
- f) provide coherent, timely and efficient decision-making; and

- g) correspond with the key features of the Project governance arrangements set out in this MoU.

4.3 Project board

- a. The Project Board will provide strategic management at Project and work stream level to ensure that the Key Objectives are being met and that the Project is performing.
- b. The Project Board consists of representatives from each of the parties. The Project Board shall have responsibility for the execution of the project plan and deliverables, and therefore it can draw technical, commercial, legal and communications resources as appropriate into the Project Board. The core Project Board members are:
- **The Authority:** Graham Thomas (Head of Planning) and Alethea Evans
 - **BBC:** Philip Drane (Corporate Director), Jonathan Quilter and Thom Hoang
- c. The Project Board shall meet to monitor the project plan and deliverables and thereafter, with a frequency dictated by the agreed project plan milestones.

4.4 Decision Making:

- a) Decisions shall be taken by the Project Board by majority vote.
- b) Voting on decisions can be taken using electronic means upon advance notice being given
- c) The Authority shall have the deciding vote where no majority is established

4.5 Reporting

Project reporting shall be undertaken at two levels:

- a) **Project Board:** Actions will be recorded for each Project Board meeting. Any additional reporting requirement shall be at the discretion of the Project Board.

Reporting shall be based on milestones with the agreed project plan, based on the actions from the Project Board highlighting: Progress this period; issues being managed; issues requiring help and progress planned next period

- b) **Organisational:** the Project Board members shall be responsible for drafting reports into their respective sponsoring organisation which may be reviewed

by the Project Board before being issued.

5. ROLES AND RESPONSIBILITIES

5.1 The parties shall undertake the following roles and responsibilities to deliver the Project:

Activity	the Authority	BBC
Reviewing documents produced for the CIL, and providing feedback	Assure	Lead
Facilitating Member engagement on CIL	Assure	Lead
Reporting CIL for the purposes of decision making by the charging authority		Lead
Enabling engagement on the CIL in accordance with agreed consultation plan	Assure	Lead
Submitting CIL for the purpose of independent examination.		Lead
Provide professional support to the Independent Examination	Assure	Lead
Implementation of CIL		Lead
Delivery of infrastructure projects up to the value of this agreement	Lead	Assure

5.2 For the purpose of the table above:

- a) **Lead:** the party that has principal responsibility for undertaking the particular task, and that will be authorised to determine how to undertake the task. The Lead must act in compliance with the Objectives and Principles at all times, and consult with the other party in advance if they are identified as having a role to Assure the relevant activity;
- b) **Assure:** the party that will defer to the Lead on a particular task but will have the opportunity to review and provide input to the Lead before they take a final decision on any activity. All assurance must be provided in a timely manner. Any derogations raised must be limited to raising issues that relate to specific needs that have not been adequately addressed by the Lead and/or concerns

regarding compliance with the Key Objectives and Principles.

5.3 Within 3 months of the date of this MoU the party with the lead role for any aspect of the Project shall develop a delivery plan for that part of the Project which shall identify the following:

- a) the key milestones for the delivery the Key Objectives;
- b) what employees (other than employees identified in this MoU) will be required to work on the project;
- c) whether any staff will need to be seconded from one party to the other;
- d) what staff will require access to the premises of the other party;

Each delivery plan must be approved by the Project Board prior to being implemented.

6. ESCALATION

6.1 If either party has any issues, concerns or complaints about the Project, or any matter in this MoU, that party shall notify the other party and the parties shall then seek to resolve the issue by a process of consultation. If the issue cannot be resolved within a reasonable period of time, the matter shall be escalated to the Project Board, which shall decide on the appropriate course of action to take. If the matter cannot be resolved by the Project Board within 28 days for resolution the project will be dissolved.

6.2 If either party receives any formal inquiry, complaint, claim or threat of action from a third party (including, but not limited to, claims made by a supplier or requests for information made under the Freedom of Information Act 2000) in relation to the Project, the matter shall be promptly referred to the Project Board (or its nominated representatives). No action shall be taken in response to any such inquiry, complaint, claim or action, to the extent that such response would adversely affect the Project, without the prior approval of the Project Board (or its nominated representatives).

7. INTELLECTUAL PROPERTY

7.1 The parties intend that any intellectual property rights created in the course of the Project shall vest with BBC as Charging Authority

7.2 Where any intellectual property right vests in either party in accordance with the intention set out in Clause 7.1 above, that party shall grant an irrevocable licence to the other party to use that intellectual property for the purposes of the Project.

8. TERM AND TERMINATION

8.1 This MoU shall commence on the date of signature by both parties, and shall expire when the Authority is in full receipt of CIL contributions from Brentwood Borough Council to the total sum of up to £65,000 (final sum confirmed through invoices paid by ECC) or on the 5th anniversary of this agreement whichever is sooner.

8.2 Any Party may give 28 days' notice in writing to the Project Board to withdraw from the Project at any time but for the avoidance of doubt this withdrawal will not terminate this MoU unless the Project Board determines to do so.

9. VARIATION

9.1 This MoU, including the Schedules, may only be varied by written agreement of the Parties.

9.2 Any authority who gives valid written notice pursuant to clause 8.2 above is hereby deemed to have withdrawn from this MoU and this MoU is varied accordingly.

10. BENEFITS REALISATION

10.1 The Parties agree that:

- (a) The Authority investment is expected to be returned through the CIL contributions paid by developers and passed by Brentwood Borough Council to the Authority.
- (b) The contributions will be spent upon infrastructure projects agreed between the parties within the Brentwood Borough.
- (c) The return of investment at the value of up to £65,000 shall be paid back within 5 years of adoption of the CIL by Brentwood Borough Council.

11. CHARGES AND LIABILITIES

11.1 Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in complying with their obligations under this MoU.

11.2 Both parties shall remain liable for any losses or liabilities incurred due to their own or their employee's actions and neither party intends that the other party shall be liable for any loss it suffers as a result of this MoU.

12. STATUS

12.1 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from this MoU. The parties enter into the

MoU intending to honour all their obligations.

- 12.2 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party as the agent of the other party, nor authorise either of the parties to make or enter into any commitments for or on behalf of the other party.

13. DATA PROTECTION

- 13.1 The Parties shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Legislation and both Parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Agreement.

14. FREEDOM OF INFORMATION

- 14.1 Both parties are subject to the provisions of the FOIA and the EIR (the “Acts”) and both parties shall assist the other party to enable it to comply with these Acts. Both parties acknowledge that the other may be obliged to disclose information relating to this Agreement.
- 14.2 Where either party so requires for the purpose of compliance with the Acts, either party shall provide the other party with a copy of all information in its possession or power, in the form that the such party requires within ten (10) working days (or such other reasonable period as the other party may specify) of the party requesting the information.
- 14.3 Both parties shall provide all necessary assistance as requested by the other so as to enable each party to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 14.4 Both parties acknowledge that the other may be obliged under the Acts to disclose information without consulting with the other party or following consultation with the other party and having taken its views into account.
- 14.5 Nothing in this Agreement shall prevent either party disclosing any information:
- a) for the purpose of the examination and certification of their accounts; or
 - b) any examination pursuant to Section 6 (1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the parties used their resources;
 - c) to any government department or any other contracting authority;
 - d) to any person engaged in providing any services to either party for any purpose relating to or ancillary to this Agreement provided that in disclosing information the parties disclose only the information which is necessary for the purpose

concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

15. NON-SOLICITATION


- 15.1 In order to protect each other's legitimate business interest, neither party shall (except with the prior written consent of the other) during the term of this agreement and for a period of 12 months thereafter, solicit or attempt to solicit or entice away any senior staff of the other party who have been engaged or employed in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other party.

16. COUNTERPART

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

17. GOVERNING LAW AND JURISDICTION

- 17.1 This Agreement shall be governed by and construed in accordance with English law and, without affecting the escalation procedure set out in Clause 6, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

Signed for and on behalf of ESSEX COUNTY COUNCIL	
Signature:	<i>Graham Thomas.</i>
Name:	Graham Thomas
Position:	Head of Planning and Sustainable Development
Signed for and on behalf of BRENTWOOD BOROUGH COUNCIL	
Signature:	
Name:	Philip Drane
Position:	Corporate Director, Planning and Economy
CONTACT POINTS	
The Authority	
Name:	Alethea Evans
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BBC	
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SCHEDULE 1

THE PROJECT

Project overview

1. The Project Objectives listed below are not exhaustive and additional Objectives may be discussed and instructed on written terms agreed by the Parties.

The Key Objectives

The Authority:

The contribution towards the preparation of a viability study to support the introduction of the Community Infrastructure Levy ("CIL") in the borough of Brentwood Borough Council to enable developer contributions to be obtained from smaller housing developments, which are known to provide low contributions to infrastructure, thus increasing the overall level of developer contributions received. This will involve the payment towards a CIL viability study to BBC to support the Charging Schedule, up to the value of £20,000 and supply of officer resources to undertake the work set out within the project plan valued at up to £45,000.

BBC

Preparing documents for the CIL, and providing feedback

Facilitating Member engagement on CIL

Enabling engagement on the CIL

Submitting CIL for the purpose of independent examination.

Provide professional support to the independent examination

Implementation of CIL

The existing position and contributions already made

No contributions have been made to date.

The following programme of work and timescales has been agreed at this stage, but will be subject to refinement and updating as the project progresses:

Indicative project plan (to be agreed through inception meeting)

Ref	Project timescales	2022																				
		Feb			Mar			Apr			May			Jun			Jul					
1	Project initiation																					
1a	Agreement of project plan and timetable																					
2	Production of a CIL Viability Assessment																					
2a	Production of a CIL Viability Assessment project brief																					
2b	Inception meeting and provide required support to viability consultant																					
2c	Provide viability consultant with all required background information																					
2d	Support the viability consultant as required in preparing and undertaking stakeholder consultation to support the production of the viability assessment																					
2e	Review draft assessment, provide comments to viability consultant, and finalise the assessment																					
3	Production of draft CIL Charging Schedule																					
3a	Officer workshop to review CIL options and the outcomes of the viability assessment																					
3b	Production and agreement of draft CIL Charging Schedule																					
4	Consultation, engagement and agreeing modifications on Draft Charging Schedule																					
4a	Produce and agree Regulation 16 consultation project plan																					
4b	Produce Cabinet report to seek approval to consult on the Regulation 16 draft charging schedule																					
	Cabinet approval required																					

Ref	Project timescales	2022																										
		Feb			Mar			Apr			May			Jun			Jul											
4c	Produce consultation material - questionnaire, leaflets, explanatory posters for consultation events, website and promotional materials																											
4d	Attend public consultation exhibitions																											
4e	Stakeholder workshop with developers / agents																											
4f	Stakeholder workshop with Council Members and Town Council																											
4g	Review and analyse representations received																											

Ref	Project timescales	2022 - 2023																									
		Aug		Sep			Oct			Nov			Dec			Jan			Feb								
4h	Work with viability consultant to review consultation responses and finalise any modifications required																										
4i	Produce and agree a Statement of Modifications																										
5	Submission of the CIL Charging Schedule																										
5a	Prepare submission material, consultation statement, final Charging Schedule																										
5b	Produce Council report seeking approval to submit the CIL Charging Schedule for examination																										

Ref	Project timescales	2022 - 2023																								
		Aug			Sep			Oct			Nov			Dec			Jan			Feb						
	Full Council approval required																									
6	Examination																									
6a	Submit the CIL Charging Schedule and liaise with PINs as required																									
6b	Appoint a programme officer and prepare for the examination																									
6c	Prepare any necessary material for the examination																									
6d	Responding to correspondence with the examiner																									
6e	Reporting to the Council on the progression of the examination																									
7	Adoption																									
7a	Produce a report to the Council presenting the outcomes of the examination and requesting the adoption of the CIL Charging Schedule																									
8	Preparing for CIL implementation																									
8a	Undertake workshops with council officers to outline the internal processes required by the Council to implement and administer CIL																									
8b	Work with Council officers as required to set up internal administrative processes to administer CIL payment																									
8c	Prepare and undertake workshops with relevant Council officers, members, Parish / Town Councils, and organisations																									

Unknown time period:
reliant on PINS

Ref	Project timescales	2022 - 2023																		
		Aug			Sep			Oct			Nov			Dec			Jan		Feb	
	to determine how CIL contributions should be used, including how the Council should distribute the 'neighbourhood element' of CIL in non-parished areas.																			

SCHEDULE 2

CIL CONTRIBUTIONS

The return to the Authority for the Project shall be in the form of a return of investment at the value of up to £65,000 to be paid back within 5 years.

This total includes:

- CIL Viability Evidence at a total of £20,000
- Staff resources delivering work as per the Project Plan up to a value of £45,000

The investment is expected to be returned through the spending of CIL contributions paid by developers to Brentwood Borough Council on projects agreed between Brentwood Borough Council and Essex County Council. These projects will be in Brentwood Borough administrative area. The spending on such priority projects is to take precedence over other CIL spending until such time that the investment is returned.

SCHEDULE 3

CHARGING SCHEDULE

The Charging Authority should specify in their charging schedule what types of development are liable for the levy and the relevant rates for these development types. Levy rates are expressed as pounds (£) per square metre.

When deciding the levy rates, the Charging Authority shall strike an appropriate balance between additional investment to support development and the potential effect on the viability of developments. This balance is at the centre of the charge-setting process.

In meeting the regulatory requirements, the Charging Authority shall show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant plan and support development across their area

SCHEDULE 4

GRANT AGREEMENT

A separate Grant Agreement will be signed by the Parties named in this MOU, to set the terms and conditions governing the payment of funding to support the CIL Viability Evidence which Brentwood Borough Council will commission.