

WELWYN HATFIELD BOROUGH COUNCIL  
CABINET HOUSING AND PLANNING PANEL – 16 MARCH 2017  
REPORT OF THE EXECUTIVE DIRECTOR (PUBLIC PROTECTION, PLANNING AND GOVERNANCE)

COMMUNITY INFRASTRUCTURE LEVY (CIL) PRELIMINARY DRAFT CHARGING SCHEDULE CONSULTATION

**1. Executive Summary**

- 1.1 The Community Infrastructure Levy (CIL) is a locally set planning charge which local authorities can choose to implement to raise contributions from new housing and other development towards the delivery of necessary supporting infrastructure.
- 1.2 In accordance with the Council's Local Development Scheme, which sets out a work programme relating to the preparation of the Local Plan, a CIL Preliminary Draft Charging Schedule has been prepared for public consultation.
- 1.3 The Preliminary Draft Charging Schedule is the first statutory stage of consultation required in respect of CIL. The consultation will set out the type of development which will be liable for the levy, the proposed charging rates and the types of infrastructure that the levy will contribute to.

**2. Recommendations**

- 2.1 That the Panel recommends to Cabinet that the CIL Preliminary Draft Charging Schedule and Initial Draft Regulation 123 List be agreed for six weeks of public consultation.

**3. Background**

- 3.1 The Community Infrastructure Levy (CIL) is a locally set planning charge which local authorities can choose to implement to raise contributions from new development towards the delivery of necessary supporting infrastructure.
- 3.2 Local authorities are the charging authority for CIL and are responsible for setting CIL charges. Councils that wish to charge the levy must prepare a Charging Schedule which sets out the charge per square metre that will apply to new development.
- 3.3 When setting charges, a charging authority is required by the CIL Regulations to strike an appropriate balance between the desirability of funding required infrastructure delivery using CIL (in whole or in part), other actual and expected sources of funding and the potential effects of CIL on the economic viability of development.
- 3.4 In order to implement CIL the Council must follow a series of steps set out in the CIL Regulations 2010 (as amended). A preliminary draft charging schedule is a document which sets out the charging authority's initial proposals for the levy, for public consultation. The authority must take into account the comments it receives

when firming up its proposals in the form of the draft charging schedule. This document must then be subject to a further period of statutory consultation before going forward for inspection.

- 3.5 In accordance with the Council's Local Development Scheme, which sets out a work programme relating to the planning documents that will be prepared as part of the Local Plan, a CIL Preliminary Draft Charging Schedule has been prepared for consultation.
- 3.6 CIL contributions received by the Council must be spent on infrastructure. The Council is required by CIL regulations to produce a list of all infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL. This is called the Regulation 123 List. In accordance with best practice as detailed in National Planning Policy Guidance, it is proposed that alongside the Preliminary Draft Charging Schedule the Council should consult on an Initial Draft Regulation 123 List.
- 3.7 A key advantage of CIL is that receipts can be used to help fund strategic infrastructure – these are “big” items such as road improvements. These types of infrastructure are difficult to fund through multiple Section 106 contributions. Whereas Section 106 contributions can only be collected to mitigate the impacts of a specific development, CIL is collected towards general infrastructure and the Council can (in consultation with key bodies such as Hertfordshire County Council as highway and education authority, the NHS and local Clinical Commissioning Groups, etc) decide what it is spent on and where it is spent regardless of which development it originated from.

#### **4. Explanation**

- 4.1 In order to implement CIL the Council must follow a series of steps set out in the CIL Regulations 2010 (as amended). The first statutory step is to consult on a Preliminary Draft Charging Schedule. The Welwyn Hatfield CIL Preliminary Draft Charging Schedule (Appendix 1) sets out initial proposals for the levy including proposed charging rates.
- 4.2 It has been informed by key evidence relating to infrastructure needs in the borough and economic viability of development to contribute to infrastructure through payment of CIL.
- 4.3 The starting point for preparing the Preliminary Draft Charging Schedule was to establish the infrastructure needs arising from planned development in the borough. The Draft Infrastructure Delivery Plan (August 2016) identifies the full range of infrastructure needs (physical, social and green) which can clearly be attributed to growth proposed in the Draft Local Plan Proposed Submission (August 2016). An analysis was subsequently carried out to assess the funding available to deliver the necessary infrastructure having regard to actual and expected sources of funding. This exercise indicated a significant infrastructure funding gap over the plan period. In February 2017 officers reviewed the infrastructure funding gap estimating it at £155.6 million based upon the latest information available. On this basis, the Council can clearly justify why it is necessary to implement CIL in the Borough.
- 4.4 The next requirement was to establish what level of CIL could be applied to different types of development without harming the economic viability of development across the area. To inform this, specialist consultants BNP Paribas were commissioned to

prepare a CIL Viability Study. The CIL Viability Study (November 2016) is a background paper to this report.

- 4.5 A further piece of evidence was commissioned to consider in detail the viability of the four large scale strategic development sites identified in the emerging Local Plan - North West Hatfield (Hat1), Symondshyde (Hat15), Panshanger (WGC4) and Birchall Garden Suburb (WGC5) – and to assess whether they were deliverable having regard to the recommended CIL charging rates in the CIL Viability Study (November 2016). The Strategic Sites Testing Update (December 2016) is a background paper to this report.
- 4.6 With regard to residential development, the schedule proposes three charging zones, reflecting variations in development values across the borough. Residential Zone 1 applies to most of Hatfield. Residential Zone 2 applies to West Hatfield, Welwyn Garden City and Welham Green. Residential Zone 3 applies to the rest of the borough including Welwyn, Woolmer Green. Oaklands, Mardley Heath, Digswell, Cuffley, Essendon, Brookman’s Park and Little Heath.
- 4.7 Based on the recommendations of the CIL Viability Study and the Strategic Sites Testing Update, the Preliminary Draft Charging Schedule proposes the following charging rates:

Development type	CIL rate (per square metre)			
	Residential Zone 1	Residential Zone 2	Residential Zone 3	Identified sites
Residential development of 11 or more dwellings	£50	£100	£230	£0
Residential development of under 11 dwellings	£230			
Supermarkets, superstores and retail warehouses	£85			
All other uses (excluding healthcare, emergency services facilities and education)	£20			

- 4.8 Based on proposed policies in the emerging Local Plan, residential developments of under 11 dwellings do not have to provide any affordable housing. As a result the viability is significantly better than residential developments of 11 or more dwellings. Small sites across the Borough can afford to contribute the level of CIL proposed in the highest value residential zone (zone 3). The proposed charge for residential developments of under 11 dwellings is therefore the same across the whole borough.
- 4.9 In addition to testing generic residential typologies, BNP Paribas assessed the potential of the following strategic sites to contribute to CIL: North West Hatfield (Hat1), Symondshyde (Hat15), Panshanger Aerodrome (WGC4) and Birchall Garden Suburb (WGC5). The analysis concluded that Symondshyde, Panshanger Aerodrome and Birchall Garden Suburb can viably contribute the recommended CIL charge for the residential zone that they are located in. The analysis found that is not viable for North West Hatfield to contribute the recommended CIL charge for the zone that it is located in. The viability of North West Hatfield is impacted by the

large scale of Section 106 planning obligations that will be sought to mitigate the impacts of the development, principally towards education and highways/transport. To ensure that North West Hatfield is deliverable it is proposed that it should have a nil CIL charge. North West Hatfield is therefore noted as an “identified site” with a proposed CIL charge of £0.

- 4.10 With the exception of supermarkets, superstores and retail warehouses, the ability of commercial uses to viably contribute to CIL is limited. A charge of £85 per square metre is proposed for supermarkets, superstores and retail warehouses with a charge of £20 per square metre proposed for all other uses (excluding healthcare, emergency services facilities and education). A charge set at this level is unlikely to impact significantly upon the viability and subsequent deliverability of these uses. The £20 per square metre charge would apply to all of the following uses: retail development, student accommodation, hotels, specialist housing, office, and industrial and warehousing development.
- 4.11 The CIL Viability Study concluded that retail development in Welwyn Garden City Town Centre could viably contribute a CIL of up to £85 per square metre, however to help ensure that the borough-wide strategic objectives of the Local Plan are achieved it is proposed that the retail charge should be consistent across the Borough at £20 per square metre.
- 4.12 Based upon the level and type of development proposed in the Local Plan, it is estimated that the Council could raise over £30 million from CIL in the period to 2032. This figure is predicated on the proposed CIL charging rates set out in paragraph 4.5. The Council is required to review CIL on a regular basis to ensure that the charges remain appropriate therefore it is probable that the CIL rates will change over time. The actual amount of CIL raised will depend on the sites that come forward for development, the timing relating to them coming forward, the nature of the development proposed and relevant CIL exemptions which apply in accordance with the CIL Regulations.
- 4.13 Whilst CIL provides the Council with another tool to help fund infrastructure in the Borough, it should be noted that the CIL Regulations 2010 (as amended) have introduced restrictions in relation to the Council’s ability to raise financial contributions from Section 106 planning obligations. These have been implemented by the Government to clarify the purpose of CIL and Section 106 and to ensure that the two mechanisms can work effectively together.
- 4.14 In the first instance, the policy tests that govern the use of Section 106 planning obligations have now been placed into law. A Local Planning Authority is now limited to legally seeking an obligation where it is (i) necessary to make the development acceptable in planning terms, (ii) directly related to the development, and (iii) fairly and reasonably related in scale and kind to the development. In line with the CIL Regulations, the Council will continue to seek affordable housing through Section 106. Affordable housing is excluded from CIL.
- 4.15 Local Planning Authorities have also been restricted in terms of their ability to pool planning obligations towards infrastructure. Since April 2015 the Council has only been able to pool up to five individual planning obligation contributions towards an infrastructure project or type of infrastructure.
- 4.16 Finally, the Regulations prevent a local authority from double charging i.e. collecting planning obligations towards infrastructure projects or types of infrastructure that it intends to fund through CIL. To ensure that there is no overlap between CIL and

S106 planning obligations, the Council is required to prepare a list of projects or types of infrastructure that it intends to fund, or may fund, through the levy. This is known as a 'Regulation 123 List'.

- 4.17 The Welwyn Hatfield Initial Draft Regulation 123 List (Appendix 2) is proposed for consultation alongside the Welwyn Hatfield CIL Preliminary Draft Charging Schedule. It sets out all infrastructure projects or types of infrastructure that the Council intends will be, or may be, wholly or partly funded by CIL. Items of infrastructure excluded from the Regulation 123 list (including affordable housing which is not eligible for CIL) would continue to be secured on a site-by-site basis via planning obligation (Section 106 or Section 278) or planning condition as appropriate where these are required to make a development acceptable in planning terms.
- 4.18 Consultation on the CIL Preliminary Draft Charging Schedule will be carried out in accordance with the CIL Regulations 2010 (as amended) and consistent with the Council's adopted Statement of Community Involvement. Subject to agreement, a 6 week consultation is proposed beginning in April / May 2017.
- 4.19 In late 2015 the Department for Communities and Local Government (DCLG) established an independent group to conduct a review of CIL. A consultation was carried out to help assess the extent to which CIL does or can provide an effective mechanism for funding infrastructure. The independent group subsequently prepared a report of their findings which was submitted to DCLG in October 2016 for their consideration. The review was published on 7 February 2017 alongside the Housing White Paper. The review's key recommendation was that the Government should replace CIL with a hybrid system of a broad and low level Local Infrastructure Tariff and Section 106 for larger developments. It is unclear at the present time whether the Government will take up this recommendation, however the Housing White Paper sets out the intention to deliver an improved approach to developer contributions. It states that the Government will examine the options for reforming the system of developer contributions including ensuring direct benefit for communities, and will respond to the independent review and make an announcement at Autumn Budget 2017. Whilst there is some uncertainty about the future CIL regime, officers propose to continue progress the charging schedule in line with the approved Local Development Scheme. If the Government makes any future policy decisions on CIL then the Council will need to review the local position.

## **5. Link to Corporate Priorities**

- 5.1 The Council's Business Plan 2015-2018 contains corporate priorities to meet the borough's housing need, help build a strong local economy, protect and enhance the environment and maintain a safe and healthy community. Consultation on a Preliminary Draft Charging Schedule is the first step in introducing a CIL charge, the eventual implementation of which will deliver funding from new development to carry out a wide range of infrastructure projects that support growth and benefit the local community.

## **6. Legal Implications**

- 6.1 The Community Infrastructure Levy (CIL) is a locally set planning charge first introduced by the Planning Act 2008 (as amended) which came into force in 2010 with the publication of the CIL Regulations 2010 (as amended). Whilst the Government encourages Local Authorities to introduce CIL in their area, there is no statutory duty to implement CIL. Where a Council is minded to implement CIL in its

area this must be done in accordance with the CIL Regulations 2010 (as amended). Regulation 15 requires a charging authority that proposes to issue a charging schedule to prepare a Preliminary Draft Charging Schedule for consultation. The Welwyn Hatfield Preliminary Draft Charging Schedule has been prepared in accordance with Regulation 15 and other relevant Regulations. Consultation must be carried out in accordance with the Council's Statement of Community Involvement.

## **7. Financial Implications**

- 7.1 The preparation of, and consultation on, a Preliminary Draft Charging Schedule forms part of the agreed work programme for the Council's Planning Policy and Implementation Team as set out in the Local Development Scheme approved by Cabinet on 4 October 2016. It has been prepared using existing resources and consultation would be undertaken without the requirement for additional resource to be allocated.
- 7.2 Consultation on a Preliminary Draft Charging Schedule is the first step in introducing a CIL charge, the eventual implementation of which has potential to generate substantial funding to deliver infrastructure necessary to support new development in the borough.

## **8. Risk Management Implications**

- 8.1 Failure to implement CIL or a delay to its introduction will mean that the Council is reliant on Section 106 planning obligations to secure contributions from new development towards infrastructure. Due to recent restrictions placed on the use of Section 106 this will likely result in significantly less income towards infrastructure.
- 8.2 A decision not to prepare a CIL Charging Schedule will mean that the borough misses out on a significant source of funding for infrastructure.

## **9. Security and Terrorism Implications**

- 9.1 There are no security and terrorism implications arising directly as a result of this report.

## **10. Procurement Implications**

- 10.1 There are no procurement implications arising directly as a result of this report.

## **11. Climate Change Implications**

- 11.1 No climate change implications have been identified resulting from this report.

## **12. Policy Implications**

- 12.1 The Welwyn Hatfield Preliminary Draft Charging Schedule is a consultation document. It does not propose any immediate change in Council policy, rather it sets out the Council's intended approach to implementing CIL in the borough. The authority must take into account the comments it receives from consultation and then prepare a Draft Charging Schedule. This document must then be subject to a further period of statutory consultation before going forward for examination.

## **13. Equality and Diversity**

13.1 An Equalities Impact Assessment (EIA) has not been carried out in relation to the CIL Preliminary Draft Charging Schedule as this is a document for consultation and does not involve any immediate change of policy.

Author: Bryce Tudball  
Team: Planning Policy and Implementation  
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#### Appendices

- Appendix 1 – CIL Preliminary Draft Charging Schedule
- Appendix 2 – Initial Draft Regulation 123 List

#### Background Papers

- Community Infrastructure Levy Viability Study November 2016
- Strategic Sites Testing Update December 2016