

## **OVERVIEW AND SCRUTINY COMMITTEE**

**DATE OF MEETING:** 15 DECEMBER 2020

**TITLE OF REPORT:** COMMUNITY INFRASTRUCTURE LEVY

**Report of:** Head of Place

**Cabinet Member:** Councillor Graham Cockarill, Place

### **1 PURPOSE OF REPORT**

- 1.1 To provide an update on setting a Community Infrastructure Levy (CIL) Charging Schedule in Hart.

### **2 OFFICER RECOMMENDATIONS**

- 2.1 The report is an update as requested by the Overview & Scrutiny Committee in July 2020 and contains no specific recommendations. As the project proceeds, Overview & Scrutiny Committee will have the opportunity to consider the draft CIL charging schedule prior to both planned public consultations.

### **3 BACKGROUND**

- 3.1 CIL is a levy on new development to be spent on infrastructure. Overview & Scrutiny Committee expressed its support for a CIL in July 2020.
- 3.3 In September 2020 Cabinet decided to commence work on the establishment of a CIL Charging Schedule for Hart. Work has commenced and a project plan is attached at Appendix 1.
- 3.3 The national context has recently shifted with changes to the Use Classes Order (which were implemented in September 2020) and potentially more far reaching proposals in the Planning White Paper to replace the current CIL and section 106 arrangements with a single 'Infrastructure Levy'. These are discussed below but neither affect the decision to proceed with a CIL.

### **4 CHANGES TO THE USE CLASSES ORDER**

- 4.1 The recent changes to the Use Classes Order are set out at Appendix 2. The changes were made to provide greater flexibility for businesses and town centres uses, to aid economic growth. They took effect on 1<sup>st</sup> September 2020.
- 4.2 The changes will affect the CIL charging schedule in that different uses tend to attract different CIL rates. However, the implications for CIL are very minor and do not affect the decision to proceed with the project.

## **5 THE PLANNING WHITE PAPER**

- 5.1 The Planning White Paper proposes a radical overhaul of the planning system as a whole; to simplify, modernise, and speed up decision making.
- 5.2 One of the proposals is to replace the current regime of CIL and Section 106 agreements with a single mechanism – an Infrastructure Levy. The Council has responded to the White Paper consultation including comments on this issue (see background documents at the end of this report).
- 5.3 Cabinet was made aware of the White Paper proposals when taking its decision in September 2020. Given the uncertainties, and the likely timescales even if it does proceed, it was decided to progress with CIL under the current system, although clearly a watching brief is needed on what the Government does next. The evidence base (infrastructure planning and viability) will be useful in any event for future local plan work and the development management process.

## **6 CIL CHARGING SCHEDULE**

- 6.1 At the last Overview & Scrutiny Committee there were a number of questions about the CIL Charging Schedule and how it would operate. An example of a recently adopted and implemented CIL charging schedule is attached at Appendix 3, from Chiltern and South Bucks District Councils. It sets out what the CIL rates are for different types of development along with useful information on what rules apply, how it is administered, and how it operates alongside Section 106 agreements. In this case developments of 400 homes or more or on sites of 10 or more hectares are zero rated for CIL. This enables bespoke Section 106 agreements to include on-site provision of infrastructure. Up to 5% of CIL receipts are used to fund the cost of setting and administering CIL.

## **7 PROJECT PLAN**

- 7.1 A high level project plan is attached at Appendix 1. The key stages are:
1. Develop the evidence base on viability, infrastructure needs and funding gap. It is necessary to show a gap between infrastructure needs to support growth and funding to justify charging a CIL income. The viability work informs how much can realistically be charged without adversely affecting viability and deliverability of development. Viability will be the main issue at the examination.
  2. Prepare a *Preliminary* Draft Charging Schedule and consult on it for 6 weeks.
  3. Consider the feedback and amend if or as necessary.
  4. Prepare a Draft Charging Schedule and consult on it for 6 weeks.

5. Collate the feedback and submit the Draft Charging Schedule and supporting information for examination.
  6. Examination into the Draft Charging Schedule by an approved examiner (not necessarily the Planning Inspectorate). This could be by written representations but more likely will involve a short hearing.
  7. Subject to passing the examination, adopt the CIL charging schedule with a date for implementation.
- 7.2 Overall it should take around 18 months to create and adopt a CIL charging schedule. There are some estimates within the timelines, for example the evidence base studies which will need to be firmed up through discussions with the appointed consultants.
- 7.3 The CIL project is wider in scope than merely creating the Charging Schedule. There needs to be a system in place to administer and collect the levy, decide on and track expenditure, and report on revenue received and spent. This needs suitable software, processes and staff resources in place and will be looked at in more detail in the new year. For now, the focus is on the charging schedule and the background work that is needed for it to be found sound.

## **8 FINANCIAL AND RESOURCE IMPLICATIONS**

- 8.1 The main costs associated with the project are:
1. Consultant's fees for developing the evidence base: Viability Study, Infrastructure Delivery Plan and Funding Gap Analysis
  2. Consultancy/external specialist support to progress the CIL project (with oversight from the Planning Policy & Economic Development Manager and the Head of Place)
  3. Legal advice as or when necessary
  4. Programme Officer to help run the CIL examination
  5. Consultants to act as a 'critical friend'
  6. Examiner's fees (not necessarily the Planning Inspectorate).
- 8.2 In addition to creating the CIL charging schedule there will be costs around implementation i.e. the IT and human resources needed to administer the process, to ensure correct charges are applied, to deal with correspondence, to collect the revenue, and to monitor and report on receipts and expenditure.
- 8.3 Whilst all these costs are not covered within existing budgets, the CIL charges incorporate the costs of setting and implementing the CIL Charging Schedule (5% of all CIL receipts).

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**Appendices:**

Appendix 1: CIL Project Plan

Appendix 2: Use Classes Order Changes

Appendix 3: Chiltern and South Bucks District Councils CIL Charging Schedules

**Background documents:**

Planning For the Future White Paper, August 2020

<https://www.gov.uk/government/consultations/planning-for-the-future>

Hart District Council's response to the Planning White Paper, October 2020

[https://www.hart.gov.uk/sites/default/files/4\\_The\\_Council/Policies\\_and\\_published\\_documents/Planning\\_policy/Hart%20District%20Council%27s%20Response%20to%202020%20Planning%20White%20Paper.pdf](https://www.hart.gov.uk/sites/default/files/4_The_Council/Policies_and_published_documents/Planning_policy/Hart%20District%20Council%27s%20Response%20to%202020%20Planning%20White%20Paper.pdf)

# Hart Community Infrastructure Levy Charging Schedule

## Outline Project Plan

### Key roles

- 1.1 Project Sponsor: Mark Jaggard, Head of Place
- 1.2 Project Manager: Daniel Hawes, Planning Policy & Economic Development Manager

### Project purpose

- 2.1 To introduce a CIL Charging Schedule for Hart. The charging schedule will set out the cost per sq m that must be paid to the Council for certain types of development. It will help fund infrastructure needed to support growth.
- 2.2 The scope of this project does not yet include the work needed to administer CIL once it is implemented. This will be looked at separately in the new year.

### Key tasks and timeline

- 3.1 The Gantt chart attached sets out the key tasks with estimated timelines. Overall, it is expected to take until Summer 2022 for adoption – around 18 months.
- 3.2 The process for creating a CIL charging schedule is subject to regulations which include a requirement for public consultation and examination.
- 3.3 The charging schedule must be based on evidence to demonstrate that there is a funding gap for new infrastructure needed to support development, and that the charge is not set so high as to render development unviable.
- 3.4 The initial phase is to develop the evidence base. This involves tendering for the work; appointing consultants, and then working with those consultants so that they can update the Infrastructure Delivery Plan, identify the funding gap, and complete the viability study. This will take several weeks but is a vital part of the project.
- 3.5 The ***Preliminary Draft Charging Schedule*** will then be prepared, informed by the viability study. This goes out to public consultation to test initial views on appropriate CIL rates. At the same time the evidence base is made public, and comments are invited on the evidence base.
- 3.6 Responses will be considered before the ***Draft Charging Schedule*** is agreed for consultation. This is a statutory consultation preceding the examination. Representations made will be considered by the examiner.

3.7 The examination could in theory be by written representations, but a hearing is commonplace. At this stage of the project timelines are largely dictated by the examiner and whether a consultation on further changes to the charging schedule are required.

**Resources**

- 4.1 CIL is new to Hart and there is insufficient capacity and expertise in-house to take it forward without external assistance. Consultants with expertise in this field will be used to help deliver the project, in particular the evidence base (viability work, Infrastructure Delivery Plan, and funding gap analysis) and the creation of the draft charging schedules. Council officers will manage the consultants, undertake the public consultations, appoint the examiner and programme officer for the examination, submit the documentation for the examination and meet any other requirements of the project including internal reporting procedures.
- 4.2 An examiner and a programme officer will need to be appointed for the examination. The examiner need not necessarily be the Planning Inspectorate.
- 4.3 The costs of setting and implementing the CIL Charging Schedule can be recouped through an admin charge (5% of future CIL receipts).

**Risks and mitigation**

Risk	Mitigation / Comment
<p>The Planning White Paper proposes an alternative mechanism to CIL and Section 106 – an <b>Infrastructure Levy</b>. There is therefore a risk of abortive work.</p>	<ul style="list-style-type: none"> <li>• There is currently too much uncertainty over this proposal to recommend aborting the CIL project.</li> <li>• Evidence base work (viability and infrastructure planning) will be useful in any event both for the next local plan and the development management process.</li> <li>• The position will be monitored, and a decision taken when necessary if it becomes clear that it is not worth proceeding with CIL any further.</li> </ul>
<p>Estimated timelines prove to be over optimistic – project takes longer than intended.</p>	<ul style="list-style-type: none"> <li>• The timelines are challenging but considered to be reasonable estimates. They may need refining during the life of the project, for example in light of discussions with consultants, or in light of the volume and complexity of comments received during public consultations.</li> <li>• At the examination we will to some extent be in the hands of the examiner regarding timescales, but the scale, timescales, and costs</li> </ul>

Risk	Mitigation / Comment
	<p>of a CIL examination are much smaller than for a local plan.</p>
Covid-19	<ul style="list-style-type: none"> <li>• This could affect the ability of consultants or officers to deliver the project in a timely fashion. For example, if officers are diverted into priority 'response' activities.</li> </ul>
Viability work renders a CIL unviable	<ul style="list-style-type: none"> <li>• This is highly unlikely given the current evidence that was prepared for the local plan examination (but which must be updated) demonstrates that a CIL is clearly viable alongside planning policies including for affordable housing.</li> </ul>
CIL fails the examination	<ul style="list-style-type: none"> <li>• This risk is small provided the CIL rates selected are supported by the evidence. A critical friend review is proposed prior to the statutory consultation on the DCS and again prior to submission in light of any comments received at that stage.</li> </ul>





## Appendix 2

### Summary of Use Class Order changes<sup>1</sup>

Use	Use Class up to 31 <sup>st</sup> August 2020	Use Class from September 2020
Shop – not more than 280sqm mostly selling essential goods, including food and at least 1km from another similar shop	A1	F.2
Shop	A1	E
Financial and professional services	A2	E
Food and drink / café or restaurant	A3	E
Pub, wine bar or drinking establishment	A4	Sui generis <sup>2</sup>
Takeaway	A5	Sui generis
Office other than a use within Class A2	B1a	E
Research & development of products or processes	B1b	E
For any industrial process (which can be carried out in any residential area without causing detriment to the amenity of the area)	B1c	E
Industrial	B2	B2
Storage or distribution	B8	B8
Hotels, boarding & guest houses	C1	C1
Residential institutions	C2	C2
Secure residential institutions	C2a	C2a
Dwelling houses	C3	C3

<sup>1</sup> Source: Ashtons legal at <https://www.ashtonslegal.co.uk/insights/business-news/changes-to-the-use-classes-order-in-england-from-1-september-2020/#:~:text=Changes%20to%20the%20Use%20Classes%20Order%20in%20England,or%20call%20001223%20431121.%203%20New%20Classes%20Table>

<sup>2</sup> Uses which do not fall within a specified use class

<b>Use</b>	<b>Use Class up to 31<sup>st</sup> August 2020</b>	<b>Use Class from September 2020</b>
Small house in multiple occupation 3-6 residents	C4	C4
Clinics, health centres, creches, day nurseries, day centre	D1	E
Schools, non-residential education & training centres, museums, public libraries, public halls, exhibition halls, places of worship, law courts	D1	F.1
Cinemas, concert halls, bingo halls and dance halls	D2	Sui generis
Gymnasiums, indoor recreations not involving motorised vehicles or firearms	D2	E
Hall or meeting place for the principal use of the local community	D2	F.2
Indoor or outdoor swimming baths, skating rinks, and outdoor sports or recreations not involving motorised vehicles or firearms	D2	F.2