

Cabinet Report



Listening Learning Leading

Report of Interim Head of Policy and Programmes

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To: CABINET and SOUTH SCRUTINY COMMITTEE

Dates: 10 and 21 November 2022

Community Infrastructure Levy (CIL) Charging Schedule - Adoption

Recommendations

To recommend Council to:

(a) Adopt the Community Infrastructure Levy (CIL) Charging Schedule (at Appendix 1) and the CIL Instalment Policy (at Appendix 2), with implementation anticipated in early January 2023.

(b) Delegate to the Interim Head of Policy and Programmes, in consultation with the Cabinet Member for Planning, any necessary further minor changes to the documents or a change to the implementation date for the new CIL rates.

Purpose of Report

1. To consider the Examiner's report and recommendations (**Appendix 3**), following the independent Examination of the Community Infrastructure Levy (CIL) Charging Schedule, including the Examiner's required modification to the Schedule.
2. To consider the CIL Charging Schedule (as amended) and the accompanying Instalment Policy for adoption by Council on 8 December 2022.

Corporate Objectives

3. Securing developer contributions through CIL and Section 106 Agreements will contribute towards achieving the corporate objective of 'Homes and Infrastructure that

meet local needs' as set out under Theme 5 of the South Oxfordshire Corporate Plan 2020 to 2024.

Background

4. Funding for the infrastructure necessary to support new development across the district can be sought in a variety of ways. The council currently utilises the following main mechanisms for securing infrastructure contributions from developers:
 - Community Infrastructure Levy (CIL)
 - Section 106 planning obligations (S106)
5. Our current CIL Charging Schedule and Developer Contributions SPD came into effect on 1 April 2016. The council subsequently adopted the South Oxfordshire Local Plan 2035 in December 2020, which included new site allocations and additional infrastructure requirements. There have also been changes to the Community Infrastructure Levy Regulations¹, including:
 - the removal of pooling restrictions for S106 obligations (i.e. the now cancelled requirement that no more than five S106 obligations can fund a single infrastructure project);
 - removing the need for a Regulation 123 list (i.e. a list of infrastructure projects to be funded by CIL as opposed to S106); and
 - introducing a new requirement to produce an annual Infrastructure Funding Statement.
6. Furthermore, it is evident that the current CIL rates are not generating sufficient funds to help deliver the necessary infrastructure to support planned development. In particular, funding for education is falling short and it is now proposed, in the main, to secure education through S106.
7. In light of all the above, the council considered it was necessary to conduct a review of both the CIL Charging Schedule and Developer Contributions SPD. The CIL review has been carried out in accordance with the CIL Regulations 2010 (as amended) and a draft version of the Charging Schedule, together with associated viability evidence, was approved by Cabinet for public consultation on 3 February 2022. The review of the Developer Contributions SPD has been completed and is the subject of a separate report, which Cabinet will consider for adoption on 10 November.

Consultation and Independent Examination of the Draft Charging Schedule

8. The council conducted public consultation on the draft Charging Schedule and its evidence documents for five weeks from 15 February to 22 March 2022. We subsequently considered all the representations received and produced a Statement of Representations document, which provided a summary of the main issues raised by the 41 respondents and detailed the council's response on each of these issues. We also set out several modifications to the draft Schedule. On 10 June 2022, the council formally submitted the Draft CIL Charging Schedule Submission version, as modified (June 2022) and all the evidence documents for independent examination. Anyone wishing to comment on the modifications was, in accordance with the Regulations,

¹ The Community Infrastructure Levy Regulations 2010, as amended by the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019.

given from 10 June to 8 July 2022 to do so. Only one new representation was received over that period, from DS2 on behalf of Elysian Residences.

9. Mr Keith Holland BA (Hons) DipTP MRTPI ARICS conducted a virtual hearing session on Thursday 18 August 2022, which followed an agenda circulated prior to the meeting. The virtual hearing was live streamed via the council's YouTube channel, to enable anyone interested to follow proceedings online.
10. The council proposed a further modification to Table 1 of the Charging Schedule at the hearing session. This modification sought to reduce the CIL charge for elderly persons' accommodation in Zone 2 (Built up areas of Didcot and Berinsfield) to £0 and was uploaded onto our website for a two-week consultation period (from 24 August to 7 September 2022). Given the nature of the modification, the Examiner considered two weeks' consultation to be proportionate having regard to the advice in Government's Planning Practice Guidance (PPG) on CIL.
11. The Examiner issued his report with recommendations to the council on 30 September 2022. His report has now been published on the council's website and can be found at **Appendix 3** to this Cabinet report.
12. In his report, the Examiner seeks answers to four key questions:
 - Q1 – Has the charging authority complied with the legislative requirements set out in the Planning Act and the CIL Regulations, including undertaking an appropriate level of consultation?
 - Q2 - Is the draft charging schedule supported by background documents containing appropriate available evidence?
 - Q3 - Are the proposed rates informed by and consistent with the evidence on viability across the charging authority's area?
 - Q4 - Has evidence been provided that shows the proposed rate or rates would not undermine the deliverability of the plan (in line with paragraph 34 of the National Planning Policy Framework)?
13. Mr Holland considered that the draft charging schedule complied with the requirements in Part 11 of the Planning Act 2008 (as amended) and the Community Infrastructure Levy Regulations 2010 (as amended), as well as with national planning policy/guidance. He also considered that it was consistent with the adopted Local Plan and Infrastructure Delivery Plan and that the evidence used to inform the Charging Schedule was comprehensive and robust.
14. In setting the CIL charging rates, the Examiner's report notes that the council had regard to detailed and convincing evidence on infrastructure planning and the economic viability evidence of the development market in South Oxfordshire. Mr Holland also acknowledged that the council had tried to be realistic in terms of achieving a reasonable level of income to address an acknowledged gap in infrastructure funding, while ensuring that a range of development remained viable across the South Oxfordshire district.
15. Overall, Mr Holland concluded that the council had provided sufficient evidence that showed the proposed rates would not threaten delivery of the Local Plan and that the

draft Charging Schedule would provide an appropriate basis for the collection of CIL in South Oxfordshire district. He therefore recommended that the draft Charging Schedule be approved.

16. The Examiner’s recommendation was subject to the making of one modification (EM1) to Table 1 of the Charging Schedule, which clarifies that elderly persons’ accommodation in Zone 2 (Built Up Areas of Didcot and Berinsfield) will be nil rated for CIL purposes. The Charging Schedule (see **Appendix 1**) has, therefore, now been updated to incorporate the following required modification:

Examiner Modification (EM)	Page no./ other reference	Modification
EM1	Table 1 CIL Charges	<p>In the line dealing with flats/apartments of 3 storeys and above in Zone 2, change the word ‘including’ to ‘excluding’.</p> <p>Add additional development type: ‘All elderly persons’ accommodation in Zone 2 £0’</p>

17. In light of the above, Officers recommend that the CIL Charging Schedule, as modified, is considered for adoption by Council on 8 December 2022.

CIL Instalments Policy

18. National Planning Policy Guidance (NPPG) recognises that few, if any, developments generate value until they are complete (either in whole or in phases). Regulation 69B of the CIL Regulations 2010 (as amended) consequently allows charging authorities to introduce a CIL Instalments Policy and gives each authority the freedom to decide the number of payments, the amount and when instalments are due. The council introduced a CIL Instalments Policy in 2016 alongside the adopted CIL Charging Schedule. Officers consider that administration of this policy has worked well to date and no changes are proposed, except the date of implementation, so that it is clear that the Instalments Policy will be applicable to the revised Charging Schedule, when adopted (see **Appendix 2**).

Implementation of the new CIL Rates

19. Officers consider that implementation in early January 2023 will be achievable. However, it is recommended that the Interim Head of Policy and Programmes, in consultation with the Cabinet Member for Planning, is given the power to alter the implementation date if necessary.

Options

20. Not updating the CIL Charging Schedule is an option, but this would mean relying on the 2016 version and the council not being able to increase its CIL rates in order to contribute towards plugging the significant infrastructure funding gap that has been identified in the South Oxfordshire district.

Climate and ecological impact implications

21. The district council and town or parish councils will be able to use CIL receipts to contribute towards: (i) carbon reduction measures which will help to mitigate the impact that new development and associated infrastructure has on local and global climate change; (ii) improving biodiversity, green spaces and green infrastructure; and (iii) mitigating any air quality, flood prevention and water management impacts arising from new development.

Financial Implications

22. Once adopted and implemented, the CIL Charging Schedule will help the council to secure significant funding towards necessary infrastructure in the district.

Legal Implications

23. The CIL Charging Schedule has been prepared, consulted upon and independently examined under the provisions of the CIL Regulations 2010 (as amended). There are no wider legal implications.

Risks

24. Due process has been followed (as set out in the CIL Regulations) and the Draft Charging Schedule has been assessed by an independent Examiner. Consequently, any risk of a legal challenge following the council's adoption and implementation of the Charging Schedule is limited.

Other implications

25. There are no other implications arising from this report.

Conclusion

26. Once the council has adopted the CIL Charging Schedule and the new rates come into force, it will sit alongside the adopted South Oxfordshire Local Plan 2035 and the Developer Contributions Supplementary Planning Document and will help us to deliver our development objectives and secure funding towards necessary infrastructure to support planned growth in the district.

Background Papers

- Appendix 1 – South Oxfordshire CIL Charging Schedule
- Appendix 2 – South Oxfordshire CIL Instalment Policy
- Appendix 3 – Examiner's Report with recommendations