

WELWYN HATFIELD BOROUGH COUNCIL
CABINET PLANNING AND PARKING PANEL
THE REPORT OF THE ASSISTANT DIRECTOR OF PLANNING

PROPOSED CONSULTATION ON COMMUNITY INFRASTRUCTURE LEVY (CIL)
DRAFT CHARGING SCHEDULE

1 Executive Summary

- 1.1 The Community Infrastructure Levy (CIL) is a locally set planning charge, first implemented nationally in 2010, which local planning authorities can choose to implement to raise contributions from new development in their area towards the delivery of necessary supporting infrastructure.
- 1.2 Welwyn Hatfield Borough Council has progressed CIL in the past and has undertaken previous consultation on proposed rates. It was intended that this would come into effect following adoption of the Local Plan but delays with the Plan meant that this didn't happen as envisaged. However, adoption of the Local Plan means that this can be taken forward.
- 1.3 Whilst there have been previous consultations on charging rates, these pre-date the significant changes to the national and global economy in recent years, so it is considered appropriate to undertake new viability analysis and a new consultation.
- 1.4 Consultation is required for the Council to consult on these proposed rates. If consultation is approved, if the consultation does not suggest any reason why these rates should be altered, it is proposed that the rates and accompanying evidence base be submitted for examination using delegated authority.
- 1.5 If, following an examination by an independent Inspector, the rates are unchanged it is proposed that the CIL charging schedule be adopted under delegated authority.

2 Recommendation

- 2.1 That the Panel agrees:
- (i) That the CIL Draft Charging Schedule in Table 1 and Instalments Policy in Appendix C should be recommended to Cabinet for agreement for public consultation.
 - (ii) That in the event of there being no changes to the charging schedule as a result of the consultation, delegated authority be given to the Assistant Director of Planning, in conjunction with the Executive Member for Planning, to submit the Community Infrastructure Levy charging schedule and accompanying evidence base for examination.
 - (iii) That in the event of there being no changes to the charging schedule as a result of the examination, delegated authority be given to the Assistant Director of Planning, in conjunction with the Executive Member for Planning, to adopt the Community Infrastructure Levy charging schedule.

3 Explanation

Introduction and 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. Compared to Section 106, there is more certainty as the rate is fixed and based on the overall size of developments. Whilst under CIL, Section 106 will remain, this would become a relatively small proportion of the overall and be used for very specific development issues.
- 3.2 Local authorities are the charging authority for CIL and are responsible for setting CIL charges. Councils that wish to charge CIL must prepare a CIL Charging Schedule which sets out the charges per square metre that will apply to new development. Within Hertfordshire, five¹ of the ten district and borough authorities currently already have a CIL charging schedule in place.
- 3.3 When setting charges, a charging authority is required by the CIL Regulations 2010 (as amended) to strike an appropriate balance between the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding, and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area. In other words, it is important to ensure that rates raise sufficient money to pay for infrastructure without making development unviable.
- 3.4 A key advantage of CIL is that receipts can be used to help fund strategic infrastructure – these are “big” items such as major road improvements and other sustainable transport projects such as those identified in the County’s Local Transport Plan and Growth and Transport Plans. Strategic green infrastructure projects such as the Council’s emerging Green Corridor Masterplan could also be funded. 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 decide what it is spent on and where it is spent regardless of which development it originated from.
- 3.5 Whilst under CIL, the majority of developer contributions would come from CIL, Section 106 contributions would still exist, albeit in a reduced and more focussed way. A Local Planning Authority can only lawfully seek an obligation in connection with a particular development 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, and affordable housing is exempted from payment of any CIL charge.
- 3.6 In order to implement CIL the Council must follow a series of steps set out in the CIL Regulations 2010 (as amended in 2019). CIL regulations now require that only one round of consultation on proposed levy charges is conducted as opposed to the previously required two rounds (Preliminary and Draft). Welwyn Hatfield’s first consultation was a preliminary consultation, which would now no longer be required.

CIL Viability Assessment

- 3.7 Whilst the Council has previously consulted on a draft charging schedule, this was in early 2020 so before the significant economic changes in recent years from the Covid pandemic, the war in Ukraine, significantly higher interest rates etc. As a result, it is

¹ Dacorum (2015), Hertsmere (2014), Stevenage (2020), Three Rivers (2015) and Watford (2014).

considered appropriate for revised viability work to be undertaken and for draft rates to be updated if necessary. A CIL Viability Assessment Update has been prepared. The assessment has been prepared by BNP Paribas Real Estate (BNPPRE). They also worked on the Council's previous CIL work, and the methodology is consistent.

- 3.8 The CIL Viability Assessment 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.
- 3.9 In reaching their recommendations, BNPPRE took into account changes to the national/local economy, the local property market and the nature of proposed development in Welwyn Hatfield, both that being promoted through the Local Plan and that being promoted through recent planning applications. It also assumes that developments would be Local Plan policy compliant, so covering areas such as housing mix, affordable housing etc.
- 3.10 The CIL consultation undertaken in 2020 generated 33 responses with the vast majority from the development sector and infrastructure providers, this is common with other CIL consultations given the technical nature of the consultation.

Draft CIL Charging Schedule

- 3.11 The draft Welwyn Hatfield CIL Charging Schedule proposed for consultation is presented as Table 1 (below). 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.
- 3.12 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 1 below.

Table 1: Proposed CIL 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 (excluding student accommodation, retirement housing and extra care housing)	£100	£140	£230	£0
Residential development of under 11 dwellings	£230			
All other uses (excluding healthcare facilities, facilities used by emergency services, community facilities and education facilities)	£20			

- 3.13 Evidence within the CIL Viability Study (attached at Appendix A) identifies three zones where viability is materially different for residential uses. The schedule therefore proposes three charging zones for residential development. 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, Brookmans Park and Little Heath.

- 3.14 A plan showing these zones on a map is attached at Appendix B.
- 3.15 The differences between these rates and zones, and those previously consulted upon in 2020 is:
- a) An increase from £70 to £100 for residential zone 1
 - b) An increase from £100 to £140 in residential zone 2
 - c) Removal from the schedule of an £85 rate for supermarkets, superstores and retail warehouses, such development will now be captured under all other development and a charge of £20.
- 3.16 Residential developments of under 10 dwellings do not have to provide any affordable housing. As a result, the viability is significantly better than for residential developments of 10 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 10 dwellings is therefore the same across the whole borough.
- 3.17 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.
- 3.18 Given the complexity of South East Welwyn Garden City (Birchall Garden Suburb) which include the fact it a cross boundary allocation with East Herts requiring shared infrastructure, currently unknown remediation costs and other abnormal development costs, it is considered that this should also be noted as an identified site with a proposed CIL charge of £0. Infrastructure will be delivered through S106.
- 3.19 The ability of commercial uses to viably contribute to CIL is limited. A nominal charge of £20 per square metre is proposed for all other uses (excluding healthcare facilities, facilities used by emergency services, community facilities and education facilities). A nominal charge is unlikely to impact significantly upon the viability and subsequent deliverability of these uses. The nominal charge would apply to all of the following uses: retail development, student accommodation, hotels, specialist housing, office, and industrial and warehousing development.

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

- 3.20 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. Therefore, it is proposed that consultation on the draft Charging Schedule will take place for a six week period, with the exact dates to be confirmed for January and February 2024.
- 3.21 A Frequently Asked Question (FAQ) document will be produced to accompany the CIL Charging Schedule. Consultation representations will be required to be provided by completing the questions within a response form. The questions will 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.

Conclusions and next steps

- 3.22 Following the 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.
- 3.23 In order to put CIL into place, a Council's proposed charging schedule must be examined by an independent examiner. Unlike Local Plans, this does not necessarily have to be undertaken by the Planning Inspectorate and independent providers of examination services are available. Depending on the evidence and the views of the Inspector, the examination may be undertaken through hearing session(s) or written representations, or some combination of both.
- 3.24 It is proposed that delegated authority be given to the Assistant Director of Planning, in conjunction with the Executive Member for Planning, that following consultation, if after consideration by officers the rates should remain unaltered, that the draft CIL charging schedule and accompanying evidence base should be submitted for examination. If something is raised by the consultation that suggests rates or zones should be amended, this will be brought back before members to agree to submit for examination.
- 3.25 It is further proposed that delegated authority be given to the Assistant Director of Planning, in conjunction with the Executive Member for Planning, that if there is no change to the proposed CIL rates from the examination, that this be adopted. If the examining Inspector decides that CIL rates or zones should be amended, this will be brought back to members to agree for adoption.

Governance and spend

- 3.26 Under CIL, the Borough Council would be responsible not just for collecting payments but would also hold the money and be responsible for spending it or funding others to deliver infrastructure. This is in contrast to the Section 106 situation, where contributions for education, highways etc. are paid directly to the County Council. The Council is required to produce annually a list of all infrastructure projects and the S106 and CIL funding spent on them. This is called the Infrastructure Funding Statement (IFS).
- 3.27 As a result of this, it is important that appropriate structures and systems are set up for collecting, administering, overseeing and reporting payments are put in place. As it will be some time before any CIL funding is received, this work is at a very early stage but officers from different teams will work together on progressing this.

4 Link to Corporate Priorities

- 4.1 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 contribute towards the Quality Homes through Managed Growth priority by enabling infrastructure to support growth. It will also support other priorities through enabling better infrastructure for the Borough.

5 Legal Implications

- 5.1 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.
- 5.2 Following the adoption of 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.

- 5.3 The third recommendation sets out an approach which has been adopted at other Councils and ensures that a matter proceeds on a timely basis where there is no reason to have further recourse to committee meetings.

6 Financial Implications

- 6.1 Under CIL, the Borough Council will be responsible for collecting, spending and administering funds received. As noted above, a further report will be brought to members at the appropriate time regarding this.
- 6.2 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.
- 6.3 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. As the project to adopt CIL progresses, the issue of resources is being considered.

7 Risk Management Implications

- 7.1 The production of a CIL will enable the council to require mandatory financial contributions from various forms of development to help fund supporting infrastructure.
- 7.2 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 the early years of the plan period.

8 Security & Terrorism Implications

- 8.1 There are no known security and terrorism implications as a result of this report.

9 Procurement Implications

- 9.1 There are no direct procurement implications as a result of this report. The Council's work from BNP Paribas was procured through a national procurement framework. Any assistance for a future examination will be procured using the same process.

10 Climate Change Implications

- 10.1 There are no direct climate change impacts as a result of this work. However, CIL funding may enable future infrastructure which would mitigate climate change or help reduce carbon emissions.

11 Policy Implications

- 11.1 CIL will help contribute to the implementation of a number of Local Plan policies.

12 Human Resources Implications

- 12.1 There are no known human resources implications as a result of this report. The work to undertake a consultation and work around a future examination will be undertaken by planning officers as part of their normal work.

13 Equalities and Diversity

13.1 Community Infrastructure Levy does not propose changes to existing Welwyn Hatfield Borough Council service-related policies or the development of new service-related policies. Accordingly, an Equalities Impact Assessment has not been completed.

Appendices

- Appendix A - Community Infrastructure Levy Viability Report (BNP Paribas October 2023)
- Appendix B – Plan showing zones and rates for proposed Community Infrastructure Levy
- Appendix C – Draft CIL Instalments Policy