

CABINET

26th January 2022

Subject: Community Infrastructure Levy Charging Schedule

Cabinet Member: Leader of the Council

1. Purpose of Report

- 1.1 In [November 2019](#), the Cabinet resolved to put in place a Community Infrastructure Levy (CIL) for Castle Point ([minute no. 58](#)). A draft Charging Schedule was reported to the Cabinet in [October 2021](#). At that meeting it was agreed to undertake consultation on the draft Charging Schedule ([minute no. 34](#)).
- 1.2 This report sets out the outcomes of that consultation and recommends that the CIL Charging Schedule, attached as appendix 2, is approved for examination and is approved for publication and to come into effect in accordance with the Planning Act 2008, if the examination finds the proposed rates appropriate and does not recommend modifications.

2. Links to Council's priorities and objectives

- 2.1 CIL contributes directly to the Council's **Place** priority by delivering the financial resources necessary to deliver infrastructure projects. There are potential overlaps with the Council's **People** and **Environment** priorities as CIL can be used on a variety of infrastructure types including education, health, community and sport facilities and open spaces. CIL is an enabler under the **Resources** heading.

3. Recommendations

1. The Cabinet notes the outcomes of the consultation carried out pursuant to Regulation 16 of the CIL Regulations 2010.
2. The Cabinet recommends to Council that it:
 - a. Approves the submission of the Community Infrastructure Levy Charging Schedule attached as Appendix 2 to the Planning Inspectorate for the purposes of examination in accordance with the Community Infrastructure Levy Regulations 2010 (as amended) and the Planning Act 2008.

- b. Authorises the Head of Place and Policy, and suitably qualified officers and consultants as he approves, to represent the Council in the examination of the Community Infrastructure Levy Charging Schedule, and undertake any work deemed necessary for that examination.
 - c. In the case that the examiner does not recommend changes to the rates proposed in the submission Community Infrastructure Levy Charging Schedule, the CIL Charging Schedule attached as Appendix 2 is Approved for publication and to come into effect. The Chief Executive and Head of Place and Policy, in consultation with the Leader and Deputy Leader, are authorised to publish and set a date on which the Community Infrastructure Levy will come into effect, as soon as is practical after the receipt of the examiner's report.
 - d. In order to enable the Chief Executive and Head of Place and Policy to implement recommendation c, they are authorised, in consultation with the Leader and Deputy Leader, to make minor editorial changes to the Community Infrastructure Levy Charging Schedule as necessary to indicate that it is the final version and will come into effect on a specified date.
 - e. In the case that the examiner does recommends changes to the rates proposed in the submission Community Infrastructure Levy Charging Schedule, require the Chief Executive and Head of Place and Policy to report back to Council on the examiners recommendations as soon as practical after its receipt, so that a further decision can be taken on the implementation of the Community Infrastructure Levy.
3. The Cabinet requests the Place and Communities Policy and Scrutiny Committee to review in detail the Governance options for the expenditure of CIL monies and report back on a recommended arrangement.

- 4.1 The Community Infrastructure Levy (CIL) was first introduced by the Planning Act 2008, as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. For the purposes of CIL, infrastructure is defined at section 216 of the Planning Act 2008 to include:
- Roads and other transport facilities
 - Flood defences
 - Schools and other education facilities
 - Medical facilities
 - Sporting and recreation facilities

- Open spaces
- 4.2 The CIL is a charge which can be levied by local authorities on new development in their area. The levy rates are set out within a CIL Charging Schedule, where the local authority can set various rates for a range of different development types and locations.
- 4.3 Local authorities can choose to introduce a CIL depending on the local circumstances of the area. At its meeting on the [20th November 2019](#), Cabinet resolved:
- 1) That the Cabinet confirms the process to introduce CIL
 - 2) That further reports are made to Cabinet on progress, and to Council to approve the draft Charging Schedule and Section 123 (Planning Act 2008) Schedule prior to public consultation.
- 4.4 The regulatory process for producing a CIL Charging Schedule is set out within the CIL Regulations (as amended) 2010, which came into force on 6th April 2010. Regulation 16 of the CIL Regulations requires public consultation to be undertaken on the draft CIL Charging Schedule. This is the only public consultation required prior to its submission for independent examination.
- 4.5 The CIL rates should be set at a level which ensures that they will not render new development in the area financially unviable, and once adopted the rates set are non-negotiable. Exemptions and discretionary relief can be applied in certain circumstances. Funding obtained through the Levy should be used to deliver infrastructure needed to support development in the area. To charge a CIL the Council must be able to demonstrate that there is an infrastructure funding gap in the area.
- 4.6 In [October 2021](#), the Cabinet received a report setting out the evidence of need for, and potential to charge a CIL. The evidence comprised:
- Infrastructure Delivery Plan (IDP) 2020 which identifies an infrastructure funding requirement of £96m and a funding gap of £38m
 - CIL Viability Study 2021 which identifies the potential to charge CIL on residential and retail developments, albeit at different rates without rendering those forms of development unviable.
- 4.7 Based on that evidence the following CIL Charging Schedule was recommended to the Cabinet, for the purposes of undertaking consultation in accordance with Regulation 16 of the CIL Regulations.

Table 1: Proposed CIL Rates at Regulation 16

Development type	CIL rate per sqm
Residential housing within the Mainland (including Benfleet, Thundersley and Hadleigh)	£250
Residential housing within Canvey Island	£120
Residential flat within the Mainland (including Benfleet, Thundersley and Hadleigh)	£90

Residential flat within Canvey Island	£30
Sheltered / Retirement and extra care housing	£0
Convenience ¹ retail for the first 800 sqm gross internal area	£200
Convenience retail for each sqm metre over 800 sqm gross internal area	£50
Comparison ² retail outside of the town centre boundaries	£200
All other development	£0

- 4.8 At the meeting of the Cabinet in October 2021, it was agreed to undertake consultation on the proposed CIL rates set out above.
- 4.9 The CIL rates for Canvey Island are lower than for the rest of the Borough. This reflects the differences in viability between the two areas. The soundness test for CIL is, like a local plan, based on evidence that justifies the rates that have been set.
- 4.10 The viability assessment tested a wide range of development typologies (i.e. flats or houses) and locations. The conclusions were clear that development values on the Canvey Island could not support a higher rate of CIL. Therefore, the dual rate is required.
- 4.11 To proceed with the same rate as is currently proposed for Benfleet, Hadleigh and Thundersley on Canvey Island would put CIL for the whole borough at risk, thereby, causing significant delay in introducing CIL and securing infrastructure investment.
- 4.12 The Council could choose to apply the same rates across the borough by using the lowest viable rates i.e. charging the rates proposed for Canvey across the whole of Castle Point. This would however result in the Council missing out on higher receipts from sites in Benfleet, Hadleigh and Thundersley. Where the Council misses the opportunity to optimise CIL, the money that is not collected becomes part of the developers' profits, at the expense of local infrastructure provision.
- 4.13 CIL can be reviewed, and officers will monitor viability, and if the position changes, then a further report can be made to Cabinet or the Scrutiny Committee which could trigger a review.

5. CIL Consultation

- 5.1 Consistent with the national Planning Practice Guidance regarding the preparation of a CIL and the requirements of the Council's Statement of Community Involvement the consultation on the Draft Charging Schedule took place for a period of just over 4 weeks, from the 3rd November until 3rd December 2021.
- 5.2 The consultation was undertaken in accordance with the details set out in section 9 of the report to Cabinet in [October 2021](#). In summary:

¹ Convenience retail provides lower value good purchased regularly to meet day to day needs such as food, newspapers, petrol etc.

² Comparison retail provides higher value goods purchased less often, such as household items, electrical goods, clothes, shoes etc.

- The draft CIL Charging Schedule and an explanatory information booklet was made available online and in hard copy format at the Council Offices.
 - The consultation was promoted on all of the Council's social media outlets, and through an advert in the local press.
 - Statutory consultees were written to directly notifying them of the consultation. Additionally, service providing organisations, including third sector organisations, and those involved in the local construction/development sector were written to directly.
- 5.3 A Consultation Statement comprising details of the approach taken to consultation is included as appendix 1.
- 5.4 A total of 20 separate responses were received to the consultation. This included one representation that was signed by an additional 55 people. Based on experience elsewhere in Essex, this is consistent with the level of response seen in other areas. Those responding were generally involved in the construction/development sector and are likely to be impacted financially through the introduction of CIL.
- 5.5 Each of the consultation responses has been reviewed by officers. Additionally, where matters related to the Viability Assessment were raised the Council's viability consultant has been engaged to review the comments and provide specialist advice. The responses and a response to each of the comments is included within the Consultation Statement.
- 5.6 The following key issues were raised through the consultation:
- How the Viability Study (VS) has considered the impacts of Covid-19, Brexit, and the recent Stamp Duty holiday, and the approach to sensitivity testing associated with these issues.
 - How the VS has considered the potential impacts arising from recent national planning policy and legislation changes, including the Future Homes consultation regarding changes to Part L and Part F of the Building Regulations.
 - Taking into account existing section 106 infrastructure costs upon development in the area, in addition to a Levy.
 - Consideration of an appropriate benchmark land value within the VS.
 - The size of the financial viability buffer included.
 - Queries relating to calculations within the VS included:
 - Housing type and sizes considered.
 - Approach to assessing sales values.
 - The level of external costs, site opening up costs, and abnormal costs to be considered.
 - Overall building costs considered, particularly relating to recent increases in the costs of labour and materials.
 - The amount of professional fees included.
 - Comments specifically relating to the proposed CIL rates included the following:
 - Concern that the proposed CIL rates were too high.
 - Concern that the proposed rates would reduce the delivery of new housing in the area.

- Concern regarding the difference in proposed rates between Canvey Island and the Mainland.
 - Approach to considering Levy rates for greenfield and brownfield sites.
 - Inclusion of CIL rates for different types of development.
 - Support for the draft Instalments Policy.
 - Support for the inclusion of a discretionary relief policy.
- 5.7 As a consequence of the consultation on the CIL and the additional work undertaken to review those comments, it is considered that there is no need to amend the proposed CIL Rates. It is recommended that the CIL rates proposed in October 2021 remain unchanged and are progress for submission for independent examination. The CIL Charging Schedule recommended to the Cabinet is included as Appendix 2.
- 6. Next Steps in Progressing the CIL**
- 6.1 Having carried out consultation on the draft charging schedule and considered the matters raised in the response to the consultation, the Council is now able to progress the proposed CIL charges to independent examination. The independent examination process typically takes between 3 and 6 months.
- 6.2 The purpose of the examination is to ensure that the CIL charges proposed are reasonable having regard to the evidence of need for a CIL and the evidence of the impacts on viability of introducing the CIL charges proposed.
- 6.3 The examination is carried out independently of the Council typically by an Inspector from the Planning Inspectorate. The Inspector will consider the representations made at Regulation 16 and will hear statements from any of those parties who made representations at Regulation 16 on matters related to their concerns regarding the proposed CIL charges.
- 6.4 To conclude their examination, the Inspector will produce a report which sets out their findings and recommends whether the charges proposed are appropriate or should be modified in any way.
- 6.5 Subject to any modifications proposed by the Inspector, the final CIL Charging Schedule needs to be published with an effective date. The effective date is the date on which the CIL comes into effect. Any applications decided from that date are CIL liable, subject to any specified exemptions in the Regulations.
- 6.6 To progress these next steps, the Cabinet is asked to recommend the draft Charging Schedule at Appendix 2 to the Council. The Council will be asked to:
- Authorise the submission of the draft CIL Charging Schedule for examination.
 - Authorise the Head of Place and Policy, and appropriate officers as he appoints, to undertake all tasks as necessary to represent the Council in the examination of the CIL Charging Schedule.
 - Approve the CIL Charging Schedule for publication and to come into effect, assuming that the examiner's report does not recommend modifications to the proposed CIL Charging rates.

- Authorise the Head of Place and Policy to set an effective date for the implementation of CIL, assuming the Inspector's report does not recommend modifications to the CIL Charging Rates.

6.7 The above assumes that the Inspector does not recommend modifications to the proposed CIL Charging Rates. Seeking these authorisations at this time will allow the CIL to come into effect as quickly and as seamlessly as possible.

6.8 However, if modifications are proposed by the examiner, resulting in the rates set out in the CIL Charging Schedule changing, it is proposed that the amended Charging Schedule be reported to Council for approval for publication and effect to ensure appropriate oversight by Members. Whilst officers will endeavour to do this as soon as possible after the receipt of the examiners report, it is inevitable that any modifications will delay the implementation of the CIL by a short period.

7. The implementation of the Community Infrastructure Levy

7.1 Setting the CIL charging rates is but the start of the process. The way in which CIL is implemented is critical to how successful it is in delivering infrastructure within the local area.

Monitoring and Collection

7.2 When CIL comes into effect, the Council will need to monitor development carefully, issuing liability notices to all developments that need to pay CIL, and demand notices when CIL payments become due. Inevitably it will have to take enforcement actions against those who do not pay what is due.

7.3 To this end, the Council will need to implement new operational processes to ensure that it is ready to monitor development and collect CIL as soon as it comes into effect, effectively and efficiently.

7.4 To allow for councils to implement CIL, they are permitted to keep up to 5% of CIL receipts for implementation purposes. The Head of Place and Policy is seeking to use a proportion of this resource to put the IT systems and officers in place to enable the effective collection, monitoring and expenditure of CIL on infrastructure projects in the Borough.

Relationship with S106 Agreements

7.5 The introduction of CIL does not prevent the Council from using S106 Agreements to secure elements of infrastructure provision and funding. Indeed, this is assumed in the viability assessment work that has been undertaken, and so have been factored into the setting of the proposed CIL Charging Rates.

7.6 Regulation 122 of the CIL Regulations 2010 (as amended) set out the criteria that apply for using S106 Agreements, which are as follows:

- a) Necessary to make the development acceptable in planning terms;
- b) Directly related to the development; and
- c) Fairly and reasonably related in scale and kind to the development.

- 7.7 It is recommended that the Council continues to seek S106 Agreements for infrastructure provision which can be directly linked to the development and is proportionate in scale. For example, school place funding. It is also the intention of the County Council to continue to use agreements under S278 of the Highway Act to secure direct delivery of highway improvements arising from developments.
- 7.8 The table below provides an indication of where S106 contributions will continue to be sought and where CIL could be used, subject to the prioritisation of CIL spending by the Council.

Section 106 Contributions	CIL Contributions
Schools and other education facilities	
• Education – Early Years and Child Care • Education – Primary • Education – Secondary • Education – Post 16 (in schools) • Hadleigh Library – redevelopment and enhancement	• Education – Post 16 (non-school providers) • Adult employment, skills and training facilities in Castle Point • Other Library provision and/or enhancements in Castle Point
Medical Facilities	
• On-site provision of healthcare facilities • Contributions towards off-site facilities that would serve the proposed development	• NHS Estates Plan for Castle Point where not secured through S106
Open Spaces	
• On-site open space provision, management and maintenance • Local off-site open space in lieu of on-site provision	• South East Essex Park (SEEPARK) delivery in Castle Point where not secured through S106
Sport and Recreational Facilities	
• Local Football Facilities Plan (Appleton School, Deanes School, Waterside Leisure Centre, King George's playing field) • On site indoor sports provision • Reprovision or compensatory provision of lost playing pitches	• Playing Pitch Strategy – non football elements • Built Facilities Strategy where not secured through S106 • Community space provision and/or enhancements in Castle Point
Flood Defences	
• On-site SUDS and other measures to deliver site level drainage strategy	• Surface Water Management Plan Projects in Castle Point
Roads and other transport facilities	
• Any transport schemes required to deliver any site • Any public transport schemes required to deliver any site • On-site cycle and walking network infrastructure, and connections into wider network • Other measures as identified as necessary through a site level Transport Assessment	• Strategic Transport Projects • Sustainable Transport Projects
Other matters – list is not exclusive but is indicative of common requirements	

• Biodiversity Net Gain • Essex Coast RAMS • Landscaping provision, maintenance and management • Heritage Assets – enhancement, protection, maintenance and management	
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- 7.9 In order to ensure that there is clarity around the use of S106 Agreements in Castle Point, particularly in light of the implementation of CIL, it is recommended that the Council's Developer Contributions Guidance SPD is updated. This will be reported separately to Cabinet for consideration in due course.

Spending CIL

- 7.8 Whilst it is the aim to get CIL in place as soon as possible, it is unlikely that the Council will have much by way of CIL receipts for 12 to 18 months, and a rather limited pot of monies for around 3 years. This is because only those developments approved after CIL comes into effect are liable, and they only become liable at the point at which development commences. Whilst this delay may seem frustrating, it provides the opportunity to ensure that there is good governance in place around how the spending of CIL will be prioritised and how CIL monies will be allocated to specific projects.
- 7.9 In the summer of 2021, the Planning Advisory Service published a handbook entitled *Improving the Governance of Developer Contributions*. This advocates a model for delivering developer contributions, including CIL, which builds on strong leadership and resourcing to deliver a policy and evidence led approach to deciding how CIL should be spent in a controlled and integrated way, ensuring all parts of the Council and relevant partners are involved.
- 7.10 Of course one size doesn't fit all, and the policy and evidence in Castle Point is likely to give rise to a need for different governance arrangements to those needed in other areas. Given the good amount of time available to ensure that strong governance arrangements are put in place for the expenditure of CIL, it is recommended that the Place and Communities Policy and Scrutiny Committee are asked to consider this matter. It is recommended that they are asked to make recommendations to the Cabinet as to how CIL should be governed at Castle Point to ensure that it is effective in delivering the infrastructure needed across the borough, alongside other funding sources including S106 Agreements.

8. Conclusion

- 8.1 The draft CIL Charging Schedule has been the subject of consultation. Those consultation responses have been reviewed and it remains the case that the proposed CIL rates for the Borough are appropriate and will help to maximise the potential for new development to generate income for the delivery of new infrastructure in Castle Point without rendering new development financially unviable. The Cabinet is therefore asked to recommend to Council that the CIL Charging Schedule be approved for examination, and approved for publication and to come into effect, assuming no modifications are recommended by the examiner regarding the rates proposed.

- 8.2 At the same time, the Cabinet is recommended to request that the Place and Communities Policy and Scrutiny Committee consider the governance arrangements for spending CIL in order that the Council is well placed to maximise the opportunities that CIL presents in terms of infrastructure provision. The Head of Place and Policy will make the necessary operational arrangements for the implementation of CIL.

9. Appendices

Appendix 1 – Draft Castle Point Borough Community Infrastructure Levy Charging Schedule Consultation Report

Appendix 2 – Draft Castle Point Borough Community Infrastructure Levy Charging Schedule

10. Corporate Implications

a. Financial implications

The Council has an agreement with Essex County Council to fund £60,000 towards the cost of preparing the Community Infrastructure Levy in return for them being able to access the first £60,000 worth of CIL receipts for a county led project or projects in Castle Point.

The CIL Regulations allow for the remaining costs for preparing the 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.

Separately, there is a cost associated with implementing and managing CIL. Experience from elsewhere indicates that this requires at least one CIL Officer and a computer system/data base.

It is estimated that the cost of an officer will be of the order of £55k per annum, whilst the cost of the computer system, based on the one used in around 150 Council's across the Country already, is around £30k for set up and around £15k per annum thereafter. It is estimated that the total annual cost for implementing the CIL will be of the order of £70k per annum at current costs.

The Council can use up to 5% of its CIL income to administer CIL. Over the period 2022-2033 the cost of administering CIL will be of the order of £800k at current costs. Over the same period, 5% of the projected income from CIL would amount to £1.75m at current rates meaning that there will be sufficient resources to implement CIL.

Meanwhile, the CIL will raise around £33.25m to be spent on Local Infrastructure projects. Around £400k of this will need to be assigned to local spend at the ward level, based on current costs. The remainder will be available for infrastructure projects across the borough.

b. Legal implications

The Council must ensure that the approach to progressing the CIL Charging Schedule is in accordance with the CIL Regulations and guidance in the PPG, otherwise there could be a risk of legal challenge.

Following the adoption of a CIL in an area, there would be a legal requirement on a developer to pay the levy for liable development. The adoption of a CIL could reduce the use of Section 106 agreements in the area. Arrangements will need to be put in place in respect of the transfer and use of CIL funds to third parties – i.e. ECC, the Town Council or NHS.

c. Human resources and equality implications

Human resources

Experience from other authorities who have implemented CIL indicates that its administration whilst generating a great source of funding for infrastructure projects is administratively burdensome. It requires the monitoring, enforcement and the constant tracking of the numerous development projects that may be underway across the area to know when to issue notices and expect (or otherwise chase) receipts.

It also requires the preparation of a statement setting out how CIL, alongside S106 receipts have been spent in any given year, meaning that there is an imperative to be pushing funds out to those services within the organisation or other organisations such as Essex County Council or the NHS to deliver projects, and ensuring that those projects are being delivered.

A CIL Officer will therefore be required to implement CIL, alongside an appropriate computer system.

Equality implications

There are no identified negative equality implications.

CIL provides the opportunity for the Council and its partners to deliver the infrastructure needed to support the community in Castle Point, including those with protected characteristics.

d. Timescale for implementation and risk factors

Delays in progressing a Community Infrastructure Levy 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 get a CIL in place before or alongside the adoption of the Local Plan to maximise the receipt from allocated sites.

11. Background Papers:

- [Infrastructure Delivery Plan \(2020\)](#)
- [Castle Point CIL Viability Report \(2021\)](#)
- [Community Infrastructure Levy Regulations 2010](#) (see amendment regulations also)
- [Cabinet Meeting Agenda 20th November 2019](#) (resolution to prepare a CIL)
- [Cabinet Meeting Agenda 20th October 2021](#) (resolution to consult on CIL Charging Schedule)
- [PAS Guidance – Improving Governance of Developer Contributions](#)

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