



CABINET

Subject Heading:

Havering Community Infrastructure Levy – Adoption

Cabinet Member:

Councillor Damian White
Leader of the Council

SLT Lead:

Sue Harper
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Neighbourhoods

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Policy context:

Havering Corporate Plan 2019/2020
National Planning Policy Framework (2019)
Draft London Plan (2017)
Havering Local Development Framework (2008)
Submission Havering Local Plan (2018)
Community Infrastructure Levy Regulations 2010 (as amended)

Financial summary:

The Community Infrastructure Levy is a potential income stream to be applied against Havering's infrastructure requirements and will be used to provide infrastructure within the Borough in accordance with the Regulation 123 List.

Yes – affects more than two wards and potential significant income to the Council

Is this a Key Decision?

Yes

When should this matter be reviewed?

June 2021

Reviewing OSC:

Towns and Communities

The subject matter of this report deals with the following Council Objectives

Communities making Havering	[X]
Places making Havering	[X]
Opportunities making Havering	[X]
Connections making Havering	[X]

SUMMARY

1. The Havering Community Infrastructure Levy (CIL) will be the primary mechanism for the Council to secure financial contributions from development to help deliver necessary new infrastructure across Havering. Without CIL, the Council would have to rely on other funding including via Section 106 planning obligations and other external sources of funding to help deliver the infrastructure necessary to support the timely delivery of the development set out in the Havering Local Plan.
2. An independent Examiner has recently reviewed the proposed Havering CIL. The Examiner's Report (set out in Appendix 1) was published in June 2019. This report considers the outcomes from the Examination.
3. The report notes that subject to modifications recommended by the Examiner, the Havering CIL Charging Schedule provides an appropriate basis for the collection of the levy in Havering and satisfies the necessary legal requirements.
4. The Examiner recommends that the Charging schedule, with modifications, be approved. These address comments from the Examiner about how the CIL charging zones will be identified in the CIL 'charging schedule' document and for the supporting maps in this to be on an Ordnance Survey 'base'. The Charging Schedule is attached as Appendix 2.
5. Given the above and the endorsement of the Examiner to the approach taken by the Council to preparing CIL rates, it is now proposed that the Council formally adopts the CIL Charging Schedule with the Inspector's modifications and commences charging CIL for applications determined from September 1 2019.

RECOMMENDATIONS

That Cabinet recommends to Council to:

- Adopt the Havering Community Infrastructure Levy (CIL) Charging Schedule and the Regulation 123 list (set out in Appendices 2 and 3, respectively)
- Agree that the CIL Charging Schedule will be implemented and effective from September 1 2019; and
- Agree delegated powers to the Director of Neighbourhoods or the Assistant Director of Planning in consultation with the Leader of the Council for future changes to the Regulation 123 list following its review as appropriate

REPORT DETAIL

1. Background

- 1.1 The Council has prepared a Community Infrastructure Levy (CIL) Charging Schedule which will place non-negotiable financial charges on some types of new development in Havering. This funding will help to deliver infrastructure considered necessary within Havering to support anticipated growth. CIL funds will complement and work alongside Section 106 agreements and the financial contributions secured from developers through those. The Council already collects CIL funds on behalf of the Mayor of London and these are used towards the cost of Crossrail. Those arrangements will continue and are outside of the scope of Havering preparing and adopting a Havering specific CIL regime.
- 1.2 Public consultation has been undertaken on the proposed CIL rates as required by the relevant CIL legislation.
- 1.3 An independent Examiner has reviewed the submission CIL documents following the submission of the Havering Community Infrastructure Levy in autumn 2018
- 1.4 During the Examination, the Examiner sought information and clarification from the Council on technical and 'presentational' matters linked to the CIL and these matters have been addressed to the satisfaction of the Examiner.
- 1.5 In short, the Examiner requested that the Council prepare modifications to the Draft Charging Schedule relating to how the CIL documents set out

where CIL charges would apply the application of CIL charges and the legislative background to CIL.

- 1.6 These proposed modifications were the subject of a 4 week consultation period in early 2019. Four consultations responses were received: Highways England, Natural England, Environment Agency and Williams Gallagher (on behalf of the Mercury Mall shopping centre). These were forwarded to the Inspector and taken into account in his published report. The Examiner did not hold a hearing as none of the parties exercised their right to be heard during the consultation on the Draft Charging Schedule and based on his own assessment of the representations.

2. Examiner's Report

- 2.1 The Examiner's Report on the proposed CIL rates was received recently and published by the Council in June 2019. It is included as Appendix 1. A copy was:

- Included on the Council's website
- Placed 'on deposit' at the PASC in Romford and at all libraries where the CIL consultation documents were lodged

- 2.2 In forming his view on the Council's approach to CIL, the Examiner concluded that:

- 'The Infrastructure Delivery Plan (IDP) reflects the infrastructure requirements of the emerging Local Plan for the borough and there is a funding gap. The proposed charges will make a modest contribution and I consider that the need to impose CIL has been demonstrated by the figures.' (paragraph 16 Examiner report)
- 'The Viability Assessment follows good and accepted practice'. (paragraph 22 Examiner report)
- 'The CIL rates for residential development are justified' and 'the appraisals and the absence of any contrary evidence lead me to conclude that the retail rates are justified.' (paragraphs 33 and 36 Examiner report)

- 2.3 Overall, the Examiner concluded:

'In setting the CIL charging rates the Council has had regard to detailed evidence on infrastructure planning and the economic viability evidence of the development market in the London Borough of Havering. The Council has been realistic in terms of achieving a reasonable level of income to address a gap in infrastructure funding while ensuring that in general development remains viable across most of the authority's area. An appropriate balance has been struck.' (Paragraph 40 Examiner report)

- 2.4 The Examiner has recommended that the Charging Schedule be approved with his specified modifications (see paragraph 5 above). Subject to approval and adoption by Members, it is proposed that CIL comes into effect and is applied to relevant planning permissions granted after 1 September 2019.
- 2.5 The Council as planning authority has been advising developers and applicants of the proposed date for the introduction of CIL. Planning applications determined after this time (including those which involve the signing of associated legal agreements) will become CIL liable, where a CIL charge is to be applied for that form of development.
- 2.6 Work is underway to ensure that there are appropriate administrative processes in place linked to the Council's development management role as the local planning authority to collect CIL receipts and manage the process of receiving these.

3. The CIL Regulation 123 List

- 3.1 Under the current legislation including the CIL Regulations, the Council is required to have a Regulation 123 list to set out the infrastructure that it intends to fund through CIL receipts. Its purpose is to ensure that the authority does not use developer contributions secured through Section 106 (S106) agreements to fund infrastructure that it has determined it will fund through CIL contributions. Planning obligations cannot be sought for infrastructure intended to be funded by CIL and the Regulation 123 list has been carefully drafted to avoid identifying development specific infrastructure items that it is expected would be required through a S106 agreement to mitigate its impacts. As this report was being finalised for consideration by Members, the Government announced its intention to further amend the CIL Regulations with anticipated effect from September 2019 in regard to some of its specific provisions including the 'pooling' restrictions linked to planning obligations, the scope for infrastructure to be funded by both CIL monies and developer contributions secured through planning obligations and the replacement of the Regulation 123 list with an Infrastructure Funding Statement to be published from the end of 2020. This is part of the Government's aim to provide more flexibility to fund and deliver infrastructure. It is considered that the Council should adopt the CIL that was the subject of independent Examination (including the amendments required by the Examiner) subject to implementation in accordance with the relevant legislative changes as and when these become effective
- 3.2 The Regulation 123 list is drawn from the Infrastructure Delivery Plan (IDP) prepared to support the submission Havering Local Plan in early 2018. The Regulation 123 list and the IDP were both submitted to the Examiner for information.

- 3.3 The Regulation 123 list details the infrastructure types that will, and will not, receive funding from CIL. A governance process will be developed to determine CIL funding priorities and allocations. It is likely that this decision making process will be informed by the Infrastructure Delivery Plan
- 3.4 It is expected that the IDP and the Regulation 123 list will be kept under review and updated as necessary depending on development progress across Havering. This report includes a recommendation that the review of the Regulation 123 list be delegated to the Director of Neighbourhoods/ Assistant Director of Planning in consultation with the Leader of the Council.
- 3.5 A copy of the current Regulation 123 list (as submitted to the Examiner) is provided in Appendix 3 and will come into effect at the same time as CIL is introduced.
- 3.6 Alongside the introduction of CIL, there will be a continued need to make use of Section 106 agreements in the future, in order to mitigate the impact of a specific development. Such agreements must be drafted in line with the CIL regulations such that 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.

4. The scope for CIL to be paid in instalments

- 4.1 The CIL monies due from a development are generally paid 60 days after a development has formally 'commenced'. However, the CIL Regulations provide the flexibility for CIL schemes to include an instalments policy to allow for the phased payment of the CIL amount for larger sites (where the CIL liability could be a significant financial obligation). This is to assist in supporting a developer's cash-flow, which is important to ensure that a site comes forward for development in a timely manner, given that the majority of development costs are 'up-front'.
- 4.2 The Charging Schedule will include provision for payment of CIL charges by instalments in specific circumstances. These are:
- If the CIL liability is less than £100,000 then no instalments are allowed and the total amount payable is required to be paid within 60 days of the commencement of development
 - If the CIL liability is £100,001 or above, then two instalments are allowed. The greater of £100,000 or half the value of the total amount payable within 60 days of commencement of development and the remainder within 240 days of commencement of development.

4.3 This approach is consistent with the Mayoral CIL instalment policy. No consultation responses commented on this aspect of the Havering CIL. It is proposed that the CIL should be adopted with this provision.

5. Discretionary Matters

5.1 The draft CIL Charging Schedule includes details on the exceptional circumstances where the Council will offer 'discretionary relief' from CIL liability. This includes circumstances where land is transferred to the Council and/or where infrastructure is provided and also provisions for charitable relief.

6. Payment in Kind

6.1 In the vast majority of cases, CIL will be passed to the borough council in the form of a financial payment. However, the CIL Regulations allow for the charging authority, at its discretion, to accept land and/or infrastructure from the body liable in exceptional circumstances, instead of money to satisfy the CIL charge arising. It may be more beneficial for all parties for a developer to provide the infrastructure as a component of a scheme, where this serves a strategic function and this is not to be provided through a Section 106 agreement. .

7. Havering Planning service restructure and its implications for CIL

7.1 A service wide restructure has been implemented with a recruitment campaign shortly to be launched. The restructure includes the provision of a specific Infrastructure and Delivery team overseen by the Head of Strategic Development. The team will address matters linked to these areas including:

- Section 106 planning obligation database and monitoring
- Community Infrastructure Levy collection and monitoring
- Lobbying for key infrastructure
- Development Plan Document infrastructure policy
- Infrastructure Delivery Plan
- Community Infrastructure Levy review
- Section 106 planning obligation and Community Infrastructure Levy management and infrastructure delivery co-ordination

7.2 The provision of a specific and 'dedicated' officer team linked to CIL will enable the Council to optimise its approach to CIL in regard to infrastructure planning, establishing priorities for spending CIL funds and keeping CIL under review.

8. Summary and reasons for the recommendation

Cabinet, 9 July 2019

8.1 In conclusion, and recognising the modifications set out in the Examiner's Report, it is recommended that the updated CIL Charging Schedule is adopted at the July 2019 meeting of Full Council.

8.2 After formal adoption of the CIL Charging Schedule by the Council, the necessary regulatory requirements will be undertaken in order to commence charging CIL for planning applications determined from September 1 2019.

9. Next steps

9.1 Cabinet is asked to recommend to the Council that the CIL Charging Schedule and Regulation 123 list be adopted.

9.2 Subject to the adoption of the charging schedule and related documents by the Council, it is proposed that the Council implements CIL with effect from September 1 2019. This provides time to complete preparations for internal teams/processes and sufficient time to liaise with the development industry to enable them to complete their negotiations and prepare their applications in the knowledge of whether or not they will be liable to pay CIL.

9.3 Planning approvals made on, or after September 1 2019 for development specified in the Charging Schedule which is liable for CIL charges, will be subject to the requirements of the Charging Schedule, regardless of when the applications were submitted.

REASONS AND OPTIONS

The approval of the Havering Community Infrastructure Levy will ensure the early adoption of the Levy and will optimise the potential financial contributions from developers towards the cost of infrastructure provision.

1. Reasons for the decision:

To ensure:

- The effective adoption of the Havering Community Infrastructure Levy; and
- That the potential financial contributions from developers/development are optimised to assist in the provision of necessary infrastructure to support development in Havering.

2. Other options considered:

2.1 The option of not accepting the report from the Examiner and not recommending the adoption of the Havering Community Infrastructure Levy has been rejected because this would prevent the Council from optimising

the financial contributions it secures from development towards the cost of infrastructure needed to support development in the borough.

IMPLICATIONS AND RISKS

Financial implications and risks:

1. The introduction of a Havering CIL will enable the Council to secure developer contributions towards the provision of specific infrastructure matters within the borough with these monies being outside the 'pooling' restrictions currently in place for contributions from developers. The level of CIL funds generated will be dependent on the type, size and quantity of development in the borough. The potential income from the Havering CIL is set out below.
2. CIL will be another potential funding stream towards the cost of infrastructure (as identified in the Regulation 123 list supporting the Havering CIL. It will sit alongside the financial contributions that the Council will continue to seek from developers for on-site/off-site/site specific infrastructure. Details of these are set out in Appendix 3.
3. The Council has produced viability evidence to inform the setting of its CIL rates as well as providing supporting evidence of the infrastructure funding gap based on the Havering Local Plan.
4. The level of contributions received under CIL will represent only a proportion of the cost of the infrastructure needs of Havering and as such funding will need to be allocated to projects which are identified as having the highest priority.
5. The Infrastructure Delivery Plan estimates that the infrastructure needed to support development in the borough over the period of the Havering Local Plan will be in the region of £580m. The Havering Community Infrastructure Levy Infrastructure Funding Gap Report sets out further detail on this and the potential sources of funding towards this which will complement the Havering Community Infrastructure Levy.
6. CIL legislation and regulation requires that a proportion of CIL funds from a development are spent within the area where the development is located. The proportion varies from 15-25% depending on factors such as whether there is a neighbourhood plan in place and if there are parish, community or town Councils in place. In the case of Havering, the proportion to be spent in the local neighbourhood will be required to be 15%.
7. Once adopted, the Council will be able to use an element of the CIL monies towards the cost of administering and collecting the CIL itself. There are

provisions within the CIL regulations to use up to 5% of funds derived from CIL to administer and monitor the system.

8. The Council's consultants have reviewed the potential CIL income based on the development envisaged in the Local Plan (based on the housing trajectory as at April 2019). They estimate that over the period 2017/18 – 2031/32 the potential Havering CIL income may be:

Year	Potential CIL income £m	Potential CIL income per annum £m
2017/18 – 2021/22	10.600	2.650
2022/23 – 2026/27	40.500	10.125
2027/28 - 2031/32	12.400	3.100
Total	63.500	5.000

9. Havering CIL charges will be collected from developers alongside any relevant London Mayoral CIL charges as one overall CIL obligation. Havering will then forward Mayoral CIL monies to the London Mayor as it does currently.
10. The Council has employed specialist advisers to assist officers in preparing the Havering CIL. An overall cost of around £0.075m is expected to be incurred over the period 2018/2020 to deliver the Havering CIL for adoption. This includes final costs for the Examination and for the Programme Officer to be incurred in 2019/20 (confirmation of these is awaited but they are expected to be circa £0.013m in total). The Programme Officer acts as an independent 'conduit' between the Council and its consultants and the Examiner.

Legal implications and risks:

1. The power to charge by way of the Community Infrastructure Levy (CIL) was introduced by Part 11 (Sections 205-225) of the Planning Act 2008. The Community Infrastructure Levy Regulations 2010 (as amended) deal with the detailed implementation of CIL and cover matters such as the procedure for setting CIL, the charging and collecting of the levy and liability for payment. A charging authority cannot adopt CIL unless it has first produced a charging schedule based on appropriate available evidence, which has informed the preparation of the charging schedule.
2. Setting and reviewing the Community Infrastructure Levy (CIL) must follow a statutory process, as defined in the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended). In addition, there is considerable Government Planning Policy Guidance dealing with the

approach to be adopted in setting and reviewing rates within the Charging Schedule.

3. The statutory process requires demonstrable evidence of how the Council has derived the Regulation123 Schedule and liable development, and consultation of that evidence. There is also a requirement to consider the outcome of that consultation prior to setting or reviewing a rate, which includes external validation by an examiner with the Charging Schedule being subject to any modifications recommended by the examiner.
4. The report from the independent Examiner concluded that the Havering Community Infrastructure Levy Charging Schedule, with the modifications that have been consulted upon, satisfies the requirements of Section 212 of the 2008 Planning Act and 2010 Regulations (as amended).

Human Resources implications and risks:

1. There are no specific implications for the Council's workforce arising from this report.
2. The work involved in progressing the CIL through consultation and examination will be undertaken by officers in the Planning Service except where it is necessary to engage the specialist skills provided by the consultants retained to advise on the preparation of the Havering CIL. The project team will need to consider the IR35 Intermediaries implications

Equalities implications and risks:

1. The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:
 - (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
 - (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are: age, gender, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender re-assignment.

2. The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

3. The Community Infrastructure Levy is unlikely to have an adverse impact on any social group. By making communities more sustainable, the Community Infrastructure Levy will facilitate economic growth and liveability and so create opportunity for all. The infrastructure and services that the Community Infrastructure Levy will provide will enhance accessibility and liveability for all sectors of society, and could help to deliver new infrastructure that serves different needs within the community, for example by increasing mobility and accessibility.
4. The Havering Community Infrastructure Levy has been subject to public consultation and is informed by the emerging new Havering Local Plan and its Equalities Impact Assessment.
5. An Equality Impact Assessment was undertaken to consider the implications of the introduction of CIL for the Public Sector Equality Duty and the impact on the protected characteristics groups (Equality Act 2010). No differential impact has been identified for any groups. It was noted that all residents will benefit from improvements to infrastructure in their local area and the borough as a whole.

BACKGROUND PAPERS