

<b>Committee(s):</b> Policy, Resources and Economic Development Committee	<b>Date:</b> 8 March 2023
<b>Subject:</b> Community Infrastructure Levy Submission	<b>Wards Affected:</b> All
<b>Report of:</b> Phil Drane, Director – Place	<b>Public</b>
<b>Report Author/s:</b> Name: Jonathan Quilter, Corporate Manager – Strategic Planning Telephone: 01277 312735 E-mail: jonathan.quilter@brentwood.gov.uk	<b>For Decision</b>

### 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 updates in March and September 2022.

The draft CIL Charging Schedule was published for Regulation 16 consultation in October 2022. This report presents the outcomes of that consultation and recommends minor amendments to address issues identified through representations received.

This report seeks approval to submit the updated draft CIL Charging Schedule and supporting documents to the Planning Inspectorate for independent examination in accordance with the Community Infrastructure Levy Regulations 2010 (as amended) and the Planning Act 2008. This follows adoption of a new local plan one year ago and the work undertaken since then to progress a CIL. If submitted, it is expected that examination would take between three to six months to complete.

## **Recommendations**

**Members are asked to:**

**R1. Note the outcomes of the Regulation 16 consultation on the draft Community Infrastructure Levy Charging Schedule.**

**R2. Approve the submission of the updated draft Community Infrastructure Levy Charging Schedule (Appendix A) and supporting documents (Appendices B-G), to the Planning Inspectorate for independent examination in accordance with the Community Infrastructure Levy Regulations 2010 (as amended) and the Planning Act 2008.**

**R3. Delegate authority to the Director of Place, in consultation with the Chief Executive and Leader of the Council, to make modifications to the submission documents during, and as a result of, the Examination in Public as advised to be necessary by the appointed Planning Inspector.**

## **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. On 9 March 2022, the Policy, Resources and Economic Development Committee (Item 337) were presented with an overview of CIL, outlining 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

Section 106 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 2022, 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. The draft Brentwood Borough CIL Charging Schedule has been prepared based on the conclusions of the CIL Viability Assessment.
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 below in Table 1 prior to an examination taking place. The council is now at Regulation 19 stage, subject to approval of the recommendations in this report.

**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.
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. Following the submission of the draft Charging Schedule, an independent examination will take place to test the appropriateness of the rates against the available evidence. An Examiners Report will present the findings of the examination process, which will outline if the proposed rates can be adopted and if any changes required to the rates.

7. 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 (informed mainly by the need to prioritise the now adopted new local plan). 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, which is Regulation 16 consultation.
8. On 3 October 2022, the Policy, Resources and Economic Development Committee (Item 178) were presented with the outcomes from the August 2022 CIL Viability Assessment, including proposed CIL rates for the area. Through the recommendations of the report, the committee approved the draft CIL Charging Schedule and supporting consultation material for Regulation 16 public consultation.

### **Regulation 16 CIL Draft Charging Schedule Consultation**

9. Consultation on the draft CIL Charging Schedule took place for four weeks, starting on Wednesday 12 October and ending on Wednesday 9 November 2022. The Consultation Statement provided in Appendix B outlines in detail how the consultation was undertaken, summarising the responses received and the changes made to the draft Charging Schedule to address issues identified through the consultation representations.
10. Alongside the draft CIL Charging Schedule, supporting consultation material included an information sheet and information booklet. Evidence base documents published as part of the consultation included the Brentwood Borough Infrastructure Delivery Plan (Version 3, 2019), the Brentwood Borough Infrastructure Delivery Plan (Part B, January 2021), and the Community Infrastructure Levy Viability Assessment Update (August 2022).
11. Consultees were asked to respond to eight consultation questions regarding the CIL Viability Assessment, the proposed CIL rates within the Draft Charging Schedule, the approach to supporting the viability of new development in the Borough, the draft Instalments Policy, and the provision of discretionary relief. Responses were invited through the council's online consultation portal or through completed response forms.
12. The consultation was promoted on the council's website, social media platforms (Twitter, LinkedIn), and the Brentwood Gazette informing residents of the consultation and how to obtain further information. A press release was published on the councils website alongside the addition of a webpage dedicated to the CIL Draft Charging Schedule consultation.

13. In accordance with the Regulations, the council consulted with individuals, statutory consultation bodies<sup>1</sup>, local authorities, developers, businesses and other organisations on the council's consultation database. In addition to the online publications, copies of the CIL Draft Charging Schedule and associated evidence base documents and consultation material were made physically available at the Town Hall and libraries for members of the public to view.
14. A total of 15 consultation representations were received. These were from developers, organisations, individuals, and statutory consultation bodies. All consultation comments have been reviewed by officers and the council's viability consultant HDH Planning and Development. A summary of the representations made and the council's response to all comments is provided in the Consultation Statement (Appendix B).
15. Table 2 below provides a summary of the key issues raised through the Regulation 16 consultation:

**Table 2: Summary of the key issues raised through consultation on the Draft CIL Charging Schedule**

Topic	Key issues
CIL Viability Assessment	<ul style="list-style-type: none"> <li>• Approach to testing typologies to ensure all potential schemes are appropriately considered.</li> <li>• Approach to considering site specific development costs, abnormal costs, values, and fees, and changes to these figures over time.</li> <li>• The application of contingency within the Assessment.</li> <li>• Consideration of the Tender Price Indices (TPI).</li> </ul>
Proposed CIL rates	<ul style="list-style-type: none"> <li>• Support for the proposed CIL rates.</li> <li>• Objections to the proposed CIL rates, with recommendations for rates to be reduced.</li> <li>• The impacts of CIL on the viability and deliverability of new development.</li> <li>• Requests for CIL exemptions from CIL.</li> </ul>
Approach to producing a CIL Charging Schedule	<ul style="list-style-type: none"> <li>• Identify the infrastructure to be supported by CIL funding.</li> <li>• Production of an up-to-date Infrastructure Funding Statement and Infrastructure Delivery Plan to support CIL.</li> <li>• Suggestions for additional clarifications and details within the CIL Charging Schedule supporting material and consultation documentation.</li> </ul>

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<sup>1</sup> As defined in Regulation 16 of the CIL Regulations 2010 (as amended)

<b>Topic</b>	<b>Key issues</b>
Instalments Policy	<ul style="list-style-type: none"> <li>• Address the gap within the identified instalments between £50,000-£100,000.</li> <li>• Need for a flexible site by site approach to paying CIL.</li> <li>• Approach to determining the proposed instalments.</li> </ul>
Discretionary relief	<ul style="list-style-type: none"> <li>• Apply discretionary relief from CIL for the regeneration of heritage areas and assets.</li> </ul>
Implementation of CIL	<ul style="list-style-type: none"> <li>• Approach to providing infrastructure contributions alongside or instead of CIL.</li> <li>• How CIL will be used alongside Section 106 developer contributions.</li> <li>• Inclusion of a CIL review mechanism.</li> </ul>

### **Modifications to the Draft CIL Charging Schedule**

16. The review of the consultation comments presented in Appendix B identified the need to make modifications to the Draft CIL Charging Schedule. All proposed modifications are presented within the Statement of Modifications (see Appendix C), and a track changes version of the previous September 2022 Draft CIL Charging Schedule is presented within appendix 13 of the Consultation Statement (see Appendix B). The modifications proposed to the CIL rates are outlined in Table 3 below.

**Table 3: Summary of proposed modifications to the rates within the Draft CIL Charging Schedule**

<b>Summary of modification</b>	<b>Reason for modification</b>
Additional non-residential development type added to include a £0 per m2 rate for Brentwood Local Plan Strategic Employment Allocation E11, Brentwood Enterprise Park.	<p>Consultation representations raised concerns regarding the viability of the site as a result of the potential imposition of a CIL charge given existing infrastructure and development costs for the area. Further assessment of the costs associated with the development of the site has resulted in a revised proposed CIL rate for the site.</p> <p>See the agreed Statement of Common Ground (presented in appendix 14 of the Consultation Statement) associated with Brentwood Local Plan Strategic Employment Allocation E11, Brentwood Enterprise Park, for further details.</p>
Additional CIL rate of £0 per m2 included for greenfield industrial development below 2,000sqm in size.	Consultation representations highlighted information within Table 12.9 of the CIL Viability Assessment (see Appendix E), which outlines that ‘small industrial’ development may not be viable with the imposition of a CIL charge.

Summary of modification	Reason for modification
	<p>The CIL Viability Assessment modelled industrial units of 400sqm (Industrial - small in Table 12.9) which are shown to be unviable with a CIL charge, and 2,000sqm (Industrial in Table 12.9) which are shown to be viable up to a CIL charge of £80 per m2. Based on the information presented in Table 12.9, the proposed CIL rates have been amended to include a £0 per m2 rate for smaller industrial units on greenfield sites.</p> <p>In considering an appropriate threshold for 'small industrial', the available BCIS costs data provides information for units up to 500sqm, 2,000sqm, and over 2,000sqm. Table 12.9 demonstrates that units of 2,000sqm or more are viable up to a CIL rate of £80 per m2, however smaller industrial development less than 2,000sqm may not be viable with the inclusion of a CIL rate. Therefore, the proposed CIL rate has been amended to apply a £0 per m2 rate to industrial development of less than 2,000 sqm.</p>

17. Regulation 16 consultation representations associated with local plan strategic employment allocation E11 (Brentwood Enterprise Park) raised concerns regarding the viability of the site as a result of the potential imposition of a CIL charge given existing infrastructure and development costs for the area. The council's viability consultant undertook a further detailed assessment of the site to consider the impact of a CIL charge on the deliverability of the site. To present the outcomes of this additional assessment, a Statement of Common Ground has been jointly produced between the council and the developer associated with site E11 (St Modwen Properties Limited). The agreed Statement of Common Ground is presented within appendix 14 of the Consultation Statement (see Appendix B). The additional assessment resulted in the proposed rate of CIL for the site being reduced to £0 per m2.
18. National Planning Practice Guidance (PPG) outlines that any changes made to the Charging Schedule between Regulation 16 consultation and submission should not be 'substantive', otherwise there would be a need to reconsult. The modifications presented within Statement of Modifications relate to minor amendments, minor changes to the rates for a local plan site allocation, and minor changes to rates for industrial development of a specific size. These modifications are not considered to be substantive, therefore no further public consultation on the updated CIL Charging Schedule is required prior to submission.

19. The updated draft Brentwood Borough CIL Charging Schedule proposed for submission is presented in Appendix A. The updated Schedule includes modified CIL rates presented in Table 4 below, which are based on the conclusions of the CIL Viability Assessment Update (August 2022, see Appendix E) and the outcomes of the Regulation 16 consultation summarised above. Variable rates are included 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 ensure that new development throughout the Borough will remain financially viable with the imposition of a levy.

**Table 4: Updated proposed CIL rates**

Development type		CIL rate per m <sup>2</sup>
Residential	Brentwood Local Plan <sup>(1)</sup> Strategic Residential-led and Mixed Use Allocations <sup>(2)</sup> : R01, Dunton Hills Garden Village	£0
	R02, Land at West Horndon Industrial Estate	£25
	R03, Land North of Shenfield <sup>(3)</sup>	£150
	All other areas	£250
	Older people's housing <sup>(4)</sup>	£220
Non-residential	Brentwood Local Plan <sup>(1)</sup> Strategic Employment Allocations <sup>(2)</sup> : E11, Brentwood Enterprise Park	£0
	All other areas	See below
Retail	General <sup>(5)</sup> retail: In Brentwood Town Centre High Street <sup>(6)</sup>	£340
	In all other areas	£80
	Supermarket <sup>(7)</sup>	£260
	Retail warehouse <sup>(8)</sup>	£160
Industrial	Located on greenfield land: 2,000 sqm or more in size <sup>(10)</sup>	£80
	Less than 2,000 sqm in size <sup>(10)</sup>	£0
	Located on brownfield land	£0
	Distribution and logistics <sup>(9)</sup>	£140
	All other development	£0

**Notes**

- (1) Brentwood Local Plan 2016-2033, adopted March 2022.
- (2) The location and boundary of the sites are presented in the CIL Variable Rates Maps 1 below.
- (3) Site referred to within the CIL Viability Assessment Update (August 2022) as Officer's Meadows.
- (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 below.*
  - (6) Retail within the areas of the Brentwood Town Centre High Street Primary Shopping Area identified in the CIL Variable Rates Maps 2 below.*
  - (7) Defined as retail selling predominantly convenience goods in premises of 1,000m<sup>2</sup> 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 2,000m<sup>2</sup> or more.*
  - (9) Uses within the Use Classes Order Class B8 storage and distribution.*
  - (10) Relating to industrial uses, excluding space associated with car parking and landscaping.*

20. Discretionary 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. Consultation representations were received regarding exemptions for specific types of development, however no supporting evidence was provided to demonstrate the need and appropriateness of the proposed exemptions. As a result, no additional relief or exemptions from the proposed CIL rates are identified at this time.

## **Conclusions and next steps**

21. Having carried out consultation on the draft CIL Charging Schedule and considered the matters raised within the consultation representations, the council is now able to submit the draft Schedule to the Planning Inspectorate for independent examination. The independent examination process typically takes between three to six months.
22. The purpose of the examination is to ensure that the CIL charges proposed are reasonable having regard to the evidence of need for a CIL and the impacts on viability from introducing the CIL charges proposed.
23. The examination is carried out independently, typically by an inspector from the Planning Inspectorate. The inspector will consider the representations made at Regulation 16 and will hear statements from any of those parties who made

representations at Regulation 16 on matters related to the proposed CIL charges.

24. To conclude the examination, the inspector will produce a report which sets out their findings and recommends whether the charges proposed are appropriate or should be modified in any way. Subject to any modifications proposed, the final CIL Charging Schedule can be published with an effective date. The effective date is the date on which the Levy comes into effect. Any applications decided from that date are CIL liable, subject to any specified exemptions in the Regulations.

### **Reasons for Recommendation**

25. The council has identified a corporate priority to adopt a Community Infrastructure Levy (CIL) for the borough. CIL will help secure infrastructure investment alongside new development identified in the council's local development plan. Resource to progress CIL to submission has been prioritised following local plan adoption in March 2021.
26. The recommendations have been made to deliver CIL to the borough, noting the outcomes of the Regulation 16 consultation, which informs the draft CIL Charging Schedule to be submitted for examination. Delegated authority is sought to make amendments that the planning inspector may require through the examination process, much in the same way as was approved for the local plan examination. Subject to approval of the committee and a successful conclusion to the CIL examination, outcomes will be reported to the council ahead of any decision to adopt the CIL Charging Schedule and how it should be implemented with regard to administering, monitoring and spending the levy,

### **References to Corporate Strategy**

27. Progressing a CIL for the borough is identified as a corporate priority following the adoption of a new local plan. 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 corporate objectives to grow the economy through supporting and promoting major infrastructure improvements.

## **Implications**

### **Financial Implications**

**Name/Title: Tim Willis, Interim Director – Resources (Section 151 Officer)**

**Tel/Email: 01277 312500/tim.willis@brentwood.rochford.gov.uk**

28. 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 Essex County Council led project/projects in the borough.
29. 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.
30. 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: Andrew Hunkin, Interim Director – People & Governance (Monitoring Officer)**

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31. 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.
32. 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 – Place**

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33. The production of a CIL will enable the council to require mandatory financial contributions from various forms of development to help fund supporting infrastructure. This by extension can help support and grow the local economy.
34. 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 receipts 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**

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35. 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.
36. 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.
37. 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**

38. 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 to identify when to issue notices and expect receipts.
39. 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.
40. Therefore, a CIL officer role (or similar) would be useful to implement CIL, alongside an appropriate software system.

### **Background Papers**

- Item 337, Policy, Resources and Economic Development Committee, 9 March 2022, Community Infrastructure Levy
- Item 178, 3 October 2022, Policy, Resources and Economic Development Committee, Community Infrastructure Levy Charging Schedule Consultation
- National Planning Practice Guidance, Community Infrastructure Levy ([www.gov.uk/guidance/community-infrastructure-levy](http://www.gov.uk/guidance/community-infrastructure-levy))
- Community Infrastructure Levy Regulations (2010) (as amended)
- Brentwood Borough Local Plan (2022)
- Community Infrastructure Levy Viability Assessment Update (August 2022)

### **Appendices to this report:**

- Appendix A: Updated Draft Community Infrastructure Levy Charging Schedule
- Appendix B: Consultation Statement
- Appendix C: Statement of Modifications
- Appendix D: Notice of Submission
- Appendix E: Community Infrastructure Levy Viability Assessment Update, August 2022
- Appendix F: Brentwood Borough Infrastructure Delivery Plan, Version 3, 2019
- Appendix G: Brentwood Borough Infrastructure Delivery Plan, Part B, January 2021