

	<p><b>Full Council</b></p> <p><b>1 March 2022</b></p>
<p style="text-align: right;"><b>Title</b></p>	<p><b>Barnet Community Infrastructure Levy Charging Schedule Review – Approval of Charging Schedule and Infrastructure Payments Policy</b></p>
<p style="text-align: right;"><b>Report of</b></p>	<p>Deputy Chief Executive in consultation with the Leader as Chairman of Policy and Resources Committee</p>
<p style="text-align: right;"><b>Wards</b></p>	<p>All</p>
<p style="text-align: right;"><b>Status</b></p>	<p>Public</p>
<p style="text-align: right;"><b>Urgent</b></p>	<p>Yes – Full Council are requested to consider this as an urgent item to enable the CIL Charging Schedule to be approved to be effective from 1<sup>st</sup> April 2022. Delaying this decision until the next ordinary Council meeting on 26 July 2022 will impact on CIL income. See section 1.12 below.</p>
<p style="text-align: right;"><b>Key</b></p>	<p>Yes</p>
<p style="text-align: right;"><b>Enclosures</b></p>	<p>Appendix A – Community Infrastructure Levy Charging Schedule  Appendix B – Examiner’s Report and Recommendations  Appendix C – Infrastructure payments policy  Appendix D – Equality Impact Assessment (EQIA)</p>
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<p><b>Summary</b></p>	
<p>This report seeks Full Council agreement to approve the CIL Charging Schedule, following receipt of the Examiner’s Report.</p>	

## **Officers Recommendations**

- 1. To note the Examiner's Report dated 15<sup>th</sup> February 2022 at Appendix B.**
- 2. To approve the new Community Infrastructure Levy Charging Schedule as set out in Appendix A subject to the recommended modification by the Examiner with effect from 1<sup>st</sup> April 2022 ('the Commencement Date').**
- 3. To approve the Infrastructure Payments Policy as set out in Appendix C and if approved to allow infrastructure payments with effect from 1 April 2022.**

### **1. WHY THIS REPORT IS NEEDED**

- 1.1 Community Infrastructure Levy ("CIL") is a standard charge collected from developers on a rate per square metre basis after their planning permissions have been implemented and the funds raised are spent on infrastructure to support the development of an area.
- 1.2 The Council has charged CIL since May 2013. Since 2019 the Council has been engaged in a process to review the CIL rate, by following the Community Infrastructure Regulations 2010 (as amended) ("Regs") procedure for publication, consultation, examination and adoption of a CIL charging schedule.
- 1.3 The Policy and Resources Committee agreed the CIL Draft Charging Schedule and evidence documents for consultation at their meeting on 8 February 2021.
- 1.4 The Policy and Resources Committee considered the results of consultation and agreed that the Charging Schedule should be submitted for Examination at their meeting on 24<sup>th</sup> May 2021.
- 1.5 Jameson Bridgwater PGDip TP MRTPI was appointed as the Examiner. The Examination has now taken place The hearing session was held on 25<sup>th</sup> November 2021. The Examiner's report was received on 15<sup>th</sup> February 2022 and is attached to this report at Appendix B.
- 1.6 The Examiner had to consider whether the requirements set out in Part 11 of the PA 2008 and the CIL Regs had been complied with and give reasoned recommendations for the draft charging schedule to be approved, rejected or modified.
- 1.7 Subject to a recommended modification, the Examiner has concluded that the London Borough of Barnet Community Infrastructure Levy Charging Schedule satisfies the requirements of Section 212 of the 2008 Act and meets the criteria for viability in the 2010 Regulations (as amended) and has therefore recommended that the Charging Schedule be approved
- 1.8 The modification is that the proposed £20 per square metre charge for leisure uses is reduced to £0. The Council has discretion over how they respond to any of the

Examiner's recommendations. However it is recommended that the modification should be accepted by the Council as this will allow the Charging Schedule to be approved and the new rates (excluding the leisure use charge) to come into effect.

- 1.9 The next step after the examination, in accordance with section 212(8) of the Planning Act 2008, is that the Council must publish the recommendations and reasons given by the Examiner and comply with the procedure for publication of the recommendations and reasons under Regulation 23. The Council must, as soon as practicable after the day on which it receives the recommendations and reasons:
1. Make the Examiner's recommendations and reasons available for inspection as previously had done so.
  2. Publish the examiner's recommendations and reason on the Council's website and
  3. Notify any persons who asked to be informed about the publication of the examiner's report.
- 1.10 The requirements above have been carried out. The Examiner's recommendation and reasons are available for inspection as previously - as the Council Offices were closed for much of 2021 and the Planning Reception remains closed, documents were not made available for inspection physically, but officers advised consultees that printed copies of any documents would be sent if requested. No requests for printed documents have been received. The Examiner's recommendations and reasons were published on the Council website on 16th February 2022. An email notifying consultees of the receipt of the report has been sent.
- 1.11 Thereafter, under section 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 by a majority of votes of members present. It should be noted that the Policy and Resources Committee does not have the authority to make any decisions post the examination stage of the process. The Charging Schedule, post consultation and examination, needs to be approved by the full Council in line with section 213(2) Planning Act 2008 and Government Guidance on approving and implementing the Charging Schedule. The Charging Schedule is attached to this report at Appendix A.

### **Urgency**

- 1.12 The Examiner's report was received on 15th February 2022. Legal advice on the process for approval was sought. The legal advice established that it was not necessary for the matter to be reported to Policy and Resources Committee in advance of Full Council. However, when officers reviewed dates, the next available Full Council would not be until July as the agenda for 1st March Full Council had been published on 21st February and the May Full Council is reserved for appointments to committees etc. Delaying the approval and subsequent implementation of the Charging Schedule to July 2022 would mean that the new CIL rates would not apply to planning permissions granted until after July rather than from 1st April 2022, which would have a significant impact on CIL income.

### **Infrastructure Payments Policy**

- 1.13 As part of consultation on the Draft Charging Schedule a number of developers 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. These comments were reported to Policy and Resources Committee in May 2021 and an infrastructure payments policy was drafted and discussed with consultees and submitted to the CIL examination for information. The Examiner did not consider the policy as it is a matter for the Council to decide whether to allow infrastructure payments. However, the policy was supported by a number of consultees. Allowing infrastructure payments may 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. It is therefore considered appropriate to allow Infrastructure Payments and for the Infrastructure Payments Policy to be approved alongside the charging schedule. The Infrastructure Payments Policy is attached to this report at Appendix C.

### **Position on Discretionary Reliefs**

- 1.14 The Council made Exceptional Circumstances Relief available when it adopted the current charging schedule in 2013. This allows charging authorities to offer relief from the levy in exceptional circumstances where a person responsible for a specific scheme cannot afford to pay the levy. The option to allow discretionary 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 and does not make discretionary social housing relief or discretionary charitable relief available. Therefore applicants that meet the criteria for discretionary social housing relief or discretionary charitable relief will continue to have to apply for exceptional circumstances relief based on evidence.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 Approval of the Charging Schedule will mean that the CIL rates set out in the Charging Schedule will apply to all planning permissions granted from 1 April 2022. Depending on the development proposed, the CIL charge will increase and will make an important contribution to meeting the acknowledged gap in infrastructure funding, while ensuring that a range of development remains viable across the borough.
- 2.2 Making infrastructure payments available may 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. It is therefore considered appropriate for Infrastructure Payments to be made available and the Infrastructure Payments Policy to be approved alongside the charging schedule.

## **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 There is the option of not approving the charging schedule at this time. However, there would appear to be no advantage to the council in delaying approval.
- 3.2 There is the option of approving the charging schedule but not bringing it into effect until a later date. However, 1st April 2022 is a pragmatic date for the new rate to apply as it aligns with the financial year. It also allows some time for planning decisions to be made on cases that are currently with the local planning authority for determination, and the current rate to apply to those cases. It should also be noted that when consulting on the

new charging schedule it was anticipated that the new rates would come into effect in late 2021 or early 2022, depending on the timescales for examination.

#### **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.
- 4.2 Once approved, Regulation 25 requires the Charging Schedule and any report to be published on the Council's website, made available for inspection at Council offices, notice to be given 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.
- 4.3 Under regulation 28A (2) the Charging Schedule which was approved in 2013 will be replaced by the Charging Schedule approved in 2022. The 2013 Schedule will cease to have effect on 1 April 2022 when the 2022 Charging Schedule comes into effect. This means that planning permissions granted prior to 1 April 2022 will be charged the 2013 (indexed) rates and planning permissions granted after 1 April 2022 will be charged the 2022 rates. Later phases of phased schemes may also pay the new rates in accordance with regulation 8.

#### **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 The financial implications of the increase in the CIL rate are built into the capital programme and Infrastructure Delivery Plan.

##### **5.3 Legal and Constitutional References**

5.3.1 As set out in Section 1.11, approval of the CIL Charging Schedule is a matter reserved to Full Council under Section 213 of the Planning Act 2008.

5.3.2 Council Constitution, Article 7 (Committees, Forums, Working Groups and Partnerships) states the following in relation to urgent business:

7.15 When an urgent matter has arisen after the publication and dispatch of an appropriate agenda the following procedure applies:

7.16 The Chairman has the authority to agree to take urgent items not on the agenda. The Chair will consult with the Vice-Chairman and Opposition Spokesperson for the committee. The Chairman (with advice from the Monitoring Officer as appropriate) needs to be satisfied as to the need for urgency under the following criteria:

- the item has arisen between the compilation of the agenda and the date of the meeting.
- the item requires an urgent decision in the public interest which cannot be dealt with by other means

7.17 In all cases the reason for the urgency shall be clearly stated and recorded in the minutes of the meeting and the urgent item will be taken as the Chairman may decide.

- 5.3.3 The Mayor has agreed to take this as an urgent item of business. The Leader (who is also Chairman of the Policy & Resources Committee), the Leader of the Opposition and the Leader of the Liberal Democrat Group have been consulted. The reason for urgency is as set out on the cover page and in the body of the report.
- 5.3.4 CIL is a planning charge that was introduced by the Planning Act 2008 Part II to help deliver infrastructure to support the development in an area. It came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010 as amended (“the Regulations”).
- 5.3.5 Section 216(2) of the Planning Act 2008 lists some examples of infrastructure which CIL can fund. i.e. roads and other transport facilities, flood defences, schools and other educational facilities, medical facilities, sporting and recreation facilities and open spaces.
- 5.3.6 Additionally, regulation 59(F)(3) of The Community Infrastructure Levy (Amendment) Regulations 2013 allow the Council, as the Charging Authority to use the CIL to support the development of the relevant area by funding the provision, improvement, replacement, operation or maintenance of infrastructure or, anything else that is concerned with addressing the demands that development places on an area.
- 5.3.7 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 CIL Regulations 2010 (as amended). The relevant provisions and procedure are set out in this report.
- 5.3.8 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).
- 5.3.9 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.
- 5.3.10 The Charging Schedule must be formally approved by a resolution of the full Council of the charging authority. The resolution should include an appropriate commencement date following approval.

5.3.11 An approved Charging Schedule must be published by the Council. The date the Charging Schedule comes into effect is chosen by the Council and is specified within the Charging Schedule, but this must be at least one day after the date of publication.

5.3.12 Section 217(4) of the Planning Act 2008 allows for regulations to make provision for payment of CIL in-kind rather than in cash. Regulations 73, 73A, 73B and 74 of the CIL Regulations 2010 allow for the payment of CIL in-kind ('now known as infrastructure payment'). This is a discretionary policy and where a charging authority chooses to adopt a policy of accepting infrastructure payments, they must publish a document which sets out the conditions to be met in detail (regulation 73A), including the requirement to enter into a written agreement. If the Council chooses to permit infrastructure payments then it must comply with the procedure set out in regulation 73B

#### 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 approving the Charging Schedule. The decision will be open to legal challenge, however it is considered that the legislative requirements for approval have been met.

#### 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 n/a

## 5.9 Consultation and Engagement

5.9.1 At this stage of the process, there are no consultation requirements set out in the regulations.

## 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>

6.5 Policy & Resources Committee 24 May 2021 Barnet Community Infrastructure Levy Charging Schedule Review – submission for examination  
<https://barnet.moderngov.co.uk/documents/s64966/Barnet%20Community%20Infrastructure%20Levy%20Charging%20Schedule%20Review%20submission%20for%20examination.pdf>

