

Subject:	Community Infrastructure Levy - Statement of Modifications to the Draft Charging Schedule		
Date of Meeting:	22 November 2018		
Report of:	Executive Director, Economy, Environment & Culture		
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Ward(s) affected:	All		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 This report outlines the results of the consultation on the published Community Infrastructure Levy (CIL) Draft Charging Schedule as agreed by this committee in March 2018 and seeks approval to publish a CIL Draft Charging Schedule Statement of Modifications. This will form part of the Draft Charging Schedule submission to an examination in accordance with the Planning Act 2008 (as amended) and CIL Regulations 2010 (as amended) agreed by this committee in March 2018.

2. RECOMMENDATIONS:

- 2.1 That the Committee notes the CIL Statement of Representations made on the Draft Charging Schedule 2018 (Appendix 3) and subsequent recommendations arising from the CIL Viability Study Addendum 2 (Nov 2018) (Appendix 4) which have informed a CIL Draft Charging Schedule Statement of Modifications (Appendix 1).
- 2.2 That the Committee agrees to publish the CIL Draft Charging Schedule Statement of Modifications (Appendix 1) which will form part of the Draft Charging Schedule submission to an examination, as agreed by this committee in March 2018, in accordance with the Community Infrastructure Levy Regulations 2010 (as amended), and to authorise the Head of Planning to make any necessary minor editorial/grammatical amendments to these modifications prior to submission.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 In September 2016 the Economic Development & Culture Committee resolved that work commence on a CIL charging schedule for Brighton & Hove, noting that a key stage was to 'Publish a Preliminary Draft Charging Schedule (PDCS) for consultation following committee resolution'.
- 3.2 In September 2017 this Committee resolved to carry out a consultation exercise on a Preliminary Draft Charging Schedule (PDCS) in accordance with the

Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations). Consultation responses on the PDCS helped inform the preparation of a Draft Charging Schedule.

- 3.3 In March 2018 this committee agreed to consult on a Draft Charging Schedule and then submit this Draft Charging Schedule for Examination. It was agreed that where modifications were required these would be brought back to this committee before the modifications are published.
- 3.4 The Draft Charging Schedule supported a zoned CIL charge for residential development (C3/C2) and also CIL charges for retail development and Purpose Built Student Accommodation. It was also agreed that two strategic sites should be identified for nil-rating (the King Alfred/LNR site and the Inner Harbour at the Marina) due to key viability issues and abnormal costs.
- 3.5 The Draft Charging Schedule was supported by a draft Regulation 123 Infrastructure List setting out a framework of citywide infrastructure types suitable for CIL funding. Consultation on both documents was undertaken between 28 March and 13 June 2018.

Summary of consultation responses from the Draft Charging Schedule

- 3.6 The Draft Charging Schedule consultation received 38 responses: 6 from residents; 4 from community organisations; 12 from public bodies/statutory authorities/service providers; 2 from Parish and Town Councils; 14 from developers/ agents/ business organisations. Appendix 3 sets out a full summary of the representations received and the council's response.
- 3.7 The following key issues were raised through the representations:

a) Identification of additional strategic sites for nil rating:

A number of respondents sought the inclusion of additional sites for nil CIL rating, referring to a range of site specific delivery/viability issues:

City Plan Part One DA2 area 'Brighton Marina, Gas Works and Black Rock Area' – respondents cited abnormal development site costs and significant viability issues at the Brighton Marina Outer Harbour, Gas Works and Black Rock sites. It was indicated that Brighton Marina Outer Harbour is likely to require new planning permissions to bring forward development and that a cohesive and consistent approach to development is required for the whole harbour area.

Brighton General Hospital - the respondent cited viability issues and the requirement for residential development to cross-fund a new D1Health Hub providing significant infrastructure for the city;

Sackville Road Trading Estate/Coal Yard - respondents cited mixed use provision required, residential development to cross-fund marginal B1 provision, abnormal site costs and viability issues, queried CIL viability assessment around build to rent housing delivery;

DA1 site 'Brighton Centre and Churchill Square Area' cited viability issues and the need to cross-fund Waterfront Project within worsening retail climate;

Toad's Hole Valley – respondent queried CIL rates as too high

- b) **Charging rates generally** – some responses considered the proposed CIL rates were too high; others were in support of the proposed charging rates.
- c) **C2 charge** - C2 is residential institutions, which can include a number of different delivery formats including extra care and assisted living accommodation. One respondent argued that such uses should be subject to a separate and reduced CIL charge.
- d) **PBSA** – respondents felt that the proposed Draft Charging Schedule rate was currently too high and that there should be a zoned approach.

Further consideration of these issues has been undertaken and where relevant and necessary there has also been a further assessment of the viability evidence underpinning the Draft Charging Schedule.

- 3.8 In terms of responses to the draft Infrastructure/Regulation123 List and s106 contribution areas, there was general support for the List and the proposed s106 contribution areas. Some respondents suggested additional infrastructure for inclusion within the List and there were queries regarding the status and priorities of the List. Some responses also requested future Infrastructure Development Plan (IDP) updates, information about future governance procedures for CIL spending as well as the neighbourhood portion.

Proposed Modifications to the CIL Draft Charging Schedule (to be set out in the Statement of Modifications)

- 3.9 An addendum to the CIL Viability Study (Appendix 4) has been prepared. This has informed a number of the proposed changes to the CIL Draft Charging Schedule in response to the key issues raised through the representations as summarised above.
- 3.10 **Changes made to the Draft Charging Schedule:**
- a) Expanding the Brighton Marina Inner Harbour nil CIL category to cover the wider City Plan Part One Development Area DA2 including the Outer Harbour, the Gas Works and Black Rock sites. The treatment of the Outer Harbour site should be consistent with the Inner Harbour for CIL purposes, reflecting significant infrastructure provision requirements and abnormal site costs, which are also associated with the Gas Works site.
 - b) Nil CIL rating for Brighton General Hospital due to the required provision of the D1 Health Hub and viability addendum findings.
 - c) Distinguish between types of C2 for CIL charging purposes, following further consideration of representations and submitted evidence as set out in the viability addendum. Remove the reference to C2 within the Residential (C3) charge and replace with new category 'Private care residential homes with a degree of self-containment including Extra Care and Assisted Living' with associated rate of £100/sq. m in zones 1 & 2.

3.11 Clarification to Draft Charging Schedule

Purpose Built Shared Living (PBSL) accommodation comprising cluster type accommodation and/or studio units commensurate with PBSA standards will be included with the PBSA development type for CIL charging.

- 3.12 The Viability Addendum has further reviewed and updated viability modelling and figures from the Viability Study 2017 and this suggests there is no case to lower the overall charging rates as set out within the Draft Charging Schedule.
- 3.13 All changes made to the Draft Charging Schedule at this submission stage are listed in the Statement of Modifications (Appendix 1). For clarity a Draft Charging Schedule including Statement of Modifications (November 2018) is attached (Appendix 2), demonstrating how the Statement of Modifications would now amend the Draft Charging Schedule.

Changes are illustrated in the table below.

Use	Location	Levy (£/sq. m)
Residential - applies to C3 use class Zone areas are shown on Map in Appendix 1	Zone 1	175
	Zone 2	150
	Zone 3	75
<u>Private care residential homes with a degree of self-containment including Extra Care and Assisted Living</u> <u>Zone areas are shown on Map in Appendix 1</u>	<u>Zone 1 & Zone 2</u>	<u>100</u>
<u>Nil CIL charge zone</u> Nil CIL charge zone boundaries are shown on Map in Appendix 1	<u>DA2 Brighton Marina, Gas Works and Black Rock Area</u> King Alfred Leisure Centre/RNR site <u>Brighton General Hospital site</u>	0
<u>Purpose Built Student Accommodation / Purpose Built Shared Living Accommodation</u>	City Wide	175
<u>Retail – Larger format – Retail warehousing / Supermarkets</u>	City Wide	100
<u>Retail - Other shopping units development</u>	City Wide	50
<u>All other development uses</u>	City Wide	0

3.14 Section 106 and 278 Developer Obligations

Members are reminded that once CIL is adopted, all development including that within the identified nil CIL charge zones will still be expected to meet any necessary site specific infrastructure through s106 obligations as well as s278

and/or s38 agreements under the Highways Act 1980. Nil rating for CIL does not exempt development sites from these obligations.

- 3.15 The estimated CIL income remains at approximately £2 million per annum. It is not considered that the proposed modifications including additional nil rated sites would significantly alter this high level estimate which is based on planned amounts of development as set out in the adopted City Plan Part One.

Publication of Statement of Modifications and Submission of the Draft Charging Schedule to an Examination.

- 3.16 The statutory requirements to submit a Draft Charging Schedule are set out in the CIL Regulations. The Regulations state that any request to be heard by the examiner in connection with the Statement of Modifications must be made within a period of 4 weeks of the submission of the Draft Charging Schedule to the examiner. All documents will be published on the council’s Consultation Portal and website, the City’s Customer Service Centres, Brighton & Hove City Council libraries, and sent to those persons and bodies invited to make representations on the PDCS in accordance with the CIL Regulations.
- 3.17 The next stage is formal submission of the Draft Charging Schedule and Statement of Modifications, the CIL Statement of Representations made on the Draft Charging Schedule 2018 and all representations made, and all relevant information including the Infrastructure Delivery Plan and the Viability Study to an examiner, in accordance with the CIL Regulations. The examiner will consider all requests to be heard which were made as part of the Draft Charging Schedule consultation earlier this year, along with any duly made requests made in connection with this Statement of Modifications.

Next Steps for CIL

- 3.18 Indicative Timetable for approval of a CIL Charging Schedule

Date	Key Stage
December 2018	Submission of documents and information to the Examiner
March 2019	Examination of submitted Draft Charging Schedule. Public hearing sessions may be part of the examination.
May - June 2019	Publication of the Examiner’s recommendations
September – November 2019	Following this committee’s resolution, submit CIL Charging Schedule for approval by a resolution of Full Council and set up of CIL procedures

- 3.19 Following an examination, the examiner will publish recommendations to approve, modify or reject the proposed Charging Schedule. The examiner’s recommendations including any modifications, and an updated Development Contribution Technical Guidance to reflect the scaling back of relevant s106

contributions, will be brought back to this Committee for agreement to endorse the Charging Schedule prior to submitting to Full Council for approval.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 To progress a CIL Charging Schedule through to approval there are no alternative options but to comply with the relevant regulations as set out in the legislation. An agreed CIL Charging Schedule will provide a funding stream to help ensure that appropriate infrastructure investment is made across the city.
- 4.2 The submitted charging schedule must set an appropriate balance between the funding required to help bring forward necessary new infrastructure and the potential effects on the economic viability of development across the Charging Area. The rates set out in the submitted Draft Charging Schedule should reflect the findings of a robust evidence base which will be scrutinised through the examination process. Necessary changes have been made to the published Draft Charging Schedule in the form of a Statement of Modifications which responds to the representations made at Draft Charging Schedule consultation stage. If the evidence base is not appropriately reflected by the Draft Charging Schedule submitted for examination it may be rejected, or the examiner may require further evidence or clarification, all of which will delay the implementation of CIL.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Adopted BHCC Statement of Community Involvement (SCI) (2015) sets out how the council will consult when preparing CIL. The consultation on the Draft Charging Schedule was carried out between March 2018 and June 2018 in accordance with the CIL Regulations and the SCI. The SCI has been prepared in accordance with the key principles of the Community Engagement Framework.
- 5.2 CIL Charging Schedule preparation sets two formal stages of consultation at PDCS Stage and Draft Charging Schedule Stage which have both been undertaken. The statutory procedure for representations to be made on a Statement of Modifications is not through consultation but for the right to be heard as part of the DCS examination. In order to exercise this right a request to be heard must be made to the charging authority within 4 weeks of submission of the DCS to the examiner, as referenced above.
- 5.3 The CIL Statement of Representations made on the Draft Charging Schedule (Appendix 3) to this report summarises all representations received to the Draft Charging Schedule and the council's response.

6. CONCLUSION

- 6.1 This report sets out key representations received on the CIL Draft Charging Schedule consultation between 28 March and 13 June 2018. It notes how these representations have been considered and, where considered necessary, addressed through a Statement of Modifications, informed by the findings of the CIL Viability Study Addendum 2 (Nov 2018) (Appendix 4).

- 6.2 It is recommended that the Draft Charging Schedule rates, map and text are modified in accordance with this Statement of Modifications (Appendix 1). A Draft Charging Schedule including Statement of Modifications (Nov 2018) is attached (Appendix 2) for information only, to demonstrate how the Statement of Modifications amends the Draft Charging Schedule.
- 6.3 The report then requests authority to publish the Statement of Modifications to form part of the submission of the Draft Charging Schedule to an examination agreed by this committee in March 2018.
- 6.4 It is considered that the proposed rates in the Draft Charging Schedule, which have been reviewed in response to two statutory rounds of consultation, strike the right balance between securing additional infrastructure investment to support development and development viability in terms of overall delivery of planned development set out in the City Plan.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The staff time and consultation costs arising from the report recommendations will be met from existing revenue budgets within the City Development and Regeneration department.
- 7.2 Once a scheme is implemented, there will be ongoing costs connected with advising developers of their liability, collecting, monitoring, reporting and enforcing the scheme. An impact assessment by the Department for Communities and Local Government from 2011 estimated that the annual ongoing cost of the scheme to a local authority outside of London will be up to £0.076m.
- 7.3 CIL regulations allow charging authorities to use up to 5% of CIL receipts on expenses in connection with the initial set-up and ongoing operation of the CIL scheme. Consideration has therefore been given to the costs of administration in setting rates to maximise cost recovery.
- 7.4 The current forecast value of receipts the council may receive from the implementation of the CIL is £2 million per annum over the plan period to 2030. However income from S106 contributions will reduce as a consequence. It is anticipated that overall the income from CIL contributions will be at least the same as current S106 contributions.
- 7.5 CIL receipts will be a potentially important source of income for funding infrastructure in the city; however consideration has also been given to ensure that the charges are compatible with the aims and objectives of the council.

Finance Officer Consulted: Gemma Jackson

Date: 19/10/18

Legal Implications:

- 7.6 The statutory background to the report's recommendations is set out in the body of the report.

Lawyer Consulted: Hilary Woodward

Date: 23/10/18

Equalities Implications:

- 7.7 An Equalities Impact and Outcome Assessment (EIA) has been prepared alongside the CIL Draft Charging Schedule and is available on the council's website. The EIA will be updated before approval of the CIL Charging Schedule.

Income raised from CIL will go towards funding infrastructure necessary to support new development and communities.

Sustainability Implications:

- 7.8 CIL receipts help fund infrastructure necessary to support new development and sustainable communities and should therefore have a positive impact in terms of sustainability outcomes. A Strategic Environmental Impact (SEA) screening opinion for this CIL has concluded that a SEA is not required.

Any Other Significant Implications:

- 7.9 Corporate / Citywide Implications
Implementation of CIL will help to deliver the policies and objectives of the City Plan and other agreed strategies in the city.

SUPPORTING DOCUMENTATION

Appendices

1. CIL Draft Charging Schedule Statement of Modifications (November 2018)
2. Draft Charging Schedule including Statement of Modifications (November 2018)
3. CIL Statement of Representations made on the Draft Charging Schedule (November 2018)
4. CIL Viability Study Addendum 2 (November 2018)

Documents in Members' Rooms

N/A

Background Documents

1. Community Infrastructure Levy Draft Charging Schedule (March 2018) Brighton & Hove City Council
2. Community Infrastructure Levy Preliminary Draft Charging Schedule (Sept 2017) Brighton & Hove City Council
3. Preliminary Draft Charging Schedule CIL Consultation 2017 Report (March 2018) Brighton & Hove City Council
4. BHCC CIL Viability Study Addendum and Appendices Combined (Feb 2018) for Brighton & Hove City Council
5. CIL Viability Study 2017 for Brighton & Hove City Council
6. Brighton & Hove City Plan Part One 2016
7. Brighton & Hove Local Plan 2005 (Retained policies March 2016)
8. Infrastructure Delivery Plan Update 2017, Annex 2 to the Brighton & Hove City Plan
9. Developer Contributions Technical Guidance 2017 Brighton & Hove City Council
10. Statement of Community Involvement 2015 Brighton & Hove City Council

