

Decision Maker: EXECUTIVE

FOR DISCUSSION AT DEVELOPMENT CONTROL COMMITTEE

Date: DCC: 24 September 2020
Executive: 14 October 2020

Decision Type: Non-Urgent Executive Key

Title: BROMLEY BOROUGH COMMUNITY INFRASTRUCTURE LEVY
– DRAFT CHARGING SCHEDULE CONSULTATION AND
SUBMISSION

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Ward: (All Wards);

1. Reason for report

- 1.1 This report seeks the Committee's agreement to approve the Bromley Community Infrastructure Levy Draft Charging Schedule for consultation and subsequent submission to the Secretary of State for independent examination. Once adopted, the Community Infrastructure Levy will provide financial contributions from certain types of development to help fund new or improved strategic infrastructure required to support the growth identified in the Bromley Local Plan.

2. **RECOMMENDATION(S)**

- 2.1 That the Development Control Committee recommend to the Executive that the Bromley Community Infrastructure Levy Draft Charging Schedule at Appendix 1 is approved for consultation and, pending no changes following consultation, subsequent submission to the Secretary of State for independent examination (alongside all relevant supporting documents).
- 2.2 That the Executive approve the Bromley Community Infrastructure Levy Draft Charging Schedule at Appendix 1 for consultation and, pending no changes following

consultation, subsequent submission to the Secretary of State for independent examination (alongside all relevant supporting documents).

- 2.3 That the Executive delegate approval of any necessary changes to the Draft Charging Schedule prior to submission (as a result of consultation) to the Portfolio Holder for Renewal, Recreation and Housing.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: No impact
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Corporate Policy

1. Policy Status: Not Applicable
 2. BBB Priority: Vibrant, Thriving Town Centres Regeneration Excellent Council Quality Environment
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Financial

1. Cost of proposal: Cost of consultation and examination can be met from Planning Policy and Strategy budget, and can be set against future CIL income upon adoption of CIL.
 2. Ongoing costs: Resource costs for ongoing management of CIL will be accommodated in Planning Policy and Strategy budget, funded from a proportion of CIL receipts which can be used to fund administration of the CIL. Additional staffing resources to assist with CIL collection and allocation may be needed in future.
 3. Budget head/performance centre: Planning Policy and Strategy
 4. Total current budget for this head: £0.568m
 5. Source of funding: Existing Revenue Budget for 2020/21
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Personnel

1. Number of staff (current and additional): 3 FTE
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: The Community Infrastructure Levy Regulations 2010 (as amended)
 2. Call-in: Applicable
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Procurement

1. Summary of Procurement Implications: N/A
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? N/A
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

Background

- 3.1 The Community Infrastructure Levy (CIL) allows local authorities in England and Wales (known as charging authorities for the purposes of CIL) to raise funds from developers undertaking new building projects. It effectively replaces much of the existing process of planning obligations commonly known as Section 106 agreements (although in some instances Section 106 agreements will still be sought – see below). The primary use of CIL is to gain financial contributions from certain types of development to help fund new or improved strategic infrastructure required to support the growth identified in the Local Plan. CIL places a charge per square metre on development. It will not be the sole funding source for all infrastructure delivered but will supplement other revenue streams.
- 3.2 CIL liability is triggered by most development comprising buildings that include an increase of new build floorspace of 100sqm or more of gross internal floorspace (GIA); or where there is a creation of a new dwelling. Provided that a building has not been left vacant, the GIA of any existing building on the site which is due to be demolished, or which will form part of the new development, would normally be deducted from the chargeable area.
- 3.3 The CIL Regulations also provide exemptions and reliefs from payment of the levy for certain forms of development. (subject to certain criteria); this includes relief for social housing, charitable development, self-build homes, residential extensions and residential annexes.
- 3.4 A chargeable development, for the purposes of determining a CIL liability, is the development for which planning permission is granted. This includes development where planning permission is granted by way of a “general consent” (such as permitted development) if it is of a sufficient scale or type which would trigger liability to pay CIL (as noted in paragraph 3.2 above). CIL is a mandatory payment that becomes payable on commencement of development by the party who has assumed liability or each person known to the authority as an owner of the relevant land.
- 3.5 The Council consulted on a CIL Preliminary Draft Charging Schedule (PDCS) in early 2018. The requirement for this stage of consultation no longer exists following changes to legislation in September 2019, but where a consultation was undertaken before this date, the charging authority must take into account any representations made before it publishes a draft charging schedule. A consultation statement is provided at Appendix 2, which details representations received during the PDCS consultation and the Council’s response to these representations.

Draft Charging Schedule and supporting documents

- 3.6 The Draft Charging Schedule (DCS) is provided at Appendix 1. The DCS proposes the following charges:
- £150 per sqm for large-scale purpose-built shared living¹ and purpose-built student accommodation².
 - £100 per sqm for residential development excluding residential development which delivers additional care and support services (which will be charged at a nil rate); and large-scale purpose-built shared living and student accommodation (which have a separate rate).

¹ Large-scale purpose-built shared living is sui generis non-self-contained market housing. It is not restricted to particular groups by occupation or specific need such as students, nurses or people requiring temporary or emergency accommodation proposed by speciality providers.

² Purpose built student accommodation is sui generis non-self-contained housing that is secured (through legal agreement) for use by students.

- £100 per sqm for retail warehousing³ over 1000sqm.
 - £100 per sqm for supermarkets/foodstore over 280sqm (3,000 sq ft).
 - £0 per sqm for all other forms of development.
- 3.7 These rates align with those consulted on in the PDCS consultation, except for the higher rate for large-scale purpose-built shared living and purpose-built student accommodation. This higher rate has been introduced in the DCS due to further viability testing, which shows that these types of development can viably accommodate a higher CIL contribution.
- 3.8 Some respondents to the PDCS consultation suggested that the Council should explore differential charging rates, particularly where different CIL charges would apply in different parts of the Borough. The viability study at Appendix 3 has considered whether such rates are necessary and concludes that there is not significant justification on viability grounds for a lower differential rate for different parts of the Borough; and highlights the simplicity of a single headline type charging rate set at a rate which is not too high, i.e. at the margins of what is viable. At the proposed rates, CIL is a modest proportion of overall development value, and it is noted that actual schemes that come forward are likely to benefit from reductions not explicitly modelled in the viability (see paragraph 3.10 below). It is also noted that some areas of the Borough could support a higher rate, therefore the proposed rate is considered to be pitched appropriately.
- 3.9 The DCS does set out differential charging rates for different development types, as set out above and in Appendix 1. One respondent to the PDCS suggested incorporating different development types into the viability testing. The viability study has had regard to different types of residential development including build to rent, large-scale purpose-built shared living and student accommodation. The conclusions of the study support a higher rate for large-scale purpose-built shared living and student accommodation; for build to rent, the viability study notes that the additional flexibility relating to affordable housing for these schemes and the likely limited frequency of such schemes coming forward means that a differential rate is not necessary. Actual schemes that come forward are likely to benefit from reductions not explicitly modelled in the viability (see paragraph 3.10 below), which will improve viability for build to rent schemes.
- 3.10 The Council considers that the DCS reflects the findings of the viability study and addresses issues raised by PDCS respondents. It is noted that the viability study takes a conservative approach to assessing CIL rates, and that it does not include any discounting to reflect existing floorspace on sites. Officers have since looked at development in the Borough that has been subject to the Mayor of London CIL (to which the Council is the Collecting Authority); typically, two thirds of sites contain existing floor space, on average representing a 50% reduction in liable floorspace – globally this would represent an average assumption of a 33% reduction on CIL liabilities. The rate of reduction differs slightly in different areas, with the figure rising to 40% in Bromley Town. This analysis shows that there is some additional viability headroom with the proposed CIL rate and confirms the proposed rates are demonstrably viable and are unlikely to threaten future scheme viability.
- 3.11 The CIL regulations require that *“in setting rates.....a charging authority must aim to strike what appears to the charging authority to be an appropriate balance between—*
- (a) the desirability of funding from CIL....to support the development of its area, taking into account other actual and expected sources of funding; and*

³ Retail warehousing is defined for the purposes of CIL as: large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering mainly for car-borne customers.

(b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.”

3.12 The DCS is underpinned by two main evidence base documents which satisfy the above requirements set out in CIL regulations and Planning Practice Guidance (PPG)⁴:

- CIL Viability Assessment (provided at Appendix 3): the viability assessment, produced for the Council by Dixon Searle Partnership, examines the levels of CIL that can be achieved across the Borough without affecting the overall viability of development identified in the Local Plan. This assessment is based on a number of site typologies, reflecting typical sites that are considered likely to come forward in the Borough. Only developments that are shown to be viable will be charged CIL. The PPG notes that *“viability assessments should be proportionate, simple, transparent and publicly available in accordance with the viability guidance”*⁵ and that *“a charging authority’s proposed rate or rates should be reasonable, given the available evidence, but there is no requirement for a proposed rate to exactly mirror the evidence”*⁶. The DSP report is consistent with the CIL regulations and PPG; the intention is not that the proposed CIL should be proven to be affordable on every site, but that, as a whole, it can be afforded against the majority of sites (based on the site typologies modelled in the viability assessment) to sufficiently enable the planned development targets to be delivered.
- Infrastructure Delivery Plan (IDP) (provided at Appendix 4): the IDPs role is to demonstrate that there is a funding deficit between the total cost of required infrastructure and the infrastructure already agreed for delivery and to be financed by other sources. As noted upfront in the IDP document, the information contained in this iteration of the IDP is based on the best available data, and is correct at the date of publication. It provides an overview of current infrastructure needs; it does not establish a hierarchy of future investment decisions by either the Council or other infrastructure delivery agencies. The projections and infrastructure proposals may change over time, and the IDP will be updated periodically to incorporate such changes. The PPG⁷ *“recognises that there will be uncertainty in pinpointing other infrastructure funding sources, particularly beyond the short-term”*; that *“[c]harging authorities should focus on providing evidence of an aggregate funding gap that demonstrates the need to put in place the levy”*; and that *“[a]ny significant funding gap should be considered sufficient evidence of the desirability of CIL funding, where other funding sources are not confirmed”*. The deficit identified in the most up-to-date version of the IDP at Appendix 4 demonstrates a significant funding gap, and, consistent with legislation and guidance, justifies the position of the Council to move forward with CIL. It is noted that further detail on CIL spending priorities that are to be funded in whole or in part by the levy should be set out in an Infrastructure Funding Statement (IFS) which must be published annually. The requirement to publish an IFS was introduced via the 2019 CIL regulation amendments, with the deadline for publication of the first IFS being December 2020.

3.13 In addition to the viability assessment and IDP, there are further documents which will be prepared and submitted alongside the DCS, to help justify the proposed approach and provide clarity on certain issues, including operational issues. A draft ‘Operational Guidance’ document is provided at Appendix 5 for information. This document is not mandatory, but would address many questions the Council receive on the collection and spending of CIL. The CIL Regulations can be very complex, and sometimes vague in the respect of practical interpretation.

⁴ Available here: <https://www.gov.uk/guidance/community-infrastructure-levy>

⁵ Ibid, Paragraph: 019 Reference ID: 25-019-20190901

⁶ Ibid, Paragraph: 020 Reference ID: 25-020-20190901

⁷ Ibid, Paragraph: 017 Reference ID: 25-017-20190901

Furthermore there are locally determined elements such as the proportion of expenditure to be specifically directed to 'the local area', or discretionary reliefs, which would benefit from having a clear narrative and statement of intent by the Council; this will be of benefit to developers and residents alike. The guidance is not part of the CIL examination and could be updated at any time, either pre-submission, during the examination or post-adoption.

- 3.14 Information on section 106 funding collected in recent years is provided at Appendix 6. This document will be submitted alongside the DCS, to address guidance in the PPG⁸ which states that *“as background evidence, the charging authority should also provide information about the amount of funding collected in recent years through section 106 (s106) agreements. This should include information on the extent to which their affordable housing and other targets have been met.”* In line with guidance, the paper sets out the amount of funding collected in recent years, and the Council's record of achieving affordable housing over the last five years. Further information relating to s106 agreements can be found within Bromley's Authority Monitoring Reports (AMRs)⁹.
- 3.15 Once CIL is adopted it is assumed to be the primary mechanism to raise funds for strategic infrastructure. The Council has until now used s106 to raise contributions towards various infrastructure projects, ranging from items directly required as a result of development (such as landscaping or immediate highway improvements) to off-site tariffs, such as those collected for education and community facilities. Once CIL is adopted, the s106 process will remain, however its scope will be largely restricted to site specific aspects, with wider infrastructure delivery assumed to be paid for via CIL. Affordable Housing (including payments in-lieu) and non-infrastructure contributions (e.g. employment and training, carbon offset) will continue to be secured via s106. The Council is required to provide narrative on the balance of its approach between CIL and s106 as part of annual IFS (discussed above).

Next steps

- 3.16 Following approval by Executive, the DCS will be subject to consultation for a minimum of four weeks, in line with guidance set out in the PPG. Following consultation on the draft proposals, the DCS will then be submitted for examination. Unlike other planning documents like Local Plans, the examination is undertaken by an 'examiner' appointed by the Council; this can be the Planning Inspectorate or another suitably qualified person. A CIL examination usually involves an informal hearing lasting one or two days (depending on the complexity of the schedule or representations raised).
- 3.17 Subject to a successful examination, the Council are then required to formally adopt the Charging Schedule and state a date for it to come into effect. The date of effect will require any application determined on or after that date to be liable for CIL, irrespective of when the application was received by the Council. As such it is typical for a Council to specify a future date of effect - usually 1 to 2 months after adoption by the Council. Factoring in these stages, it is envisaged that the local CIL would be adopted and take effect by autumn 2021, dependent on the committee cycle.
- 3.18 In terms of administering CIL, the Council is already the collecting authority for the Mayor of London CIL, and as such already has bespoke systems in place and trained staff to implement a Bromley CIL. The introduction of a Borough CIL will increase administrative requirements for each CIL liable application given that the Borough CIL will also need to be calculated. The calculation of CIL may be slightly more complex in certain cases, as may challenges against the chargeable amount.

⁸ Ibid, Paragraph: 019 Reference ID: 25-019-20190901

⁹ Recent published AMRs are available here:

https://www.bromley.gov.uk/downloads/download/73/annual_monitoring_reports_and_five_year_housing_supply

- 3.19 For the purpose of adopting CIL, the Council is not required to stipulate how it will be spent. However, establishing a process and principles for prioritising and allocating CIL expenditure will be important post-adoption, not only for services in the Council, but also other stakeholders and the local community. The CIL Regulations require that CIL is spent towards *“the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area”*. The definition of ‘infrastructure’ is very broad, covering all forms of transport, health, social and educational improvements – the only stipulated exception is affordable housing.
- 3.20 Whilst not prescribing an approach, government guidance is clear that Councils’ should put CIL towards *“infrastructure they need to deliver their relevant plan”* – in this case the Bromley Local Plan adopted on 16 January 2019. The IDP at Appendix 4 outlines the overall infrastructure needs to deliver the Local Plan but it does not prioritise any expenditure; government guidance is clear this a matter for the Council to determine. The IDP is a living document and the stipulated schemes may change from time to time, hence the Council is not obliged to tie CIL expenditure to items in the IDP, although it should be given key regard. Furthermore, the Council is required to identify a ‘neighbourhood proportion’ of CIL to be specifically spent in the ‘neighbourhood’ where development has occurred. The government does not prescribe how this is to be achieved, nor does it specify the extent of a ‘neighbourhood’. In general however, the Council is expected to set out a process to ensure a minimum of 15% of CIL receipts raised in a defined area is put toward priorities expressed by residents in that area; for example, this could be a proposal set out in a neighbourhood plan or expressed through other community participation events.
- 3.21 As CIL is only received on the commencement of sites approved after CIL comes into effect, it is unlikely to reach levels on to which to formalise investment priorities until at least 2023 based on the approximate timescale for adoption set out above. In the interim, extant s106 amounts (which are stipulated for specific use or use by a specific service) from sums received or due to be received from current permissions will remain the main source of income from development. Previously, in the report to approve the PDCS, this committee was advised that CIL would raise approximately £3.5m per annum; whilst this is still possible, it is an ambitious total and would likely only become achievable in the second or third year of operating CIL at any rate. Officers are producing an up-to-date projection of funds based on future planned growth, including geographical dispersal for the purposes of neighbourhood proportion.

4. POLICY IMPLICATIONS

- 4.1 The impacts of the COVID-19 pandemic are currently uncertain, but it is noted that it could have significant impacts on the local economy and housing supply in particular, hence it could impact on projected CIL receipts and could also slow down development or preclude development coming forward entirely. However, such impacts are not yet evident at a macro level. The DCS is underpinned by a viability assessment which takes a prudent approach to modelling potential CIL rates – it is therefore considered that the rates proposed in the DCS will not introduce significant financial constraints on development, as the viability assessment includes significant headroom to account for any additional financial constraints, for example, the cost of delays to development due to the pandemic.
- 4.2 It is noted that that government has implemented a CIL payment deferral process in response to the pandemic, permitting CIL liabilities to be deferred for up to 6 months. The approach to defer rather than reduce or ‘write off’ CIL liabilities is evidence of a view that the matter is temporary, and that the market will ‘pick up’. It is also relevant that the government specifically made the option of deferral only available to those with a turnover of less than £45 million per annum, suggesting that the government envisage that the impacts of the pandemic will affect smaller

firms and that only such firms should benefit from the deferral option; conversely, this suggests that the government considers larger firms are well placed to weather any impacts.

- 4.3 The government has recently launched a consultation on significant changes to the planning system¹⁰. This includes a proposal for a new Infrastructure Levy which will replace CIL and s106. No firm proposals are put forward and there has been no information published about transition to the new system for Boroughs such as Bromley who are currently in the process of introducing CIL. Therefore, officers consider that the planning reform consultation does not affect any decision to proceed with adopting a Borough CIL. Based on a CIL adoption date of mid-2021, it is likely that CIL would be in place for at least two to three years while any new planning system is put in place, during which time the CIL would apply and we would receive payments to fund essential infrastructure in the Borough. Having an adopted CIL in place may also provide a more solid footing to develop a future Infrastructure Levy, as there would be a tangible charging levy which could be used to inform it (although this is dependent on the degree to which there is local flexibility in setting the rates in any future Infrastructure Levy). The costs associated with proceeding with CIL adoption relate to the cost of consultation on the DCS and the cost of holding the examination, which are already budgeted for as noted below in the financial implications; therefore, even if the government does publish guidance which requires a pause in work on CIL, the aborted costs incurred would not be significant.

5. FINANCIAL IMPLICATIONS

- 5.1 As reported above, the previous estimate was that CIL would raise approximately £3.5m per annum, although officers currently believe this will not be achieved until the second or third year of operation i.e. no earlier than 2023. This estimate will need to be updated based on latest available data and officers are progressing this. The nature of schemes that CIL is designed to finance will mean that the majority of expenditure enabled will be through the Capital Programme. Therefore, this funding source will need to be factored into the Council's Capital Strategy and future expenditure and financing considerations.
- 5.2 Preparation of these documents will be led by the Planning Policy and Strategy Team, with input from other Council departments from where necessary. The cost of consultation and examination can be met from the Planning Policy and Strategy existing revenue budget. It is estimated that the combined cost of consultation and examination will be £5-£10k. This includes potential further support from the Council's viability consultants, if required. Should the charging schedule be approved and the Council adopt a local CIL, then the costs incurred can be set against future CIL income.
- 5.3 Ongoing management of CIL will be accommodated in Planning Policy and Strategy budget, although additional staffing resources may be necessary to assist with CIL collection and allocation. The CIL Regulations allow for a proportion of CIL receipts to be used to fund administration of the CIL:
- in years one to three, the total amount of CIL that may be applied to administrative expenses incurred during those three years, and any expenses incurred before the charging schedule was published, shall not exceed five per cent of CIL collected over the period of years one to three; and
 - in year four, and each subsequent year, the total amount of CIL that may be applied to administrative expenses incurred during that year shall not exceed five per cent of CIL collected in that year.

¹⁰ Planning for the Future, available here: <https://www.gov.uk/government/consultations/planning-for-the-future>

5.4 Further guidance on what constitutes is set out in the PPG¹¹:

“Administrative expenses associated with the levy include the costs of the functions required to establish and run a levy charging scheme. These functions include levy set-up costs, such as consultation on the levy charging schedule, preparing evidence on viability or the costs of the levy examination. There are similar costs associated with amending a levy charging schedule. They also include ongoing functions like establishing and running billing and payment systems, enforcing the levy, the legal costs associated with payments in-kind and monitoring and reporting on levy activity.”

5.5 This proportion of CIL will be used to meet the cost of any additional resources required, and also contribute towards the Council’s other budgeted costs. The overall cost of administration remains to be determined and costed; this will need to be considered and approved before the scheme is implemented and reflected in the Council’s revenue budget plans.

6. LEGAL IMPLICATIONS

6.1 The DCS has been prepared in line with the Community Infrastructure Levy Regulations 2010 (as amended) and relevant PPG. Consultation on the DCS and subsequent submission to the Secretary of State will be in line with this legislation and guidance. The DCS consultation will be a minimum of four weeks and will also have regard to the Council’s Statement of Community Involvement (SCI).

6.2 Due to the current COVID-19 restrictions and the potential for further restrictions to be imposed at short notice, it may not be possible to fully address the consultation requirements set out in national legislation and guidance and in the Council’s SCI, particularly with regard to having documents available for inspection at Council offices. Where this is not possible, the Council will seek to notify widely via email, the Council website and through other means where appropriate. This will ensure that the DCS documents are available widely and is considered to be a practical and pragmatic approach as advocated in the Chief Planners Letter of 20 March 2020¹².

Non-Applicable Sections:	N/A
Background Documents: (Access via Contact Officer)	<p>Bromley Local Plan 2019 - https://www.bromley.gov.uk/download/downloads/id/4768/bromley_local_plan.pdf</p> <p>Bromley Community Infrastructure Levy – Preliminary Draft Charging Schedule and Executive report – https://cds.bromley.gov.uk/documents/s50055193/London%20Borough%20of%20Bromleys%20Community%20Infrastructure%20Levy%20proposed%20Preliminary%20Draft%20Charging%20Sched.pdf</p> <p>Planning Practice Guidance – Community Infrastructure Levy - https://www.gov.uk/guidance/community-infrastructure-levy</p> <p>Bromley Statement of Community Involvement - https://www.bromley.gov.uk/download/downloads/id/2750/revised_statement_of_community_involvement_2016.pdf</p> <p>CIL Viability Assessment appendices</p>

¹¹ Paragraph: 157 Reference ID: 25-157-20190901, available here: <https://www.gov.uk/guidance/community-infrastructure-levy>

¹² Available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875045/Chief_Planners_Newsletter_-_March_2020.pdf