

CABINET

DATE OF MEETING: 3 SEPTEMBER 2020

TITLE OF REPORT: COMMUNITY INFRASTRUCTURE LEVY

Report of: Head of Place

Cabinet Member: Cllr Graham Cockarill, Place

1 PURPOSE OF REPORT

1.1 To consider the introduction of a Community Infrastructure Levy (CIL) in Hart.

2 OFFICER RECOMMENDATIONS

1. That officers commence the processes to set the Community Infrastructure Levy (CIL) Charging Schedule; and
2. That Overview and Scrutiny Committee consider any draft CIL Charging Schedule prior to a Cabinet decision to consult.

3 BACKGROUND

- 3.1 The Community Infrastructure Levy (CIL) was introduced through the Planning Act 2008. It is a levy on new development, intended as a fair and transparent means of capturing developer contributions towards the cost of infrastructure needed to support growth.
- 3.2 All district councils in England are empowered, but not required, to introduce CIL in their area.
- 3.3 If implemented, the levy applies to most new buildings (generally to all new homes, and other development over 100 sq. m.). Charges are based on the size and type of new floor space.
- 3.4 Both the Corporate Plan and the Hart Local Plan (Strategy & Sites) 2032 refer to the introduction of CIL. The evidence base behind the Local Plan demonstrates there is scope to introduce CIL in terms of development viability.
- 3.5 Overview and Scrutiny Committee considered this report at its July 2020 meeting and recommends that Cabinet agree to officers to commence the processes to implement a CIL. The Committee also requested that it sees and considers the draft CIL Charging Schedule before it is consulted upon. If two consultations are carried out during the CIL process it is recommended that Overview and Scrutiny Committee are involved on both occasions.

White Paper: Planning for the Future

- 3.6 Since O&S considered the report in July, the Government has published [‘Planning for the Future, White Paper, August 2020’](#). One of the proposals is to replace Planning Obligations and CIL with a consolidated ‘Infrastructure Levy’. This would be based upon a flat-rate, valued-based charge, set nationally, at either a single rate, or at area-specific rates.
- 3.7 The Government is seeking views on this proposal and variations on it. There is no guarantee that it will be implemented. If it is to be implemented, it would require primary legislation followed by secondary legislation and could take 2 to 3 years.
- 3.9 In these circumstances it is recommended that work *does* start on the CIL project for Hart. The Council will need to monitor the situation closely but at present there is not enough certainty to abort the CIL project. The risk of aborting the project now in anticipation of the possible new levy is that the Government changes its mind or moves it to the longer term. That would mean time, and CIL receipts, would be lost.
- 3.10 It is therefore recommended that the Council starts the first steps of the project needed to create a draft CIL Charging Schedule, namely an updated viability study and an updated Infrastructure Delivery Plan (IDP). The IDP was always intended to be a ‘live’ document, to keep abreast of the infrastructure needed to support growth and aid the implementation of local plan policies. The work on viability would also assist in the determination of planning applications. Both of these documents would also assist in a future work on Local Plans, which is also highlighted in the Planning White Paper.

4. PROVISION OF INFRASTRUCTURE CURRENTLY

- 4.1 Currently in determining planning applications, the Council as the Local Planning Authority considers the need for infrastructure to mitigate the impact of the development under a planning obligation, known as a S106 agreement. A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:
- (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.
- 4.2 Planning obligations are negotiated with the applicant, and then need to be secured through the S106 legal agreement. Both the negotiation on the content of the agreement and the drafting of agreed words in the agreement take a long time.
- 4.3 Planning obligations are tailored to each development to make it acceptable in planning terms. They can be used to secure on-site provision of infrastructure

as well as financial contributions to off-site improvements. They work well on large or strategic sites, allowing for bespoke solutions on a case by case basis, but for the numerous smaller developments they are inefficient and impractical. As a result, minor developments, especially cumulatively, have social or environmental effects that are often not captured through S106 obligations.

5. ABOUT THE COMMUNITY INFRASTRUCTURE LEVY (CIL)

- 5.1 CIL is a tariff in the form of a standard charge on most new development. The District Council is the Charging Authority and sets the levy in a balanced way to ensure that development remains viable whilst contributing towards infrastructure projects that the Council has prioritised. An example of a recently adopted CIL Charging Schedule is attached at Appendix 7 (Chiltern & South Bucks CIL Charging Schedule, adopted January 2020).
- 5.2 The principle behind CIL is that applicant / developer who receives planning permission pays towards the cost of funding the infrastructure to support growth within the district. Since most development has some impact on infrastructure, it follows that the development should contribute towards the cost of providing or improving such infrastructure.
- 5.3 The key difference between S106 and CIL is that S106 is negotiated and becomes an obligation on the implementation of a planning permission to make that specific development acceptable in environmental and social terms. Whereas CIL is non-negotiable once the charging levy has been adopted and does not need to directly benefit infrastructure related to the development which has been permitted.
- 5.4 The Council must follow a statutory process to introduce a CIL charging schedule. These steps, which could take a year to 18 months overall, are:
1. Updating the infrastructure and viability evidence;
 2. Public consultation on the preliminary draft Community Infrastructure Levy Charging Schedule;
 3. Public consultation on the draft Community Infrastructure Levy Charging Schedule;
 4. Examination of the draft Community Infrastructure Levy Charging Schedule;
 5. Adoption of Community Infrastructure Levy Charging Schedule; and
 6. Implementation of the Community Infrastructure Levy.
- 5.5 This process identifies two consultations. Legally only one consultation is now required (it used to be two). However, it may still be sensible to plan for two consultations in order to enter the CIL examination on the most robust footing possible. This would likely make it a smoother examination and reduce risks,

including the possibility of a second consultation being needed at that late stage.

- 5.6 In preparing a CIL charging schedule the Council needs to have an up to date infrastructure delivery plan. In setting the levy a balance must be struck between maximizing revenue for infrastructure and the development remaining viable including the margins on developer profit (see Appendix 1). Viability is a key test at the CIL Examination to ensure CIL does not apply a 'brake' on development.
- 5.7 In setting the CIL rate (cost per sq. m.) the Council can differentiate between different geographic zones, between different types of development, and can make certain scales of development exempt. Equally Government guidance for CIL states that charging authorities should avoid undue complexity.
- 5.8 **Charging by Use Class** - Developers are familiar with the Town and Country Planning (Use Classes) Order 1987 (see Appendix 2). This categorises types of development and enables the viability assessment to similarly categorise types of development. For example, a charge can be set for A1 (shops) and a different charge for C3(a) (a single persons or family home). Many charging schedules using this approach have been found sound at examination including neighbouring authorities Surrey Heath and Bracknell Forest, and the attached example in Appendix 7. It should be noted that the Use Classes Order is being amended.
- 5.9 **Charging Zones** - Some Councils have significant differences in land values across their district. If clearly demonstrated through the CIL viability assessment, charging schedules can reflect this and set differing rates across their area.
- 5.10 The 2016 Adams Integra viability report for the Hart Local Plan & CIL recommended a range of charges across settlements for new homes of between £150 and £275 per sq. m. and for commercial uses, charging supermarkets and retail warehouses at £120 per sq. m. and zero rating all other uses. This work will need to be brought up to date.
- 5.11 Too much complexity can, however, create problems with implementation and a number of Council's have sought to simplify the process to ensure clarity for the development industry and planning authority alike. Appendix 3 shows the rates across a number of authorities adjacent to Hart.
- 5.12 Some developments are exempted from CIL. These include development of less than 100 sq. m. (unless it is a new home), affordable housing, self-build homes and development by a charity for its charitable purpose. On sites including the redevelopment of existing floorspace, the existing floorspace can be 'netted off' the new floorspace when calculating the CIL payment.

- 5.13 Once CIL has been adopted, other than the exemptions such as those mentioned above, the CIL payment is a requirement when the developer implements the development. In effect it is applied similar to a tax. There is no negotiation.
- 5.14 The CIL payment is required within 60 days of commencement by default. The Council can provide the opportunity for staged payments (especially for the larger sites / payments); these can help with the cash flow and therefore the viability of the development. This can be considered during the preparation of the CIL Charging Schedule.
- 5.15 If the CIL project proceeds it will be necessary to keep abreast of changes to regulations and guidance particularly given the ongoing Covid 19 situation.

6 BENEFITS OF CIL

- 6.1 **Flexibility** - The Council can decide how to spend the levy receipts provided it is on infrastructure needed to support development within the district (and exceptionally outside the district).
- 6.2 The levy can be used to fund a wide range of infrastructure, including: transport, education, health, indoor and outdoor sport, play areas, open spaces, parks and green spaces, cultural facilities, other community facilities.
- 6.3 The levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure if that is necessary to support growth and development. This flexibility far exceeds that secured through S106 obligations and unlike S106 is not time limited in its expenditure.
- 6.4 Funds can also be reprioritised by the Council to tackle unexpected needs for infrastructure, such as in response to Covid-19.
- 6.5 **Forward-funding** - CIL provides an opportunity to pool contributions to forward fund infrastructure to make development more acceptable at the outset.
- 6.6 **Town/Parish Councils** - Town and Parish Councils will receive a portion of the CIL receipts, the share being greater for those with a Neighbourhood Plan.

Neighbourhood Plan	Town / Parish Council Levy receipt
✓	25% uncapped, paid to Parish or Town Council
✗	15% capped at £100/dwelling (subject to annual indexation), paid to Parish or Town Council

- 6.7 Parish and Town Councils can spend CIL to fund the provision, improvement, replacement, operation, or maintenance of infrastructure, and anything else that is concerned with addressing the demands that development places on an area. It is also possible for the CIL Neighbourhood Portion to be spent on affordable housing.
- 6.8 **Speed of Decision Taking** - CIL is quicker than planning obligations creating efficiencies in the planning application process.
- 6.9 **Certainty for Developers and the Council** - Given CIL is non-negotiable developers will know at the outset what their charge will be, and this provides developer certainty. This helps the developer to pay an appropriate price for the land.
- 6.10 **Capturing contributions from minor development.** CIL is far more effective than planning obligations at capturing contributions from small/minor developments. These developments are often not caught by planning obligations because of difficulties demonstrating a direct link or impact on development at that scale. Equally the processes of justification, negotiation and converting individual impacts into appropriate monetary sums is disproportionate to the scale of the development. CIL overcomes this and is therefore better at addressing the cumulative impacts of minor developments.
- 6.11 National research¹ indicates that amongst a ‘commuter belt family’ of authorities (which includes Hart) CIL is generally being used as the most effective means of capturing contributions from minor developments². In 2016/17, within this group of authorities, 79% of minor developments made a CIL contribution (some of which also had a S106 agreement). This tells us that for the most part, authorities with similarities to Hart have decided to go down the CIL route. Since that study some of the others may have also gone down the CIL route.
- 6.12 In addition, the Infrastructure policy (INF1) in the new Hart Local Plan 2032 precludes ‘tariff-style’ contributions from developments of 10 units or less, and which have a maximum combined gross floorspace of no more than 1,000 sq. m. (gross internal area). This is a result of the Plan being examined under previous national policy which included this restriction. This means that the Council would only be able to capture S106 obligations to make minor development acceptable in planning terms.

¹ The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685301/Section_106_and_CIL_research_report.pdf

² Residential minor developments are fewer than 10 units (unless floorspace exceeds 1,000 sq. m. or 0.5ha). For land uses other than dwellings a minor development is where the floorspace is less than 1,000 sq. m. or where the site area is less than 1ha, all other developments are major.

- 6.13 The Local Plan was written with the assumption that CIL would be introduced and thus the absence of tariff-style infrastructure contributions on sites of 10 units or less would be temporary: *'Until we adopt a CIL Charging Schedule the level of any financial contributions will be determined on a site by site basis'* [paragraph 331]. The Local Plan and CIL being both adopted would better serve the effective and timely delivery of infrastructure.
- 6.14 In the absence of CIL, the Council is missing out on a potential source of funding for infrastructure, particularly for minor developments, which are expected to continue as windfalls for the foreseeable future. The NPPF 2019 para 68 says 10% of housing supply should be from sites of 1 hectare or less. This re-affirms the point, despite having just adopted the Hart Local Plan 2032, and having granted planning permission already for the strategic sites, there will a number of smaller developments coming forward which enforces the need to bring in CIL.
- 6.15 **Recouping administrative costs** - The charging authority can retain 5% of the receipts to recoup administrative costs. Administrative expenses associated with the CIL include the CIL set-up costs, including preparing evidence on viability, IDP and the funding gap, consultation(s) on the charging schedule and the costs of the examination. Other costs include 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.

7. COSTS AND CONSIDERATIONS

- 7.1 CIL is a relatively straightforward process to implement and we can learn a lot from Councils who have already implemented it. It requires a limited amount of evidence and a simple consultation and examination process. In addition, charging CIL on sites of ten or less will capture funds that will otherwise not be captured.
- 7.2 Appendix 4 sets out a table which calculates the type of CIL rates which would be available based on typical house sizes (taken from the National Prescribed Space Standards) and a range of CIL rates from £150 per sq. m. to £200 per sq. m. It shows that for a medium sized 3 bed home, with a CIL rate of £175 per sq. m. the CIL payment would be circa £16,000. Appendix 5 sets out how this payment would be split between infrastructure delivered by the District Council, infrastructure delivered by the Town or Parish Council, and the admin fee.
- 7.3 As part of this process a number of recent planning decisions have been reviewed to assess the existing contributions to infrastructure via planning obligations under S106. In recent years we have not received significant sums. The legislation is very clear, as set out earlier, that contributions can

only be required if they are necessary to make the development acceptable in planning terms, directly related to the development; and fairly and reasonably related in scale and kind to the development. And where the infrastructure providers have not asked, or not been able to demonstrate their ask meets the above criteria, we have not been able to secure significant contributions.

- 7.4 Approving the process towards adoption of CIL will require finance for officer time to prepare the relevant documents, commission the evidence, hold the examination and set up officers to charge, monitor and enforce CIL. As noted in paragraph 6.15 these costs are recoverable.

8. ALTERNATIVES TO CIL

- 8.1 The alternative is to continue using planning obligations secured via S106. However, the new local plan infrastructure policies preclude tariff-style contributions from small sites. To remove this restriction would require a full local plan review process for those policies which would take longer than introducing CIL. And even then, the legal tests would still apply so the tariffs could not be routinely applied. This approach is not recommended.

9. MONITORING AND REPORTING REQUIREMENTS

- 9.1 Even without CIL, the Council needs to invest staff time into meeting new monitoring and reporting requirements that relate to both CIL (if relevant) and planning obligations³. The Council will need to produce an Infrastructure Funding Statement (IFS) by December 2020 and annually thereafter setting out how developer contributions have been spent, how future receipts will be spent, and whether the receipts derive from CIL or planning obligations. If the Council introduces CIL there would be synergies between the two approaches in terms of meeting the new monitoring and reporting requirements (potentially including software that serves both purposes).

10. CONCLUSION

- 10.1 The Council has previously stated its intention to introduce a CIL. Initial estimates suggest that CIL should generate increased funding for local infrastructure than a continued reliance on planning obligations. CIL is also regarded as the best approach to address the cumulative impacts of smaller developments. CIL should be viewed as a long-term commitment.

³ The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 PART 10A Reporting and monitoring on CIL and planning obligations

11 POLICY IMPLICATIONS

11.1 Introducing CIL is consistent with the adopted Hart Local Plan (Strategy & Sites) 2032 and the Corporate Plan.

12 FINANCIAL AND RESOURCE IMPLICATIONS

12.1 There are financial and resource implications which are set out in Appendix 6. Planning, consultation and implementation costs of CIL are not covered within existing budgets, however the CIL charges incorporate the costs of setting and implementing the CIL Charging Schedule (5% of all CIL receipts).

13 ACTION

13.1 It is requested that Cabinet support the introduction of CIL.

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Appendices:

Appendix 1: Viability

Appendix 2: Use Classes Order

Appendix 3: CIL rates in adjacent authorities

Appendix 4: Potential rates for residential C3 development

Appendix 5: Potential breakdown of the income from CIL

Appendix 6: Indicative resource implications of introducing a CIL

Appendix 7: Example CIL Charging Schedule: Chiltern & South Bucks, January 2020

Background Papers:

Whole Plan and CIL Viability Study, Adams Integra, December 2016 and Addendum January 2018

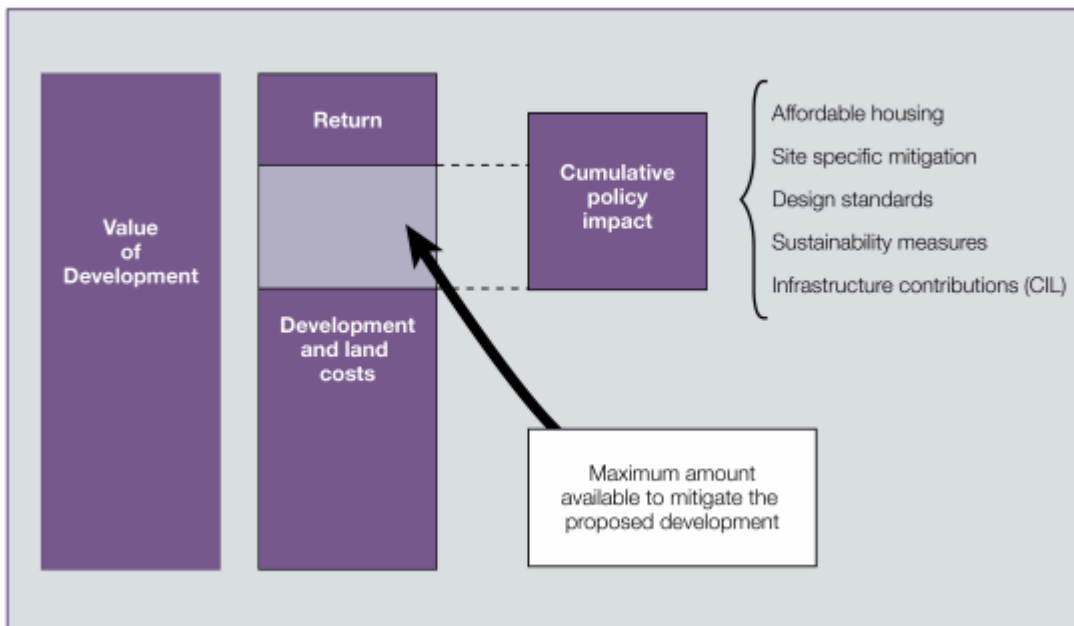
The Incidence, Value and Delivery of Planning Obligations and Community Infrastructure Levy in England. MHCLG March 2018

Financial viability in planning RICS guidance note 1st edition (GN 94/2012)

[Planning for the Future, White Paper, August 2020](#)

Appendix 1 – Viability

The illustration below shows the value of development and its components of costs, mitigation and developer return.



Financial Viability in Planning, RICS, 2012

Appendix 2 – Use Classes Order

PART A

Class A1. Shops

Class A2. Financial and professional services

Class A3. Food and drink

Class A4. Drinking Establishments

Class A5. For the sale of hot food for consumption off the premises

PART B

Class B1. Business

Class B2. General industrial

Class B8. Storage or distribution

PART C

Class C1. Hotels and hostels

Class C2. Residential institutions

Class C3. Dwelling houses

Class C4. Houses in multiple occupation

PART D

Class D1. Non-residential institutions

Class D2. Assembly and leisure

SUI GENERIS. Uses which do not fall within the specified use classes above

Appendix 3 – CIL rates in adjacent authorities

The chart below provides information on the CIL charging schedules for Hart’s neighbouring authorities. Note: the charges are those set at the point of adoption – each January they are adjusted by the rate of inflation linked to the building cost inflation provided by Building Cost Information Service (BCIS).

Adjacent Authority	CIL status	Adoption Year	Residential Charges £	Retail/ Commercial Charges £	Other Charges £	Notes
Basingstoke and Deane	Adopted	2018	£200 £140 £80 £0	£0	£0	No charge for care home, extra care, sheltered housing, or wholly flatted schemes.
Bracknell Forest	Adopted	2015	£350 To £0	£100 £0	£0	Multiple residential charging zones
East Hampshire	Adopted	2015	£180 £150 £65 £10	A1-A5 £100 £0	Hotel £70 £0 Retail (A1-A5) £110 £0	Two charging zones C3A sheltered housing developments with rates of £40 and £0 psm.
Surrey Heath	Adopted	2014	SANG £55 £95 or no SANG £220 £180 £0	£200 £100 £0	0	Supermarket/ superstore and retail warehouse £200 psm. Two charging zones for all other retail with rates of £100 and £0 psm

Adjacent Authority	CIL status	Adoption Year	Residential Charges £	Retail/ Commercial Charges £	Other Charges £	Notes
Wokingham	Adopted	2015	£365 £340 £320 £300	£50 £0	0	Two sheltered housing zones with rates of £365 and £150 psm. Two residential institution and extra care housing with rates of £100 and £60 psm.
Waverley	Adopted	2018	£395 £372 £452 £435	£25 £65 £75 £95	Older persons accommodation from £100 to £268 depending on affordable housing provision and location	

Appendix 4 – Potential rates for residential C3 development

Number of bedrooms	Size (sq. m.)	Amount of CIL per home based upon rate per sq. m. of:		
		£150	£175	£200
1	49	£7,350	£8,575	£9,800
2	70	£10,500	£12,250	£14,000
3	91	£13,650	£15,925	£18,200
4	110	£16,500	£19,250	£22,000
5	119	£17,850	£20,825	£23,800
6	127	£19,050	£22,225	£25,400

Home sizes (in sq. m.) is based on the midpoint of homes in each size (based on number of bedrooms) as set out in the Technical Housing Standards – National Described Space Standards.

Appendix 5 – Potential breakdown of the income from CIL

The following tables assesses how the income from CIL would be broken down in areas with and without made Neighbourhood Plans

Based upon a 3 bed home (91 sq. m.) and at a rate of £175 per sq. m. (see table in Appendix 4) then the total CIL income would be £15,925

Situation where there is no made Neighbourhood Plan	
80% to provide infrastructure to support growth managed by Hart District Council	£12,740
15% Neighbourhood Portion given to Town or Parish Council to provide infrastructure	£2,389
5% admin fee	£796
Total	£15,925

Situation where there is a made Neighbourhood Plan	
70% to provide infrastructure to support growth managed by Hart District Council	£11,147
25% Neighbourhood Portion given to Town or Parish Council to provide infrastructure	£3,981
5% admin fee	£796
Total	£15,925

Appendix 6 – Costs of introducing CIL

Table 1: Resources for creating the CIL charging schedule (setting out CIL rates)

Task	Resource / cost implication
Prepare CIL Charging Schedule including consultation and examination support.	Consultant and Staff time: 12 months, 2-3 days per week.
Commission update to viability study, Infrastructure Delivery Plan and Infrastructure Funding Gap analysis.	Tender Consultants £30,000 + staff time (procurement, liaison etc.)
Examination: Examiner, programme officer, legal support, expert witness.]	£5,000 fees + staff time

Table 2: Resources for operating CIL

Task	Resource / cost implication
Training: Understanding and implementing the new procedures and processes for collection and monitoring.	Internal project team including Development Management, Business Support and Finance.
Appropriate software to run the calculation, collection and monitoring processes.	Add module to Uniform. Cost recoverable.
Staff resources for calculation / collection / monitoring / spending including preparation of Infrastructure Funding Statements.	CIL/S106 officer – 1 full time equivalent. Cost recoverable.