



Policy and Resources Committee

24 May 2021

Title

Barnet Community Infrastructure Levy Charging Schedule Review – submission for examination

Report of

Chairman of the Policy and Resources Committee

Wards

All

Status

Public

Urgent

No

Key

Yes

Enclosures

Appendix A – Draft Charing Schedule
Appendix B – Summary of representations received and how they have been taken into account under regulation 17
Appendix C – Infrastructure Delivery Plan
Appendix D – Equality Impact Assessment (EQIA)

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Summary

This report seeks committee agreement to submit the Draft Community Infrastructure Levy (CIL) Charging Schedule for examination, following consultation. This report explains the representations received and how they have been taken into account.

The Draft Charging Schedule proposes to revise the Barnet CIL rate to £300 per square metre for residential development and introduce a charge for employment and leisure uses of £20 per square metre. Independent viability evidence was commissioned and indicates

the new proposed rates to be both viable and would not unduly prejudice development coming forward in the borough

Officers Recommendations

1. That the Committee considers the consultation responses received in relation to the Draft Charging Schedule, summarised in a table at Appendix B.
2. That having considered the consultation responses, officers and viability consultants proposed responses, the Committee agrees that the rates set out in the Draft Charging Schedule should not be amended apart from clarification points in relation to B2 and B8 uses and the use classes order.
3. That the Committee agrees submission of the draft Charging Schedule (Appendix A) and other evidence documents, including updates to the Council's draft Infrastructure Delivery Plan (Appendix C), to the Planning Inspectorate for examination.
4. That the Committee note that the Charging Schedule, post examination (if recommended for approval by the examiner), will need to be approved by the full Council in line with s.213(2) Planning Act 2008 and Government Guidance on approving and implementing the Charging Schedule.

1. WHY THIS REPORT IS NEEDED

- 1.1 The Policy and Resources committee agreed the CIL Draft Charging Schedule and evidence documents for consultation at their meeting on 8 Feb 2021.
- 1.2 The rates per square metre that were set out the Draft Charging Schedule and consulted on are shown below. The rates for residential development would increase to £300 a square metre and a rate of £20 a square metre for Leisure and Employment uses would be introduced. The rates for Hotels (C1) and Retail are in effect not proposed to be increased.

Development	Proposed Amount
Residential including C2, C3 and C4 use classes and sui generis HMOs	£300
Hotels (C1)	£202
Retail (former A1-A5 uses)	£202
Leisure (former D2 uses)	£20
Employment (former B use classes)	£20
All other uses	£0

- 1.3 Public consultation was carried out between 18 February and 21 March 2021. Representations were invited by letter and email from all parties registered on the Local Plan Consultation Database as well as the consultation documents and a questionnaire being available on the Engage Barnet website. This means that representations were

invited from bodies, groups and persons as required by regulation 16(1A) of the CIL Regulations 2010 (as amended) (CIL Regs).

- 1.4 Developers and agents were invited to a Teams presentation on the CIL charging schedule consultation on the 12 March 2021 and 40 external parties were registered as attending. The event provided an opportunity for developers and agents to learn more about the Council's approach and ask questions ahead of the consultation closing on 21st March.
- 1.5 20 responses were received to the consultation, mainly from developers that are active in the Barnet area, some local residents and politicians.
- 1.6 Under regulation 17(5) of CIL Regs, a charging authority must take into account any representation made to it on the draft charging schedule before submitting the schedule for examination. A detailed summary of representations is provided in Appendix B
- 1.7 The main issues raised are highlighted below.

Support for review

- 1.8 Support for the review and the increase to rates was received from 4 members of the public/community groups, neighbouring Brent Council and the London Assembly member for Barnet and Camden.

Challenging Viability Evidence and questioning timing of review

- 1.9 8 developers challenged the council's supporting viability evidence, putting forward technical arguments as to why the evidence did not justify the proposed rate. The council's viability consultants have responded in detail to these comments as set out in Appendix B. It is suggested the committee take account of the following points made by the viability consultants:

- The Council's CIL rates have remained unchanged since 2013 (save for indexation) and significantly out of kilter with other London boroughs with similar value profiles, conversely, development and land values in North London do not markedly differ as to undermine the viability evidence.
- There is never a 'good' time for a review and reasons can always be advanced for any changes to be deferred but ultimately there is a pressing need for infrastructure to support growth and this requires additional funding.
- The Planning White Paper proposes changes to infrastructure funding, but these are currently very high level and require considerable work to resolve detailed issues. It is unlikely that any changes will take effect in the next three years, during which time the Council will miss out on significant funding to support growth if a new Charging Schedule is not brought in.

Requesting sites zero rated or rate not increased

- 1.10 4 developers of sites requested that the rate was not increased for their particular site. These are mainly sites where permission has been granted or developers are actively bringing forward proposals such as Douglas Bader estate, Edgware town centre, the Grahame Park Estate and North Finchley town centre. Officers have met with a number of these developers and will continue to do so in advance of examination. In officer's view,

there are a number of options available to these developers to mitigate the impact of any increase in rate if evidenced and justified on viability or wider public benefit grounds, rather than their sites being zero rated or the rate not increased on their site. The Council already makes exceptional circumstances relief available and it likely to introduce infrastructure payments following consultation (as explained in paragraph 1.12).

Requesting Discretionary Social Housing Relief

- 1.11 One developer (Pocket Living) requested that Discretionary Social Housing Relief be made available. Discretionary Social Housing relief available was introduced into the CIL regulations in 2014, and allows for charging authority's to make such relief available for properties that are sold at 80% of market value in perpetuity (such as those built by Pocket Living). The Council has demonstrated its willingness to work with Pocket Living to address any issues by making partial exceptional circumstances relief available on one of its recent planning permissions. However, this does not mean that ALL Pocket Living schemes will always be unviable and the Council's approach therefore provides sufficient flexibility without locking in nil or reduced rates when they may not always be required.

Introduction of Infrastructure payments

- 1.12 A number of developers (Ballymore, Brent Cross South) suggested that infrastructure payments be made available under regulations 73A, 73B and 74. These regulations allow for CIL payments to be made in kind, by providing infrastructure on site as part of a development. This would address comments made challenging evidence and asking for zero rate at North Finchley, Douglas Bader and Grahame Park. Officers consider there to be merit in this approach, however prior to introducing Infrastructure Payments the council would need to adopt anew policy and align this with adoption of a new charging schedule. Making infrastructure payments available may also reduce the number of strategic sites that seek Exceptional Circumstances Relief and may be a more efficient way of bringing forward critical infrastructure ahead of or in line with the pace of development.
- 1.13 The facility to have infrastructure payments was introduced in 2014, (after Barnet CIL was adopted) therefore this is the first opportunity to consider this option. If members agree that infrastructure payments should be made available, a policy will be prepared in the lead up to the examination and discussed with consultees and adopted alongside the new charging schedule.

Position on car parking

- 1.14 As the Draft Charging Schedule sets out, Car Parking will no longer be zero rated for Barnet CIL. A number of objections were received to this. However, it is considered appropriate to charge for ancillary car parking upon adoption of the new charging schedule, it would not undermine viability and will streamline administration, resulting in greater CIL receipts to provide infrastructure to support development and removes the anomaly of Barnet being the only charging authority in London that doesn't charge for car parking.

Position on discretionary reliefs

- 1.15 The council made Exceptional Circumstances relief available when it adopted the current charging schedule in 2013. The option to allow discretionarily social housing relief and discretionary charitable relief was provided through changes to the CIL regulations in 2014, but was not made available in Barnet. It is proposed that the Council continues to make exceptional circumstance relief available but does not automatically make discretionary

social housing relief or discretionary charitable relief available, applicants will continue to have to apply for exceptional circumstances relief based on evidence.

Clarification points

- 1.16 In recommending the proposed rates, the viability consultants have followed the Planning Practice Guidance that states: “Charging authorities may also set differential rates by reference to different intended uses of development. The definition of “use” for this purpose is not tied to the classes of development in the Town and Country Planning Act (Use Classes) Order 1987 (as amended) although that Order does provide a useful reference point.” As set out in section 7.3 of the 2021 update to the viability study, the viability consultant’s recommendation was that industrial and warehousing (B1 and B2) and former B1 uses (Offices, research and development and light industrial uses which now fall within class E) should be charged at £20 a square m, but the way this was expressed in the Draft Charging Schedule may have been unclear as it signposted to former B uses and uses B2 and B8 remain and are intended to be charged as employment uses. Therefore, the charging schedule has been changed to reference B2 and B8 uses as well as former B uses against employment, and to reference the extract from the government’s Planning Practice Guidance referred to above. A reference to ‘other sui generis residential uses’ has been added to ensure residential use for commercial leisure uses is captured. The Draft Charging Schedule has been updated and is attached at Appendix A and the new table and note that has been incorporated is copied below, with the new text underlined:

Table 1: CIL Rates

Development	Proposed Amount
Residential including C2, C3 and C4 use classes and sui generis HMOs <u>and other sui generis residential uses</u>	£300
Hotels (C1)	£202
Retail (including former A1-A5 uses)	£202
Leisure (<u>including former D2 uses and sui generis leisure uses</u>)	£20
Employment (including former B use classes and / or B2 and B8 uses)	£20
All other uses	£0

NB in accordance with government guidance, the rates have been set on the basis of the intended use of development. The definition of “use” for this purpose is not tied to the classes of development in the Town and Country Planning Act (Use Classes) Order 1987 (as amended) although reference has been made in the table above to use classes in that Order in order to provide a useful reference point. Therefore, in the table above, the reference made to the use classes are not limited to those use classes.

Infrastructure needs, the CIL charging schedule and the emerging local plan

- 1.17 The 8th February Policy and Resources Committee report set out in detail the infrastructure costs that had been identified through the preparation of the Infrastructure Delivery Plan, as well as anticipated receipts through CIL if a new Charging Schedule comes into effect and the development anticipated in the Local Plan comes forward.

- 1.18 The infrastructure delivery plan (IDP) is an important evidence document for justifying charging CIL and as evidence to support the emerging Local Plan. The IDP remains a living document that will be updated as requirements are better understood and infrastructure is delivered. The current version is attached at Appendix C, but will be updated as necessary prior to submission of the charging schedule for Examination and will also be updated and published as evidence for the Regulation 19 version of the Local Plan.
- 1.19 Officers have discussed the timing of the Charging Schedule and the Local Plan with the planning inspectorate and concluded that it is appropriate to submit the Charging Schedule for examination in advance of the Local Plan so that the new CIL rate can come into effect sooner¹. In turn, this will help delivery of the policies in the Local Plan by increasing the funding available towards critical infrastructure from CIL to support current and future growth.

2. REASONS FOR RECOMMENDATIONS

- 2.1 Consultation responses have been reviewed and it is still considered necessary to review the CIL rates to ensure that the Council is achieving a fair contribution to the infrastructure demands of new development that is coming forward in the borough and to help deliver the policies set out in the emerging Local Plan.
- 2.2 Taking account of consultation responses, it is considered that the proposed rates set out in the Draft Charging Schedule strike an appropriate balance between the desirability of funding from CIL the infrastructure required to support development in the Barnet area and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area. This is the main requirement set out in regulation 14 of the CIL regulations for setting rates and will be tested at examination by an independent examiner.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 There is the option of not submitting the charging schedule for examination at this time, however, there would appear to be no advantage to the council in delaying submission. There is a pressing need to for infrastructure to support growth and the viability evidence indicates that it is appropriate for an increased rate to be applied and it would be sensible to bring this into effect as soon as possible.

4. POST DECISION IMPLEMENTATION

- 4.1 The Community Infrastructure Regulations 2010 (as amended) sets out the procedure for publication, consultation, examination and adoption of a CIL charging schedule.

¹ As noted in the February committee report, any new rate will take some time to introduce and flow through into receipts or impact on development proposals (as the new rate will apply to planning permissions or the later phases of schemes granted after the Charging Schedule comes into effect).

- 4.2 The Draft Charging Schedule together with the prescribed documents would be submitted to an examiner for examination in accordance with regulation 19 and prescribed documents under reg.19(3) are to be published (in a similar fashion to the first publication).
- 4.3 Any person who has made a representation has the right to be heard by the examiner under regulation 21. The examiner will determine the method by which the right to be heard will be exercised, this can be by round table discussion, informal hearing or formal inquiry.
- 4.4 The examiner may choose to conduct the examination of the draft charging schedule by written representations, if no person has requested the right to be heard.
- 4.5 The examiner may decide the amount of time to be allowed at an examination for the hearing of representations and may refuse to allow representations that are irrelevant, frivolous, vexatious or repetitious (regulation 21(12)).
- 4.6 The examiner must consider whether the requirements set out in Part 11 of the PA 2008 and the CIL Regs (together known as the drafting requirements) have been complied with and give reasoned recommendations for the draft charging schedule to be approved, rejected or modified.
- 4.7 . After the examination, the procedure for publication of the recommendations and reasons given by the examiner has to be complied with under regulation 23. The examiner's recommendations and reasons must be available for inspection, published on the Council's website and any persons notified as requested.,
- 4.8 If the examiner has recommended approval, the charging authority has discretion over how they respond to any of the examiner's recommendations.
- 4.9 If the examiner has identified a failure to comply with the drafting requirements, the charging authority may only approve the charging schedule if, after having regard to the examiner's recommendations and reasons, they have made such modifications as are required to secure compliance.
- 4.10 Otherwise, under s.213 of the Planning Act 2008, the Council may approve a recommendation made by the examiner and must approve the Charging Schedule at a Council meeting. The Charging Schedule, post consultation and examination, will therefore need to be approved by the full Council in line with s.213(2) Planning Act 2008 and Government Guidance on approving and implementing the Charging Schedule. Regulation 25 requires the Charging Schedule and any report to be published on the Council's website, make available for inspection at Council offices, give notice to those persons who requested to be notified of the approval as well as the commencement date on which it is to come into effect. It is likely that the schedule would come into effect in late 2021 or early in 2022.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The increased income generated from an increase to the CIL rate will help to meet Corporate Plan 2019-24 three main outcomes by helping to pay for the infrastructure to support development and the increasing population of the borough:

5.1.2 The three main outcomes are:

- Our residents live happy, healthy, independent lives with the most vulnerable protected

- A pleasant, well maintained borough that we protect and invest in –and
- Safe and strong communities where people get along well –.

5.2 **Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

5.2.1 It is good practice to periodically review charges of this type and to ensure that they maximise the benefit to the council without being beyond the tolerance of the market. As the report indicates, it will take time for the CIL rate increase to be realised in terms of increase cash receipts, and as such no adjustment to current budget proposals is recommended.

5.3 **Legal and Constitutional References**

5.3.1 The terms of reference under Article 7 of the Council's Constitution sets out the responsibilities of the Policy & Resources Committee for:

Strategic policy, finance and corporate risk management including recommending: Capital and Revenue Budget (including all fees and charges); Medium Term Financial Strategy; and Corporate Plan to Full Council; as well as, to be responsible for those matters not specifically allocated to any other committee affecting the affairs of the Council.

5.3.2 The relevant legislation applicable to introducing or amending the CIL Charging Schedule is set out in Part II of the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended). The relevant provisions are set out in this report. However, it should be noted that the examiner may reject the draft charging schedule, if any of the drafting requirements have not been complied with and no modifications are capable of securing compliance. The Council are bound by a recommendation for refusal and must reject the charging schedule.

5.3.3 The Planning Practice Guidance on Community Infrastructure Levy provides that Charging Authorities may amend their charging schedule in whole or in part. However, the revisions must follow the same statutory processes as the preparation, examination, approval and publication of a charging schedule (as set out in Part 3 of the CIL Regulations 2010 as amended).

5.3.4 There is currently no power or discretion in the CIL Regulations to amend an adopted CIL charging schedule without going through the formal statutory process.

5.4 **Insight**

5.4.1 n/a

5.5 **Social Value**

5.5.1 The increase in receipts from the introduction of a new Charging Schedule will secure funding for a range of infrastructure to support development in Barnet, which in turn will have a range of social, economic and environmental benefits.

5.6 **Risk Management**

5.6.1 It is considered that there are limited risks associated with the Draft Charging Schedule.

There is a risk that the Charging Schedule is found unsound by the Examiner, and the costs of taking to examination are abortive, but this risk will be minimised by ensuring that the regulations are followed and the Schedule is supported by appropriate evidence.

5.7 Equality and Diversity

5.7.1 The Equality Act 2010 imposes a legal duty, known as the Public Sector Equality Duty which requires Public Bodies to have due regard to the need to:-

- Eliminate unlawful (direct or indirect) discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- Advance equality of opportunity between people who share a protected characteristic and those who do not share it; and
- Foster good relations between people with protected characteristic and those who do not share it.

Relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

5.7.2 An EQIA has been carried out and is included as Appendix D. The EQIA has not identified any potential for a disproportionate impact and all opportunities to advance equality of opportunity are being addressed.

5.8 Corporate Parenting

5.7.1 Not applicable

5.9 Consultation and Engagement

5.9.1 The consultation requirements for CIL Draft Charging Schedules are set out in regulation 16 of the CIL regulations as referred to above.

6. BACKGROUND PAPERS

6.1 Community Infrastructure Levy guidance. <https://www.gov.uk/guidance/community-infrastructure-levy>

6.2 Infrastructure Funding Statement <https://www.barnet.gov.uk/planning-and-building/planning/community-infrastructure-levy>

6.3 Barnet CIL Charging Schedule 2013 <https://www.barnet.gov.uk/planning-and-building/planning/community-infrastructure-levy>

6.4 Policy & Resources Committee, 8 February 2021 Charging Schedule Review Barnet Community Infrastructure Levy
<https://barnet.moderngov.co.uk/documents/s63176/Charging%20Schedule%20Review%20Barnet%20Community%20Infrastructure%20Levy.pdf>