

Decision Maker: FULL COUNCIL

**FOR PRE-DECISION SCRUTINY BY EXECUTIVE AND BY THE
RENEWAL, RECREATION AND HOUSING POLICY
DEVELOPMENT AND SCRUTINY COMMITTEE AND
DEVELOPMENT CONTROL COMMITTEE**

Date: DCC: 25 March 2021
RRH: 30 March 2021
Executive: 31 March 2021
Full Council: 19 April 2021

Decision Type: Non-Urgent Non-Executive Key

Title: BROMLEY BOROUGH COMMUNITY INFRASTRUCTURE LEVY
(CIL) – APPROVAL OF CIL CHARGING SCHEDULE

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Chief Officer: Tim Horsman, Assistant Director (Planning)

Ward: (All Wards);

1. Reason for report

- 1.1 This report seeks Full Council approval of the Bromley Community Infrastructure Levy Charging Schedule. The levy will be charged on planning applications approved from 15 June 2021 (the date of effect). Once approved, 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.
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2. RECOMMENDATION(S)

- 2.1. That the Development Control Committee endorse the approval of the Bromley Community Infrastructure Charging Schedule at Appendix 1 (with any necessary changes to indexation rates as noted in paragraph 3.13 of this report).

- 2.2. That Members refer the matter to the Renewal, Recreation and Housing Policy Development and Scrutiny Committee for pre-decision scrutiny.**
- 2.3. That the Executive recommend to Full Council that the Bromley Community Infrastructure Levy Charging Schedule at Appendix 1 (with any necessary changes to indexation rates as noted in paragraph 3.13 of this report) is approved to come into effect eight weeks from the date of approval (15 June 2021).**
- 2.4. That Full Council approve the Bromley Community Infrastructure Levy Charging Schedule at Appendix 1 (with any necessary changes to indexation rates as noted in paragraph 3.13 of this report), to come into effect on 15 June 2021.**

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 notification relating to the adoption of CIL can be met from Planning Policy and Strategy budget. Cost of administering the collection of CIL 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: 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 Planning Act 2008; The Community Infrastructure Levy (CIL) 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. 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 on development determined after the CIL Charging schedule comes into effect. Those liable would include development 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 in early 2018 and then on a Draft Charging Schedule from 6 November 2020 to 20 December 2020. Following the second round of consultation, the responses were reviewed and the CIL Draft Charging Schedule was submitted for independent examination on 13 January 2021. None of the representations received included a request to be heard at a public hearing.
- 3.6. The appointed Examiner - Mr Keith Holland of Intelligent Plans and Examinations (IPE) Ltd – reviewed the documentation submitted by the Council and the representations made, determining that the examination would proceed by way of the written submissions and representation. The Examiner issued their report on 17 February 2021 and concluded that the draft Bromley CIL Charging Schedule provided an appropriate basis for the collection of the levy in the area. One minor modification (relating to clarification of a footnote) was identified as necessary to meet the drafting requirements set out in CIL legislation. No changes to the proposed charging rates were required.

Examiner’s Report and Recommendation

- 3.7. All documents used by the Examiner to inform their recommendation are available on the Council’s CIL Examination webpage¹, this includes copies of representations made, supporting evidence and statements of compliance with the CIL Regulations. The main

¹ https://www.bromley.gov.uk/info/1004/planning_policy/1491/bromleys_community_infrastructure_levy_examination

substantive request raised in the consultation responses was for a tiered residential charging rate with a lower (or nil) rate in Town Centres, Renewal Areas and Opportunity Areas.

- 3.8. In his report², the Examiner, following consideration of all representations received and an assessment against relevant legislation, summarises his main findings as follows:

“In this report I have concluded that the draft London Borough of Bromley Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area.

The Council has provided sufficient evidence that shows the proposed rates would not threaten delivery of the Local Plan.

One modification is necessary to meet the drafting requirements. This is to add the following to footnote 1 that accompanies the Charging Schedule table:

Large scale refers to 50 or more units of accommodation. Accommodation with less than 50 units will be subject to the £100 per sq. m charge.

The specified modification recommended in this report does not alter the basis of the Council’s overall approach or the appropriate balance achieved.”

- 3.9. Officers agree with the modification, which aligns the threshold with the description of “Large-scale purpose-built shared living developments” in paragraph 4.16.3 of the new London Plan³; this was already the intention of the footnote and the modification makes this explicit.
- 3.10. Given that proposals for new-build shared living in the borough are infrequent, the introduction of the threshold is likely to have a minor effect on potential income from CIL.
- 3.11. Section 213(3B) of the Planning Act 2008 states that the charging authority must publish a report setting out how the charging schedule as approved remedies any regulatory non-compliance identified by the Examiner. This committee report fulfils this requirement of the Planning Act. Regulation 25 of the CIL Regulations requires this report to be published on the Council’s website and made available for inspection, alongside the approved Charging Schedule.

Modified CIL Charging Schedule proposed for approval

- 3.12. The proposed Charging Schedule as modified is provided at Appendix 1. The following charges would be introduced on relevant planning permissions approved by the Council on and after the date of effect (15 June 2021):

- £150 per sqm for large-scale purpose-built shared living⁴ and purpose-built student accommodation⁵.
- £100 per sqm for residential development excluding residential development which delivers

² https://www.bromley.gov.uk/download/downloads/id/6696/bromley_cil_charging_schedule_examination_final_report_-_february_2021.pdf

³ London Plan 2021: Para 4.16.3- https://www.london.gov.uk/sites/default/files/the_london_plan_2021.pdf

⁴ 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. Large scale refers to 50 or more units of accommodation. Accommodation with less than 50 units will be subject to the £100 per sq. m charge

⁵ Purpose built student accommodation is sui generis non-self-contained housing that is secured (through legal agreement) for use by students.

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).

- £100 per sqm for retail warehousing⁶ over 1000sqm.
- £100 per sqm for supermarkets/foodstore over 280sqm (3,000 sq ft).
- £0 per sqm for all other forms of development.

3.13. The charging schedule rates are subject to indexation from the date the schedule comes into effect to the date permission is granted. Indexation is set at the rate as published on the preceding 1 November, and can periodically be reviewed; as such the indexation rates stipulated in the indexation table in Appendix 1 may need to be amended prior to final publication.

3.14. CIL will apply to all relevant permissions determined by the Council on or after the date it comes into effect, irrespective of when the application was received by the Council. This would include applications with a resolution to grant planning permission where a legal agreement has not yet been signed and therefore the formal decision has not yet been issued. As such, officers propose that the CIL Charging Schedule should come into effect on 15 June 2021, which is eight weeks following the date of the Full Council meeting on 19 April 2021 where the CIL Charging Schedule is recommended for approval. Giving this eight-week allowance means that those applications received prior to the date of effect have an appropriate timescale to be determined prior to CIL becoming chargeable. Such applications will be at an advanced stage which could make revisions to accommodate the additionality of a CIL charge impractical; contributions under the existing S106 agreement requirements may already have been finalised for these applications.

3.15. Conversely, delays to the date of effect could mean that the amount of CIL secured is reduced, which could have knock-on effects on the Council's ability to deliver timely infrastructure improvements in the future. Officers consider that further delays beyond eight-weeks would be unnecessary and would unduly affect the level of infrastructure funding received.

3.16. Balancing the above considerations, eight weeks is considered an appropriate timescale.

Next steps

3.17. Following approval by Full Council, the Borough CIL will begin to be charged on 15 June 2021. The Council already collects CIL on behalf of the Mayor of London, and as such already has systems in place to collect. 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. Furthermore, the Council can expect an increase in planning applications submitted before June to seek determination prior to CIL coming into effect.

3.18. CIL charges are payable within 60 days of a site commencing, as such income via CIL is not expected to start accruing until late 2021, and not in substantive amounts until financial year 2022/23. Planning obligations by way of extant S106 agreements will likely remain the main source of income until 2023/2024.

⁶ 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

- 3.19. Following the adoption of CIL, the scope of new S106 agreements will become more restricted as certain elements will be assumed by the CIL charge (such as tariff style payments to health and education). Officers will prepare a revised Planning Obligations SPD to set out updated S106 requirements.
- 3.20. The Council is required to spend CIL in accordance with Regulation 59 of the CIL Regulations, namely “the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area”. It is entirely at the discretion of the Council to determine what CIL is spent on. Officers are working across services to determine an approach for spending CIL; however, as noted above, S106 amounts (which are limited in use by the terms of the specific agreement) will continue to be the main source of funding for the next financial year and will continue to be allocated for expenditure within the relevant services.
- 3.21. The Council is also encouraged by Government policy to ensure a proportion of CIL is spent in the ‘neighbourhood’ where the CIL amounts have been collected. Regulation 59A sets out a set proportion to be passed on to parish councils, however there is no set proportion for boroughs without parishes; furthermore, there is no geographical definition of what constitutes a ‘neighbourhood’. Councils are however encouraged to adopt an approach similar to that set out in Regulation 59A, that being 15% on income received, rising to 25% where there is a neighbourhood plan in place. The ‘neighbourhood proportion’ would be held by the borough and only spent where the Council deems appropriate; however, there is an expectation of meaningful engagement with those who reside in the given ‘neighbourhood’. At present officers consider that setting ‘neighbourhood’ at ward level at the rate set out above to be the best approach and will develop a process for undertaking engagement with residents. Any process adopted for spending CIL can be reviewed at a future date.

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 Charging Schedule is underpinned by a viability assessment which took a prudent approach to modelling proposed CIL rates, an approach which has been independently endorsed by the Examiner – it is therefore considered that the rates proposed will not introduce significant financial constraints on development.
- 4.2. It is noted that the 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 envisaged 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 launched last year a consultation on significant changes to the planning system⁷. This included a proposal for a new Infrastructure Levy which will replace CIL and s106. No firm proposals have yet been put forward; officers understand that MHCLG intend to

⁷ Planning for the Future, available here: <https://www.gov.uk/government/consultations/planning-for-the-future>

introduce a transitional arrangement in those boroughs that have adopted CIL, to phase out CIL before any new Levy would be introduced.

5. FINANCIAL IMPLICATIONS

- 5.1. It was previously estimated 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. 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. 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.
- 5.3. Further guidance on what constitutes 'administrative expenses' is set out in the PPG⁸:
- “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.”*
- 5.4. 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 reflected in the Council's revenue budget plans.

6. LEGAL IMPLICATIONS

- 6.1. The Charging Schedule has been prepared in line with the Planning Act 2008, the Community Infrastructure Levy Regulations 2010 (as amended) and relevant PPG.
- 6.2. The decision to adopt CIL is pursuant to section 213 of The Planning Act 2008. Section 213 specifies that a charging authority must approve a charging schedule at a meeting of the authority and by a majority of votes of members present. A legal compliance statement outlining compliance with the Act and Regulations was submitted as part of the independent examination.

⁸ Paragraph: 157 Reference ID: 25-157-20190901, available here:
<https://www.gov.uk/guidance/community-infrastructure-levy>

6.3. The Council are required to give notice of approval of the CIL Charging Schedule in accordance with Regulation 25 of the CIL regulations. 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 these requirements, particularly with regard to having documents available for inspection at Council offices. Where this is not possible, the Council will seek to make documents available for inspection by appointment. This is considered to be a practical and pragmatic approach as advocated in the Chief Planners Letter of 20 March 2020⁹.

<p>Non-Applicable Sections:</p>	<p>IMPACT ON VULNERABLE ADULTS AND CHILDREN</p> <p>PERSONNEL IMPLICATIONS</p> <p>PROCUREMENT IMPLICATIONS</p>
<p>Background Documents: (Access via Contact Officer)</p>	<p>Bromley Local Plan 2019 - https://www.bromley.gov.uk/download/downloads/id/4768/bromley_local_plan.pdf</p> <p>Development Control Committee report, 24 September 2020, BROMLEY BOROUGH COMMUNITY INFRASTRUCTURE LEVY – DRAFT CHARGING SCHEDULE CONSULTATION AND SUBMISSION - http://cdslbb/documents/s50083410/BROMLEY%20BOROUGH%20COMMUNITY%20INFRASTRUCTURE%20LEVY%20DRAFT%20CHARGING%20SCHEDULE%20CONSULTATION%20AND%20SUBMISSIONP.pdf</p> <p>Bromley CIL Examination documents (including the Draft Charging Schedule, Consultation Statement, Examiners Report and other submission documents) - https://www.bromley.gov.uk/info/1004/planning_policy/1491/bromleys_community_infrastructure_levy_examination</p>

⁹ Available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875045/Chief_Planners_Newsletter_-_March_2020.pdf