

WELWYN HATFIELD BOROUGH COUNCIL
CABINET PLANNING AND PARKING PANEL – 16 JULY 2024
REPORT OF THE ASSISTANT DIRECTOR (PLANNING)

COMMUNITY INFRASTRUCTURE LEVY (CIL) – MODIFICATIONS TO DRAFT CHARGING SCHEDULE

1 Executive Summary

- 1.1 In November 2023, CPPP recommended to Cabinet that consultation on a Community Infrastructure Levy (CIL) draft charging schedule take place. In December 2023, Cabinet agreed with the recommendation of CPPP, and consultation took place between 10 January and 28 February.
- 1.2 Following this consultation and consideration of the responses, officers and the council's viability consultant consider amendments to the Draft Charging Schedule are required before the schedule and representations are submitted for examination. The proposed revisions to the schedule will require a further round of consultation for a period of 4 weeks.

2 Recommendation(s)

- 2.1 That the Cabinet Parking and Planning Panel recommends to Cabinet that
- a) It notes the summary of the recent CIL consultation and that a focused re-consultation on proposed changes to the draft charging schedule take place as soon as possible; and,
 - b) that, in line with the Cabinet decision of December 2023, subject to there being no further changes to the draft charging schedule as a result of that consultation, the charging schedule be submitted for examination.
- 2.2 If unanimously agreed by the Panel, for the decision to be taken by the Executive Member using their delegated powers under paragraph 18.1(b) of the Cabinet procedure rules.

3 Explanation

- 3.1 In December 2023, Cabinet agreed to consult on a draft charging schedule for the Community Infrastructure Levy (CIL). CIL is a locally set planning charge which local authorities can use to raise contributions from new developments to fund necessary infrastructure. Unlike the current Section 106 agreements, CIL is charged on a per square metre of development, is fixed, based on the size of the development, and clear in advance.
- 3.2 The consultation proposed three charging zones in different parts of the Borough, with rates of £100, £140 and £230 per square metre for residential developments, with most other developments having a nominal rate of £20 per square metre.

- 3.3 Due to their complexity or the extensive infrastructure required in advance to support their delivery, two sites were designated as “identified sites” which would be nil rated for CIL, but which would fund necessary infrastructure through Section 106. These sites were Birchall Garden Suburb, where the cross-boundary nature of the development with part in Welwyn Hatfield and part in East Hertfordshire and currently unknown remediation costs made Section 106 most appropriate; and North West Hatfield where there are extensive infrastructure requirements in particular for transport and education, as a result of which Section 106 is considered the most appropriate way to bring forward infrastructure.
- 3.4 The consultation on the draft CIL charging schedule ran from 10 January to 28 February 2024 (it was extended by a week from the original closing date) and 22 responses were received, the majority of which were lengthy and detailed.
- 3.5 Following representations made to the consultation by developers / landowners and agents, officers and the council’s viability consultant consider some amendments to the Charging Schedule, as agreed by Cabinet in December 2023, are required before the schedule and representations are submitted for examination. These proposed amendments are detailed below:

Broadwater Road

- 3.6 Broadwater Road West (SDS3) in Welwyn Garden City is a strategic site in the Local Plan and includes the former Shredded Wheat site. The site has a complex planning history, there are extant planning permissions which have been partly implemented and a Section 106 to deliver the necessary supporting infrastructure that has been agreed. The site has subsequently been sub-divided and is no longer in single ownership, and it may be the subject of revised application(s) in the future.
- 3.7 The site’s extant and partly implemented permissions, agreed S106, and unusual development costs, including listed building constraints and the railway bridge, mean that the continuation of the use of S106 as the mechanism to secure development contribution to necessary infrastructure is appropriate. Introducing CIL part way through a development has the potential to complicate delivery of the whole site.
- 3.8 It is proposed that the corresponding Charging Schedule Map be amended to show that the Wheat Quarter in Welwyn Garden City be nil rated for CIL, with developer contributions continuing to be secured to mitigate the impact of the development through S106.

Voluntary and Community Organisations

- 3.9 A representation was received from Sport England identifying that community / voluntary / not for profit organisations who wish to build sports or leisure facilities should be included in the list of developments exempt from CIL. It was suggested that being liable for CIL could make any such developments unviable. It is subsequently proposed to amend the wording in the charging schedule to exempt such development from CIL. The amended draft charging schedule sets out the following:

Development by a publicly funded or “not for profit” organisation comprising:*

- *Medical, health and emergency services*

- *development used wholly or mainly for the provision of education as a school or college or as an institute of higher education; or*
- *community, sport and leisure facilities*

** Not for profit organisation is defined as an organisation that conducts business for the benefit of the general public and all money earned by/donated to the organisation is used to pursue the organisation's objectives/causes.*

Town Centre Issues

- 3.10 A representation from a large landowner in one of the town centres set out that some changes of use on existing properties which require planning permission would be liable for CIL if they have not previously been in lawful use for a period of six continuous months within three years, prior to a proposed change of use. This could potentially have the effect of making some changes of use within a town centre liable for CIL and thus adding to the costs of re-occupying a vacant unit, making them less attractive to prospective occupiers.
- 3.11 Whilst the use classes order places the majority of town centre uses – such as retail, restaurants etc. – into Class E meaning that no change of use permission would be required, some others such as a number of leisure uses, are classed as sui generis meaning that a planning application would be required to change, despite these uses being defined as “main town centre uses” in the National Planning Policy Framework (NPPF). To not discourage potential occupiers from locating in the town centres, it is proposed to make the following modification to the list of developments exempted from CIL:

Changes of use requiring planning permission on properties within a town centre, as defined in Policy SADM4 of the Welwyn Hatfield Local Plan (adopted October 2023) where the use being changed to is listed as a “main town centre use” in the National Planning Policy Framework (NPPF) (December 2023)

Other Issues Highlighted in Consultation

- 3.12 A number of further issues were raised in representations, but it is not proposed to make further modifications around these. The first, from Hertfordshire County Council, proposed that Section 106 funding for education and highways should continue to be charged on developments on top of CIL. Whilst this is legally possible and there will be an element of Section 106 retained for addressing location-specific issues, CIL was intended to largely replace Section 106. In addition, the larger, strategic sites – where more education and highways provision will be required - are proposed to not be liable for CIL and would instead fund and deliver infrastructure through Section 106. As a result, whilst the panel is asked to note the County Council’s concerns, it is not proposed to make a modification to the draft charging schedule as a result of this. A report setting out future Governance arrangements for the allocation of CIL receipts will be brought to members in due course.
- 3.13 Several representors queried some of the inputs into the viability assessments underpinning the draft charging schedule. These representations have been robustly considered by the Council’s experienced viability consultants, BNP Paribas. It is currently not considered necessary to make any modifications in light of these representations.

- 3.14 It is not uncommon for such representors to seek to challenge the inputs into viability assessment and through the examination of the charging schedule these will be considered by the appointed examiner. Should the examiner consider an in person hearing is required, the representors will be afforded the opportunity to make their representations in person.
- 3.15 A final issue is around small sites. On 19 February 2024, the Secretary of State for Levelling Up, Housing and Communities issued a written ministerial statement, which – among other things – covered the issue of CIL on small sites (i.e. those of ten units or below). In many areas, including the proposed charging schedule for Welwyn Hatfield, these small sites are charged CIL at the highest rate as they are not required to provide affordable housing. The statement said:
- This is not within the spirit of the Government’s policy on small sites. The Government will be updating CIL guidance to make it clear that CIL-charging authorities should consider the impact of CIL rates on SME developers and should not set higher residential CIL rates on minor development.*
- 3.16 Whilst this has been incorporated into Government guidance, it does not prohibit local authorities from charging a higher rate on small sites, merely that authorities should consider the impact and should not charge higher rates. However, the recently undertaken consultation only received one representation which covered this, and that said that “small sites for less than ten dwellings should only be required to pay CIL at the Zone 1 rate [i.e. the lowest rate] with the majority of CIL payment being made on sales of completed dwellings, not as an up front capital cost”. Making this modification would result in the loss of CIL contributions which would be used for important infrastructure development. Because the majority of small sites are classed as “windfall” and not allocated through the Local Plan, it is not possible to accurately forecast what potential CIL contributions might not come forward if this change were made.
- 3.17 However, based on levels of historic windfall it could be worth £7.5m over the period to 2036 (this calculation is based on a Local Plan assumption of 139 dwellings per year delivered as windfall over the period to 2026 to 2036, with historically c.25% of windfall delivery being in small sites, multiplied by the average dwelling size 94sqm at a CIL rate of £230psm. However, the nature of windfall means that these figures cannot be relied upon, though the sum involved will presumably still be significant). This is a modification which can be directed by the Examiner at an examination if considered necessary, and as a result it is not proposed to make a modification to the draft charging schedule as a result of this.

Approval and Re-Consultation

- 3.18 When CPPP considered the Charging Schedule for consultation in November 2023, and made their recommendation to Cabinet, they agreed that in the event of there being no changes to the proposed charging schedule as a result of the consultation process, that it could be submitted for examination under delegated authority. As variations to the charging schedule are proposed, it is necessary to secure the further agreement of Cabinet.
- 3.19 A further re-consultation specifically on these changes will be needed prior to submission, and – subject to unanimous agreement from this panel and a decision through an Executive Member Decision Notice - it is proposed to

undertake this as soon as possible and, in line with CIL regulations, for a period of 4 weeks.

Implications

4 Legal Implication(s)

- 4.1 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. The proposed consultation is necessary to ensure the process followed is aligned with the requirements set out in regulation and legislation.

5 Financial Implication(s)

- 5.1 There are no financial implications arising from this report and its recommendation. Financial implications of adopting CIL are set out in the CPPP of November 2023.

6 Risk Management Implications

- 6.1 There are no risk management implications arising from this report and its recommendation. The report to CPPP of November 2023 set out risks relating to any delays in progress CIL and failure to deliver new infrastructure projects.

7 Security and Terrorism Implication(s)

- 7.1 There are no known security and terrorism implications in relation to the proposals set out in this report.

8 Procurement Implication(s)

- 8.1 There are no known procurement implications in relation to the proposals set out in this report. The Council's work with BNP Paribas was procured through a national procurement framework.

9 Climate Change Implication(s)

- 9.1 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.

10 Policy Implications

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

11 Link to Corporate Priorities

- 11.1 The delivery of CIL is linked to all the Council's recently agreed Corporate Priorities. Ensuring mechanisms are in place to capture and mitigate the impact of development on infrastructure is key to delivering the priority of "Homes to be proud of".

12 Human Resources Implication(s)

12.1 There are no human resource implications in relation to the proposals set out in this report. Work on CIL and the re-consultation will be undertaken by planning officers as part of their normal role.

13 Equalities and Diversity Implication(s)

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.

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Appendix A – Community Infrastructure Levy Draft Charging Schedule (amended)

Appendix B - Community Infrastructure Levy Draft Charging Schedule Plan (amended)

Background Papers:

Written ministerial statement (19 February 2024):

<https://hansard.parliament.uk/commons/2024-02-19/debates/24021971000016/Long-TermPlanForHousing>