

Committee(s): Planning, Resources and Economic Development Committee	Date: 14 September 2022
Subject: Community Infrastructure Levy Draft Charging Schedule Consultation	Wards Affected: All
Report of: Phil Drane, Director of Place	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 which has been made in preparing a Community Infrastructure Levy (CIL) Charging Schedule for the borough since the previous report in March 2022.

This report presents the draft Community Infrastructure Levy Charging Schedule, with associated consultation materials and evidence base documents, and seeks approval to publish these documents for Regulation 16 consultation.

The draft Brentwood Borough CIL Charging Schedule proposes levy rates for the borough that will help 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 financially unviable. The draft CIL Charging Schedule is recommended to be published for consultation from 19 September until 17 October 2022.

Recommendation

Members are asked to:

R1: Approve the publication of the draft Community Infrastructure Levy Charging Schedule for public consultation pursuant to Regulation 16 of the Community Infrastructure Levy Regulations 2010 (as amended), as set out in Appendix A, alongside associated consultation material and evidence base documents set out in Appendices B-E.

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.

2. At the meeting of Policy, Resources and Economic Development Committee on 9 March 2022, a report was presented on CIL (Item No. 337). This outlined the need for a levy to support the provision of new infrastructure in the borough, the types of developments which would be liable to pay the levy, how the levy could be used alongside other infrastructure funding mechanisms, the types of projects which could be funded through CIL, how the levy would be administered, and the potential infrastructure funding which could be derived from introducing a CIL.
3. Through the recommendations of the report, the committee approved further work to be undertaken to support the production of a draft CIL Charging Schedule for the borough, in addition to progressing the consideration of options for a CIL panel to determine priorities for the spending of CIL and S106 funds, and the creation of a CIL Officer role to lead the administration of CIL within the Council.
4. As agreed by the committee in March, and to support the production of a draft CIL Charging Schedule, HDH Planning and Development were commissioned to produce the CIL Viability Assessment Update (August 2022, see Appendix E). The Viability Assessment provides the evidence base to identify appropriate levy rates for the area. Based on the conclusions of the CIL Viability Assessment, the draft Brentwood Borough CIL Charging Schedule has been prepared for consultation (Appendix A).
5. 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 the production of a CIL Charging Schedule to include the completion of the stages outlined in Table 1 prior to examination taking place.

Table 1: Key stages in the preparation and submission of a CIL Charging Schedule as outlined in the CIL Regulations

CIL Regulation	Tasks
Regulation 14	The preparation of an evidence base to inform the production of a draft Charging Schedule. This has been undertaken through the production of the Infrastructure Delivery Plan and the CIL Viability Assessment Update.
Regulation 16	Publication of the draft Charging Schedule for public consultation. This report is seeking approval for the undertaking of this task.
Regulation 17	Review and assess consultation representations and amend the draft Schedule to take account of comments as necessary.
Regulation 19	Submission of the draft Charging Schedule for independent examination. Submission documents include the draft Charging Schedule, a consultation statement, and a statement of modifications setting out changes made since the Regulation 16 consultation.

6. The council previously consulted on a ‘preliminary’ draft Charging Schedule in October 2016. CIL was not subsequently progressed further by the Council at that time, priority was given to . Recent amendments to the CIL Regulations removed the requirement to undertake this first stage of consultation previously outlined in CIL Regulation 15. The council is now only required to undertake one period of consultation to produce a CIL Charging Schedule, referred to in CIL Regulation 16. This report therefore presents the draft CIL Charging Schedule and associated evidence base and consultation material which are proposed to be published for Regulation 16 consultation.
7. Following the Regulation 16 consultation, the final Schedule is submitted for independent examination where the proposed rates will be scrutinised and tested. Where an examiner approves or recommends modifications to the proposed rates, the CIL Charging Schedule can then be adopted and implemented by the council.

CIL evidence base

8. To introduce a CIL in an area, the council is firstly required to demonstrate need for CIL through the identification of an aggregate infrastructure funding gap in the area. National Planning Practice Guidance (PPG) outlines that any significant funding gap identified should be considered sufficient evidence of a

need for the introduction of CIL¹. An Infrastructure Delivery Plan (IDP) should be used to identify any infrastructure funding gap in the area.

9. Once a funding gap has been established, the council then needs to determine appropriate CIL rates for an area. PPG 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'. The CIL rates should be set at a level which ensures that they will not render new development in the area financially unviable, particularly as once adopted the rates set are non-negotiable. The production of a CIL Charging Schedule therefore requires a viability assessment to be undertaken to determine the impact of the imposition of a levy on the financial viability of new development in the area.
10. Therefore, the Brentwood IDP and viability assessment forms the basis of the evidence base required to support the introduction of a levy in the borough and informs the production of a CIL Charging Schedule.

Infrastructure Delivery Plan

11. To support the production of the Local Plan the council produced the Brentwood IDP (2019, Version 3). This sets out the key infrastructure projects required in the borough to support growth and identifies how developer contributions and other funding sources could be used to support infrastructure delivery. The IDP highlights the need for additional sources of funding to support the delivery of new infrastructure in the borough. CIL provides a mechanism to obtain additional infrastructure funding, alongside other funding sources such as Section 106 agreements (S106).
12. To support the examination of the Local Plan, the council produced Part B of the IDP (January 2021). This presents a schedule of infrastructure projects in the borough with indicative costs, funding and delivery arrangements. The IDP Part B identified an infrastructure funding need of approximately £296.9 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 £225.8 million towards this funding gap. This means a funding gap of just over £71.1 million is identified as of January 2021, which could in part be addressed by CIL (alongside other funding options).

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

13. The IDP Part B clearly demonstrates a funding gap to deliver infrastructure required to support growth in the borough. Therefore, the need for CIL in the borough is established.

CIL Viability Assessment

14. To support the identification of appropriate CIL rates for the area, the council commissioned a CIL Viability Assessment Update (August 2022) (Appendix E). The assessment updates the Local Plan Viability Assessment (October 2018) produced to support the production of the local plan. It considers the impacts of a CIL charge on the financial viability of new development in the borough, in addition to normal development costs, policy and infrastructure requirements outlined within the local plan 2016-2033.
15. The assessment tested different development types and CIL rate scenarios. Evidence was collected from a variety of sources including questionnaire surveys with local, regional and national housing developers and registered providers operating within the area. Stakeholder consultation and engagement undertaken through a workshop in May 2022² sought views on the assumptions used within the CIL Viability Assessment. The testing examined the effects of different CIL rates and took account of the impact on development viability of other policy costs faced by development, including other planning obligation costs and the cumulative impact of local plan policies.
16. The assessment used the Residual Value methodology as set out in the Harman Guidance³ to determine the levy rates which could be applied to new development in the area without putting at risk the financial viability of new development. The residual value is calculated by removing the development costs (including profit, construction, fees, finance etc) from the gross development value. The Viability Assessment considers additional profits which could be achievable from development in the area, the inclusion of a 'buffer' or margin to account for changing economic circumstances, the potential for land prices to depress following the imposition of a CIL rate, and the potential extent of levy payments as a proportion of the gross development value of a scheme.
17. Therefore, the assessment researched development costs, land prices and the developed value of a range of uses throughout the borough in order to identify any local variations which should be addressed through the proposed rates. To test potential CIL rates, the assessment reviewed a range of residential

² See Appendix 2, 3 and 4 of the CIL Viability Assessment for further details.

³ Viability Testing in Local Plans – Advice for planning practitioners, LGA/HBF, Sir John Harman, June 2012

development typologies, proposed residential strategic allocations in the local plan, and a range of commercial / non-residential developments.

18. In relation to the identification of appropriate CIL rates in the borough, the CIL Viability Assessment Update concluded that:

a) For residential development:

- i. Across all typologies tested and older people's housing, the residual value exceeded benchmark land value⁴ (BLV) for rates of CIL of up to £500 per sqm on greenfield sites, and £350 per sqm on most brownfield sites, indicating that development is likely to be viable with these levels of CIL.
- ii. For local plan strategic sites tested, lower rates would be required to ensure the sites remain viable. The rates should be reduced at variable levels depending on the specific outputs of the viability testing.
- iii. When taking into account potential CIL rates as a proportion of residual value of a site, in order to determine the potential depression in land prices which will result from the imposition of a CIL rate, it was found that most sites remained viable at rates of £500 per sqm on greenfield sites and £350 per sqm on brownfield sites. However, rates of CIL above £250 per sqm were identified as having a notable impact on land prices with values potentially falling over 50% on some sites. Therefore, it was concluded that a maximum rate of £250 per sqm may be appropriate across all typologies, with further reduced rates for strategic allocations in accordance with the specific outputs of the viability testing.
- iv. For older people's housing, rates of CIL above £220 per sqm were identified as having a notable impact on land prices with values potentially falling over 25%. Therefore, it was concluded that a maximum rate of £220 per sqm may be appropriate for older people's housing.

b) For non-residential development:

⁴ The benchmark land value (BLV) is the minimum value, above the existing use value, at which a landowner would be willing to sell land for development.

- i. Taking into account the various residual values for the different types of non-residential development tested, the assessment concluded that a CIL rate on office, brownfield industrial, and hotel development would render these types of development unviable.
 - ii. However, CIL rates could be applied to greenfield industrial development, distribution and logistics, prime and other retail, supermarket, and retail warehouse developments. The rates to be applied would vary depending on the specific outputs of the viability testing.
 - iii. Prime retail development in the borough demonstrates significant viability, and could therefore accommodate the highest rate of CIL, at £340 per sqm.
19. The determination of appropriate CIL rates in the area includes a 'buffer', to ensure that rates are not set on the edge of viability for new development, allowing for changes to the economy to occur without rendering new development in the borough financially unviable. This buffer was incorporated into the viability testing for all typologies and development types by increasing the benchmark land value used by 30%.

Draft CIL Charging Schedule

20. The draft Brentwood Borough CIL Charging Schedule proposed for Regulation 16 consultation is presented in Appendix A. The Schedule is designed to be a simple document which clearly outlines the proposed CIL rates for each type of development. Any background information on CIL and the administration of CIL within the borough is proposed to be provided in supporting documents published on the council's website and provided alongside deposit copies of the Schedule.
21. The proposed CIL rates presented in the draft Charging Schedule are based on the conclusions of the CIL Viability Assessment Update summarise above, and include variable rates which take account of the specific outputs of the viability testing associated with development costs, residual value, and gross development value for each development type and associated typology. The different rates based on the types of development therefore ensures that new development throughout the borough will remain financially viable with the imposition of a levy. The proposed rates are outlined in Table 2 below.

Table 2: Proposed CIL rates

Development type		CIL rate per m ²
Residential	Brentwood Local Plan ⁽¹⁾ Strategic Residential-led and Mixed Use Allocations ⁽²⁾ :	
	R01, Dunton Hills Garden Village	£0
	R02, Land at West Horndon Industrial Estate	£25
	R03, Land North of Shenfield ⁽³⁾	£150
	All other areas	£250
	Older people's housing ⁽⁴⁾	£220
Retail	General ⁽⁵⁾ retail:	
	In Brentwood Town Centre High Street ⁽⁶⁾	£340
	In all other areas	£80
	Supermarket ⁽⁷⁾	£260
	Retail warehouse ⁽⁸⁾	£160
Industrial	Located on:	
	Greenfield land	£80
	Brownfield land	£0
Distribution and logistics ⁽⁹⁾		£140
All other development		£0

Notes (extract from CIL Viability Assessment)

(1) Brentwood Local Plan 2016-2033, adopted March 2022.

(2) The location and boundary of the sites are presented in the CIL Variable Rates (Map 1).

(3) Site referred to within the CIL Viability Assessment Update (August 2022) as Officers Meadow (R03 Land North of Shenfield).

(4) Older people's housing is defined as:

- Retirement living or sheltered housing: This usually consists of purpose-built flats or bungalows with limited communal facilities such as a lounge, laundry room and guest room. It does not generally provide care services, but provides some support to enable residents to live independently. This can include 24 hour on-site assistance (alarm) and a warden or house manager.
- Extra care housing or housing-with-care: This usually consists of purpose-built or adapted flats or bungalows with a medium to high level of care available if required, through an onsite care agency registered through the Care Quality Commission (CQC). Residents are able to live independently with 24 hour access to support services and staff, and meals are also available. There are often extensive communal areas, such as space to socialise or a wellbeing centre. In some cases, these developments are known as retirement communities or villages – the intention is for residents to benefit from varying levels of care as time progresses.

(5) All retail development which is not a supermarket or retail warehouse as defined.

(6) Retail within the areas of the Brentwood Town Centre High Street Primary Shopping Area identified in the CIL Variable Rates (Map 2).

(7) Defined as retail selling predominantly convenience goods in premises of 1,000m² or more, offering a shopping destination in their own right where weekly food

shopping needs are met. Supermarkets can also include non-food floorspace as part of the overall mix.

- (8) Defined as retail selling predominantly comparison goods (such as carpets, furniture, electrical goods, DIY items) in large premises of 2,000m² or more.
- (9) Uses within the Use Classes Order Class B8 storage and distribution.

- 22. The proposed variable rates for residential strategic allocations R01, R02, and R03, and the retail rate for Brentwood Town Centre High Street, relate to specific geographical areas. The areas which apply to these rates have therefore been identified within maps included within the draft Charging Schedule. All other proposed rates apply to all areas of the borough based on the type of development proposed.
- 23. 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 size⁵. The CIL Regulations allow charging authorities to provide relief or exemptions from the levy to specified types of development. PPG outlines that this can include exemptions and relief to minor development, residential annexes, self-build, social housing, and charitable development.
- 24. Through the consideration of appropriate CIL rates for the area, no types of development have been identified which are proposed to be provided specific relief or exemptions in the borough beyond nationally recommended exemptions. No borough specific relief or exemptions have therefore been identified within the draft Charging Schedule.
- 25. Relief and exemptions policies are not required to form part of the CIL Charging Schedule, and can therefore be produced and amended at any time by the Council following appropriate consultation.

Proposed Instalments Policy

- 26. In addition to the proposed CIL rates, the draft Charging Schedule also includes a proposed Instalments Policy. Where there is no instalments policy in place, the levy would usually be paid within 60 days of the commencement of development. However, this approach can have a greater impact on the viability of development. To support the financial viability of new development

⁵ PPG Paragraph: 004 Reference ID: 25-004-20190901

in the area, particularly where new levy charges are being applied, an instalments policy is proposed.

27. The Instalments Policy allows levy charges over an identified amount to be paid in instalments over a set period of time. The CIL Regulations state that a charging authority can implement and amend an instalments policy at any time following appropriate consultation. Therefore, while there is no requirement for the council to publish or consult on an instalments policy at this time, the proposed policy has been included within the draft Charging Schedule to demonstrate how the levy is proposed to be implemented.
28. It is recommended that the draft CIL Charging Schedule consultation is used as an opportunity to seek people's views on the proposed Instalments Policy as presented below.

Table 3: Proposed CIL Instalments Policy

Overall CIL liability	Payment instalments
£20,000 or less	Payment in full within 240 days
£20,000 - £50,000	50% paid within 360 days Further 50% paid within 540 days
£100,000 - £500,000	10% paid within 270 days Further 15% paid within 540 days Further 25% paid within 720 days Remaining 50% paid within 900 days
£500,000 or more	Agreement of project specific payment schedule

Proposed approach to undertaking the Regulation 16 consultation on the draft Charging Schedule

29. 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. The approach to consultation can therefore be determined by the Council, in accordance with the Councils Statement of Community Involvement.
30. PPG notes that there is an expectation that consultation on a new Charging Schedule will take place for a minimum of four weeks. Therefore, it is proposed that consultation on the draft Charging Schedule will take place for a four week period, starting on Monday 19 September and ending at 5pm on Monday 17 October 2022.
31. Additional consultation information has been produced to accompany the CIL Charging Schedule, including an information sheet, information booklet, and a

response form. These documents are presented within Appendices B, C and D. Consultation representations are requested to be provided by completing the questions within the response form. The questions seek to focus representations on the key matters relating to the production of a CIL, including the approach and content of the CIL Viability Assessment Update and the council's interpretation of the outputs. Questions are also proposed regarding the draft Instalments Policy, and the council's proposed approach to providing discretionary relief from the levy. Completed forms are requested to be posted to the Town Hall or emailed directly to the Planning Policy Team.

32. In addition, a latest news article will be placed on the council's website with supporting social media coverage (Facebook, Twitter, Instagram), informing residents and other stakeholders that the consultation is taking place and how to obtain further information.
33. As required within the CIL Regulations, the council will consult directly with neighbouring local authorities and Essex County Council on the draft Charging Schedule. Deposit copies of the draft Charging Schedule and associated evidence base documents and consultation material will be made available at the Town Hall for members of the public without access to the internet.

Conclusions and next steps

34. Following the Regulation 16 consultation, all representations submitted will be analysed to determine if any changes are required to the draft CIL Charging Schedule and associated evidence base documents. The results of this analysis will be presented to a subsequent meeting of this committee, with recommendations for progressing the CIL Charging Schedule towards submission subject to the outcomes of the consultation.

Reasons for Recommendation

35. The draft Brentwood Borough CIL Charging Schedule proposes levy rates for the borough that 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 financially unviable. Therefore, The draft CIL Charging Schedule is recommended to be published for consultation in accordance with Regulation 16 of the Community Infrastructure Levy Regulations (as amended) 2010.

References to Corporate Strategy

36. 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 Section 151 Officer

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

37. 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. 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.
38. There is a cost associated with implementing and managing CIL, which is likely to come from technical software and people. Funds will need to be confirmed and agreed within a future budget provisions, 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. The committee approved consideration of options for the creation of a CIL Officer role to lead on the administration and negotiation of development contributions (Policy, Resources and Economic Development Committee, Item No. 337, 9 March 2022). As the project to adopt CIL progresses, the issue of resources is being considered and will be presented to committee for approval.

Legal Implications

Name/Title: Steve Summers, Strategic Director and Monitoring Officer

Tel/Email: 01277 312500/steve.summers@brentwood.rochford.gov.uk

39. 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.
40. 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, Director of Place

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

41. The production of a CIL will enable the council to require mandatory financial contributions from various forms of development to help fund supporting infrastructure.
42. 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, Corporate Manager (Communities, Leisure & Health)

Tel/Email: 01277 312500/kim.anderson@brentwood.gov.uk

43. 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.
44. 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.
45. 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.

None

Background Papers

- Item No. 337, Policy, Resources and Economic Development Committee, 9 March 2022, Community Infrastructure Levy

Appendices to this report:

- Appendix A: Draft Brentwood Borough Community Infrastructure Levy Charging Schedule, September 2022
- Appendix B: Draft CIL Charging Schedule Information Booklet
- Appendix C: Consultation Information Sheet
- Appendix D: Consultation Response Form
- Appendix E: CIL Viability Assessment Update, August 2022