

# FAREHAM

## BOROUGH COUNCIL

### Report to the Executive Member for Planning and Development for Decision 08 June 2020

<b>Portfolio:</b>	Planning and Development
<b>Subject:</b>	<b>Community Infrastructure Levy (CIL) Charging Schedule</b>
<b>Report of:</b>	Director of Planning and Regeneration
<b>Corporate Priorities:</b>	Providing Housing Choices

**Purpose:**

To seek approval to the content of a consultation on a review of the Borough's Community Infrastructure Levy (CIL) Charging Schedule to amend rates for Welborne Garden Village.

**Executive summary:**

In introducing CIL in April 2013, the Council recognised the substantial site-wide infrastructure costs associated with the Welborne Garden Village and committed to an early review of the charging schedule to respond to evidence that was emerging in line with the preparation of the Welborne Plan (Part 3 of the Fareham Borough Local Plan). Such an early review would take into account the Council's requirements for the new community north of Fareham, including the infrastructure that would be required to support it, enabling an appropriate charge rate to be set for the area covered by the Welborne Plan.

This review was started in 2014 and was set to continue following adoption of the Welborne Plan, in June 2015. However, progress on the CIL charging schedule review was halted following the government's announcement of its intent to review the CIL Regulations in the autumn of that year.

Following the adoption of the Welborne Plan, progress on an outline planning application for Welborne proceeded. As part of the supporting material, the Welborne Infrastructure Delivery Plan showed how the developer intended to meet the infrastructure requirements of the Welborne Plan. The applicant presented the site wide infrastructure costs and viability issues and suggested that the scheme should not be liable to pay the Community Infrastructure Levy (CIL).

This assessment has been reviewed by CBRE on behalf of the Council, who concurred with the applicant's conclusion that the scheme cannot afford to pay both CIL and £308m of site wide infrastructure costs. This was considered by the Council at Planning Committee, which resolved to grant planning permission in December 2019, subject to the Section 106 agreement being finalised.

This report seeks approval to consult on a review of the Borough's Community Infrastructure Levy Charging Schedule, 'zero rating' the Welborne Local Plan area on viability grounds. The existing residential charge will remain unchanged and continue to be applied across the borough for applicable developments. Indexation will continue to be applied using the RICS CIL Index in line with the 2019 amendments to the CIL Regulations (2010).

**Recommendation/Recommended Option:**

It is recommended that the Executive Member:

- (a) approves the Community Infrastructure Levy Charging Schedule as set out in Appendix A to this report for public consultation for a period of 6 weeks;
- (b) agrees that the Director of Planning and Regeneration be authorised to make any necessary minor amendments, following consultation with the Executive Member for Planning and Development, and delegates to him the authority to submit the Charging Schedule for Examination; and
- (c) delegates to the Director of Planning and Regeneration, in consultation with the Executive Member for Planning and Development, the authority to procure and appoint an independent examiner to conduct the Charging Schedule Examination;

**Reason:**

To recognise the impact of the adopted Community Infrastructure Levy (CIL) Charging Schedule on the viability of Welborne Garden Village, in the light of its significant requirement to provide infrastructure through its Section 106 obligations.

**Cost of proposals:**

Cost to undertake the examination, procurement of an Inspector, venue etc. Depending on the number of days that the Inspector has to work an estimate of £15,000 for the 2020/21 financial year has been included within existing revenue budgets.

**Appendices:**

**A:** Draft Charging Schedule for Consultation

**B:** Three Dragons Fareham CIL Review April 2020

**Background papers:** None

**Reference papers:**

BDL Welborne Infrastructure Delivery Plan (Version 6, March 2019)  
<http://www.fareham.gov.uk/casetrackerplanning/GetFile.aspx?docref=ed9db292-b19c-4b62-838f-aac531cfdc78>

BDL Site Wide Viability Assessment Addendum (March 2019)

<http://www.fareham.gov.uk/casetrackerplanning/GetFile.aspx?docref=1ed89223-ba6a-40bd-a925-48818976bddb>

BDL Site Wide Viability Report Supplemental Position Statement (August 2019)  
<http://www.fareham.gov.uk/casetrackerplanning/GetFile.aspx?docref=68bb6e04-f57a-487c-8e9d-c9c4dc1d4b10>

CBRE Viability Review Report (Planning Committee Report)  
<http://www.fareham.gov.uk/casetrackerplanning/GetFile.aspx?docref=36f8c57d-677e-4d45-b4c5-38060c37f84c>

CBRE Viability Review - addendum (published for Planning Committee Update)  
<http://www.fareham.gov.uk/casetrackerplanning/GetFile.aspx?docref=55414242-a1f7-4eae-9ddb-062b6475d704>

CBRE review of Buckland Infrastructure Delivery Plan  
<http://www.fareham.gov.uk/casetrackerplanning/GetFile.aspx?docref=f6e45974-eac8-46f0-aabf-13921c9a96ac>

# FAREHAM

## BOROUGH COUNCIL

### Executive Member Briefing Paper

<b>Date:</b>	08 June 2020
<b>Subject:</b>	Community Infrastructure Levy (CIL) Charging Schedule
<b>Briefing by:</b>	Director of Planning and Regeneration
<b>Portfolio:</b>	Planning and Development

#### INTRODUCTION

1. The Community Infrastructure Levy (CIL) is a charge which can be levied by local authorities on new development in their area. It is an important tool for local authorities to use to help them deliver the infrastructure needed to support new development in their area.

#### CURRENT CIL ARRANGEMENTS

2. In April 2013, following two periods of consultation and an independent examination, a Charging Schedule for the Fareham Borough Community Infrastructure Levy was approved by the Council, effective from 1 May 2013. The Charging Schedule set a rate of £105 per square metre, applicable to all residential development across the borough, with a variation applied to retail dependent on location in relation to town centres.
3. In introducing CIL, the Council had committed to an early review of the CIL charging schedule in line with the adoption of the Welborne Plan to enable an appropriate charge rate to be set for the area covered by the Plan prior to any planning applications for the development should come forward to the Council.
4. The Council has been very successful to date in collecting CIL receipts since adoption and has collected in excess of £9 million from development sites across the Borough that has funded a range of projects. This report seeks approval to consult on a review of the Borough's Community Infrastructure Levy Charging Schedule, with a view to the Welborne Local Plan area becoming zero-rated to reflect known site-wide infrastructure costs and associated viability issues and challenges to ensure that the new community is delivered.
5. At the time of adoption of the Charging Schedule, Regulation 123 of the Community Infrastructure Regulations 2010 (as amended) restricted the use of planning obligations for infrastructure that was to be funded in whole or in part by the Community Infrastructure Levy (CIL). With the expectation that the infrastructure required for Welborne Garden Village would be captured as planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), the Council's Regulation 123 list (adopted 2013 and revised in 2018), which sets out what infrastructure

projects/types are to be funded at least in part by CIL, also excluded any provision required from Welborne. This ensured that any CIL charge levied on the development of Welborne would be additional to the section 106 contributions and could not be spent on the infrastructure required to mitigate the site.

## **PRELIMINARY DRAFT CHARGING SCHEDULE REVIEW**

6. In introducing CIL, the Council committed to an early review of CIL in line with the preparation of the Welborne Plan. This review was intended to ensure that the rate(s) at which Welborne development will need to pay CIL would be consistent with the infrastructure planning and development viability evidence that supports the adopted Welborne Plan.
7. The Council undertook a period of consultation on the first stage of its review of CIL between the June and August 2014. It is of note that the Inspector of the Welborne Plan requested to see a summary of responses to the Council's consultation on the Preliminary Draft Charging Schedule (PDCS) and an early indication of how the Council was intending to take these into account as it continued its CIL Review.
8. The consultation was held on a document known as the 'Preliminary Draft Charging Schedule', as well as its supporting evidence, including a revised Infrastructure Delivery Plan, updated viability evidence and a revised 'Regulation 123 list'. The evidence within the viability report, produced by Peter Brett Associates, pointed towards a zero rate for Welborne, and the PDCS proposed a zero rate for the site.

## **THE WELBORNE PLAN**

9. In June 2015, the Council adopted the Welborne Plan, Part 3 of the Fareham Borough Local Plan. This set out the Council's requirements for the new community north of Fareham, including the infrastructure that would be required to support it. The Plan recognised that developer contributions would be required as part of the overall funding package to deliver the infrastructure required to support Welborne.
10. Paragraph 10.51 of The Welborne Plan states:  
*Based on currently available viability evidence, the Council anticipates that all or almost all developer contributions from Welborne will be secured through Section 106 Planning Obligations and therefore, it is likely that a differential CIL rate (or rates) will be justified and will need to be applied to the Welborne policy area which reflects the overall burden of planning obligations. Given the latest available evidence, a differential rate of zero could be justifiable.*
11. Following adoption of The Welborne Plan, the Council considered how best to continue with the CIL review.

## **GOVERNMENT REVIEW**

12. In November 2015, the Government announced a wide-ranging review into CIL as an effective mechanism for funding infrastructure. The significance of this announcement, and the potential ramifications prompted the Council to put its review on hold, in order to assess any implications that could arise.
13. In October 2016 the Government published its recommendations, which included replacing the Community Infrastructure Levy with a hybrid system of a tariff and Section 106 for larger developments because they felt that CIL was unable to shoulder the entire infrastructure provision burden directly or secure its provision in a timely manner.

The Government announced their intention to make changes to the CIL regulations following this review, but a considerable period of time elapsed before the new statutory Regulations (The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019) were introduced in September 2019.

14. As a result, the Borough's Community Infrastructure Levy Charging Schedule review remained on hold, meaning it is still as it was originally adopted.

## **WELBORNE OUTLINE PLANNING APPLICATION**

15. In March 2019, the Borough's Council as Local Planning Authority consulted on significant revisions to the planning application for Welborne, originally submitted in March 2017.
16. Two key documents submitted by Buckland Development Limited (BDL) as planning applicant in this revision were the BDL Welborne Infrastructure Delivery Plan (Version 6, March 2019) and BDL Site Wide Viability Assessment Addendum (March 2019).
17. The BDL Welborne Infrastructure Delivery Plan showed how the developer intended to meet the infrastructure requirements of the Welborne Plan at an estimated total cost of £308M. Keen to obtain an independent verification, the Council commissioned CBRE to review these costs as part of the planning application process. CBRE undertook a Viability Report review (including an addendum) as well as a review of the BDL Infrastructure Delivery Plan. CBRE concluded that the BDL IDP had been thoroughly assessed and accurately costed using current market rates and pricing for the development works described.
18. The BDL Site Wide Viability Assessment Addendum, together with the subsequent Supplemental Position Statement submitted in August 2019, stated that the CIL liability for Welborne was in the region of £74m. It also showed that the scheme's viability was significantly weakened where CIL is charged so that the development could not support a policy compliant level of affordable housing. It concluded that the scheme should not be liable to pay the Community Infrastructure Levy (CIL) and, even then, the scheme viability was such that:
  - The developer contribution towards M27 Junction 10 costs is capped at £20m;
  - Affordable housing for the first 1,000 units should be 10%;
  - The affordable mix for the first 1,000 units is split 50/50 between affordable/social rent and intermediate tenures ;
  - The scheme is unable to provide Lifetime Homes or Passivhaus for the first 1,000 homes.
19. CBRE also undertook a review of the BDL Site Wide Viability Assessment Addendum on behalf of the Council, in which they benchmarked the assumptions made against market data, reviewing the inputs and outputs of the BDL financial model and analysed the approach against guidance contained in the National Planning Policy Framework (NPPF) and the National Planning Policy Guidance (NPPG). They concurred with the applicant's conclusion that the scheme cannot afford to pay both CIL and £308m of site wide infrastructure costs.
20. The application went before the Planning Committee in December 2019. The committee report (paragraph 8.30.28) stated that it was 'not within the remit of the Planning Committee to set future CIL rates or to 'predetermine' what the review of the CIL charging schedule might conclude'. Given that the Welborne Plan policies ensure that

the infrastructure necessary to support the development is to be secured through a legal agreement, and the implications that CIL has on the viability of the scheme, it was considered that there was a good prospect that a review of the charging schedule may conclude that CIL at Welborne should be zero rated. As part of sensitivity testing of variables, an assumption of zero CIL was therefore considered a reasonable approach as part of the viability assessment.

### **THREE DRAGONS VIABILITY ASSESSMENT**

21. A final independent assessment of viability for the Welborne Garden Village proposals has also been commissioned by the Council from Three Dragons. This study concurred with the CBRE position that Welborne should be zero-rated to ensure deliverability on viability grounds. This Three Dragons viability study will form part of the evidence base for the consultation on a revised CIL charging schedule and is attached to this report as Appendix B.
22. This approach reflects a “developer-led delivery” for Welborne through site specific Section 106 contributions and a zero CIL rate. A move that recognises the increased cost of bringing this site forward and the need for greater flexibility over the level of planning obligations on developments of this scale. The use of S106 rather than CIL to fund infrastructure on large strategic sites is not uncommon and was supported in particular in evidence from the government commissioned Peace review<sup>1</sup>.

### **REVIEW OF THE CHARGING SCHEDULE**

23. This report seeks approval to consult on a review of the Borough’s Community Infrastructure Levy Charging Schedule, ‘zero rating’ the Welborne Local Plan area on viability grounds. The existing residential charge will remain unchanged and continue to be applied across the borough for applicable developments. Indexation will continue to be applied using the RICS CIL Index in line with the 2019 amendments to the CIL Regulations (2010).
24. Through statutory guidance, in this case the National Planning Practice Guidance, charging authorities may revise their charging schedule in whole or in part. This report seeks a partial review at this time. Following adoption of the Local Plan, the Council will undertake a full review of the charging schedule to consider market conditions and updated infrastructure needs, with a view to adjusting the standard charges across the Borough.

### **EXAMINATION AND IMPLEMENTATION**

25. Any revisions to the charging schedule must follow the same processes as the preparation, examination, approval and publication of a charging schedule. As Charging Authority, it is our responsibility to prepare and publish the evidence base and prepare and publish a draft charging schedule. Representations are then required to be sought on the draft, before submitting the draft schedule for examination.
26. It is for the Charging Authority to decide how they wish to consult, and the regulations do not specify for how long or how many times the authority should consult, however examiners must consider whether adequate time for consultation has been provided. It is therefore recommended that following approval to progress with the review, a consultation period on the draft schedule will be undertaken for a period of 6 weeks.

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<sup>1</sup> Government commissioned review of CIL - A new approach to developer contributions: A report by the CIL review team, Chaired by Liz Peace – Para 4.1.5

27. This approach would be consistent with that undertaken during the adoption of Fareham Borough Council Community Infrastructure Levy in 2012. During that process, a period of consultation lasting 6 weeks was conducted, with two forms of communication; emails and letters to relevant individuals and organisations on the Council's Local Development Framework consultation database; and the draft Charging Schedule and supporting evidence published on the Council's website. That consultation on the Draft Charging Schedule in 2012 resulted in a total of 13 representations being received.
28. The charging schedule must be examined in public by an independent person appointed by the charging authority. The Council must consider that the examiner is independent and has appropriate qualifications and experience to fulfil the role. Planning Inspectors are likely to meet these criteria, but other independent examiners can also be used. The Planning Inspectorate is often appointed but there are availability issues associated with this route, and so it can be quicker to use alternative providers. This report therefore also seeks delegated authority to the Director of Planning and Regeneration in consultation with the Planning and Development Executive Member, to appoint an examiner following the consultation.
29. An informal hearing format is usually the most appropriate form of examination for the Community Infrastructure Levy. If no-one has requested the right to be heard, the examiner also has the option of conducting the examination by written representations. The examiner must report their recommendations to the charging authority in writing. The examiner may recommend that the draft charging schedule should be approved, rejected, or approved with specified modifications. The examiner must give reasons for those recommendations.
30. As set out in section 213 of the Planning Act 2008, 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, or on, approval. On receipt of the Inspectors report, and pending a successful outcome, the proposed Charging Schedule will be taken to Full Council to seek adoption.

## **FINANCIAL IMPLICATIONS**

31. The 2013 viability study submitted as part of the adopted Charging Schedule estimated that over the plan period to 2026 around £9.7 million could potentially be raised. Importantly, this figure excluded any estimate of levy applied to the Welborne development. As previously stated, taking into account CIL expenditure to date, the Council is ahead of that prediction having collected over £10 million to date. There has never been or was never intended to be, any assertion of income from Welborne that would be budgeted into CIL expenditure plans.
32. There will be a cost to the council to undertake the examination. This will be mainly focused on the cost of the independent examiner. Depending on the number of days that the Inspector has to work (which depends on the number and depth of comments that are received from the consultation) an estimate of £15,000 for the 2020/21 financial year has been included within existing revenue budgets.

## **CONCLUSION**

33. For the reasons set out above, the Executive is asked to approve the Community Infrastructure Levy Charging Schedule consultation document for a six-week public consultation, and delegate authority to the Direction of Planning and Regeneration in consultation with the Planning and Development Executive Member, to conduct an



Examination.

**Enquiries:**

For further information on this report please contact Gayle Wootton (Ext 4328)

## Appendix A: Draft Charging Schedule for Consultation

# FAREHAM

## BOROUGH COUNCIL

### Community Infrastructure Levy

#### Charging Schedule

##### Purpose

This schedule sets out the Community Infrastructure charging rates set by Fareham Borough Council.

##### Charging Rates

Type of Development (see Note 1 below)	CIL charge <sup>2</sup> per square meter	
	Rest of Fareham Borough	Welborne (see Note 2 below)
Residential falling within Class C3(a) & (c) and C4	£105	£0
Care homes falling within Class C3(b) and C2	£60	£0
Hotels falling within Class C1	£35	£0
Retail falling within Class A1:		
Comparison retail (see Note 3 below) in the centres as shown on the maps annexed to this schedule	£0	£0
All Other Retail (see Note 4 below)	£120	£0
Standard Charge (applies to all development not separately defined above, for example: offices, warehouses and leisure and educational facilities)	£0	£0

Note 1 – References above to Classes are to the Use Classes as set out in the Town and Country Planning (Use Classes) Order 1987 (as amended).

Note 2 – For the purposes of this Schedule, the area defined as Welborne is that as set out by Welborne Plan, Part 3 of the Fareham Borough Local Plan.

Note 3 - Reference to "comparison retail" means the selling of clothing and fashion accessories, footwear, household appliances (electric or gas), carpets and other floor coverings, furniture, household textiles, glassware, tableware and household utensils, computers, books, stationary and art materials, recorded music/videos, recording media and equipment, audio-visual equipment, musical instruments and accessories, games and toys, photographic, video and optical equipment, DIY equipment for the maintenance and repair of dwellings, tools, jewellery, clocks and watches, sports equipment, goods for outdoor recreation, telephony equipment and bicycles and accessories.

<sup>2</sup> Indexation will continue to be applied from the May 2013 base date using the RICS CIL Index in line with the 2019 amendments to the CIL Regulations (2010).

Note 4 - For the purposes of this schedule, a comparison retail unit is a unit in which it is intended to utilise more than 50% of the gross retail floor area for the sale of comparison goods as defined by Note 2 above.

### **Calculating the Chargeable amount of CIL**

CIL is charged on all new developments which create more than 100m<sup>2</sup> of floor space and on those developments, which create 1 or more new dwellings, even where the floor space is less than 100m<sup>2</sup>. The chargeable amount of CIL is calculated on the gross internal area of the net increase in floor area. The amount to be charged for individual developments will be calculated in accordance with Regulation 40 of the Community Infrastructure Levy Regulations 2010, as amended.

### **Statement of Conformity**

This Charging Schedule has been issued, approved and published in accordance with the requirements of Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 as amended by The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019.





