

Executive

26 January 2023

Report of the Corporate Director of Place
Portfolio of the Executive Member for Finance and Performance

Introduction of Community Infrastructure Levy

Summary

1. Since 2010, authorities in England and Wales have also been empowered to establish a Community Infrastructure Levy (CIL) to help pay for infrastructure to support development such as schools, green infrastructure and sustainable transport. This report will present a Draft CIL Charging Schedule setting out proposed charges to support delivery and mitigate impacts of development arising from the emerging Local Plan.
2. In addition, the report seeks authorisation to consult on the draft CIL Charging Schedule, alongside the draft CIL Instalment Plan. Following this, and after considering representations, the Charging Schedule will be submitted for independent examination after which, assuming the Examiner recommends that the Charging Schedule can be approved, the Council hope to be able to adopt it.

Recommendations

3. The Executive is asked to:
 1. agree to formally consult on the draft CIL Charging Schedule, and associated Instalment Plan.

Reason: Before CIL can be published and charged, a Draft Charging Schedule must be formally consulted on in line with the CIL Regulations 2010 (as amended 2019).

2. delegate authority to the Corporate Director of Place in consultation with the Executive Member for Finance and Major Projects to agree any minor (non-material) amendments, and to sign off the publication

version of the Draft CIL Charging Schedule prior to public consultation.

Reason: To agree presentation of the publication version of the Draft CIL Charging Schedule.

3. delegate authority to the Corporate Director of Place in consultation with the Executive Member for Finance and Major Projects to consider the representations made to the consultation, to make any relevant modifications, and then submit the draft CIL Charging Schedule (and supporting documents) for examination by an independent Examiner.

Reason: To agree presentation of the publication version of the Draft CIL Charging Schedule for examination.

Background

4. Since 2010, authorities in England and Wales have been empowered to establish a Community Infrastructure Levy (CIL) to help pay for infrastructure to support development. This charge on the development can operate alongside S106, which can continue to be used for affordable housing and other on-site infrastructure.
5. CIL is a fixed, non-negotiable, charge per square metre on most development of 100 square metres or more, or a new dwelling of any size. Development which does not pay the levy includes buildings into which people do not normally go; structures which are not buildings; and zero rated development as identified on the CIL charging schedule. Other types of development (including residential annexes and extensions; self build housing; social housing which meets the criteria in the CIL Regulations; and charitable development) can apply for an exemption from CIL. The amount due is calculated using standard formulae set out in the CIL Regulations. CIL rates must be set out in a CIL Charging Schedule by the charging authority, the Council.
6. The level at which CIL rates are set must strike an appropriate balance between collecting money to fund the infrastructure needed to support development *and* the ability of developments in its areas to afford the charge – that is the viability of development. Accordingly, CIL Draft Charging Schedules are supported by evidence of infrastructure needs and costs and viability impacts – with the latter having a central role in defining the CIL charge. These are all then subject to public consultation

before going forward to an examination in public by an 'Independent Person', such as an Inspector from the Planning Inspectorate.

7. Once the CIL Charging Schedule takes effect, payment of CIL becomes due from commencement of the development – this is either 60 days as specified in regulations, or as defined in an Instalment Policy published by the Council. The CIL monies collected can then be applied to fund a wide range of infrastructure subject to the limits defined in section 216(2) of the Planning Act 2008, and regulation 59, as amended by the 2012 and 2013 Regulations). This can include transport infrastructure, flood defences, schools, hospitals, and other health and social care facilities, open spaces, cultural and sports facilities, district heating schemes and other community safety facilities.
8. Communities without a parish or town council still benefit from the neighbourhood portion. The Council will engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding, including priorities set out formally in neighbourhood plans. The approach to engagement and decision making for the neighbourhood portion of CIL will be determined once CIL is operational.
9. During the Executive meeting held 16 June 2022, members agreed to move forward with the preparation of CIL for York and that a Draft CIL Charging Schedule setting out proposed rates will be presented prior to formal consultation, as a Draft Charging Schedule must be formally consulted on in line with CIL Regulations 2010 (as amended 2019).
10. Since the meeting of Executive in June 2022, in the context of the Local Plan examination, further viability testing of strategic sites and student housing was undertaken. An update was provided to Scrutiny Committee on 18th October 2022 on progress towards a draft CIL Charging Schedule and to indicate revised timescales. More recently, a specialist consultancy has been appointed to assess the viability of development in York to identify an appropriate CIL for York. This work has also included advice on the extent to which the rate should be varied by use or area based on evidence on viability.
11. The viability work has now been completed and a draft Charging Schedule produced. This is supported by viability testing and supporting evidence showing an infrastructure funding gap. This gap is the total cost of infrastructure required to support growth, less any infrastructure item that the Council is not expected to contribute towards and any other

known funding. The amount of revenue generated by the CIL cannot exceed this funding gap.

Consultation

12. The work programme attached to the Economy and Place Policy and Scrutiny Committee, March 2019 identifies CIL as a future area of policy development. However, to date limited consultation has taken place other than that associated with the Local Plan and the production of a viability assessment which included some engagement with developers on the assumptions used.
13. The CIL Regulations 2010 (as amended) set out a clear requirement for consultation on the Draft CIL Charging Schedule in addition to a public independent examination of the proposed charges. This Draft Charging Schedule, setting out proposed rates, is now presented for approval by Executive ahead of formal public consultation.

Options

14. Option 1 – Agree to move forward with consultation on the draft CIL Charging Schedule (including the supporting draft Instalment Policy) and, following this, submit the CIL Charging Schedule for independent examination.
15. Option 2 - The Council can maintain the status quo and continue with the planning obligations approach.

Analysis

Option 1

16. This is the recommendation. Following a successful examination, the Charging Schedule would be brought back to Executive to request approval to adopt.
17. The introduction of CIL would allow the Council greater flexibility than S106 agreements to choose the infrastructure that is to be funded to deliver the Local Plan. CIL also provides developers with greater certainty as it is non-negotiable and therefore development costs are more readily calculated than previously, as S106 agreement are open to negotiation. CIL rates are index-linked ensuring they remain up to date with market fluctuations, unlike S106 contributions which need regular evidence base updates.

Viability

18. When setting CIL rates, it is necessary to take into account the viability of different residential typologies and different uses to establish how much money could potentially be available for CIL once all development costs and profit have been accounted for. This provides information about the available headroom from which CIL can be taken. This work has been undertaken by consultants who have tested appropriate typologies to evidence the available headroom – the maximum amount available for CIL. This information is included below at Table 1. Table 2 shows the individual headrooms of the strategic sites, while Table 3 indicates the headroom available for the different typologies of non-residential development.

Table 1: Grouping of residential site typologies and their average headrooms

	Headroom per CIL liable sqm
Residential sites (excl. strategic sites)	£481
All Brownfield sites	£477
All Greenfield sites	£485
Houses	£480
Flats	£546
Mixed sites (Houses & Flats)	£323
Strategic sites (ST4, ST16, ST31, ST33, ST36)	£157

Table 2: Strategic sites headroom

Site	Headroom per CIL liable sqm
SS9 Land East of Metcalfe Lane (ST7)	£44
SS10 Land Nth of Monks Cross (ST8)	£100
SS11 Land Nth of Haxby (ST9)	£61
SS12 Land West of Wigginton Rd (ST14)	£24

SS13 Land West of Elvington Lane (ST15)	£2
SS8 Land Adj Hull Road (ST4)	£183
SS14 Terry's Extension Sites (ST16)	£418
SS16 Land at Tadcaster Rd (ST31)	£133
SS18 Station Yard, Wheldrake (ST33)	£172
SS20 Imphal Barracks (ST36)	£434

Table 3: Non-residential development headroom

Typology	Headroom per CIL liable sqm
Town centre office	-£1,034
Business park	-£906
Industrial / warehouse	-£333
Small local convenience	£154
Supermarket	-£117
Retail warehouse	£134
City Centre retail	-£68
Hotel (60 beds)	-£143
Off campus student accommodation:	
Student accommodation - 25 bed	£127
Student accommodation - 100 bed	£84
Student accommodation – 200 bed	-£8
Student accommodation - 350 bed	-£42
Student accommodation - 600 bed	-£144
On campus student accommodation:	
Student accommodation - 25 bed	£421
Student accommodation - 100 bed	£374
Student accommodation – 200 bed	£272
Student accommodation - 350 bed	£238
Student accommodation - 600 bed	£135

Care home (60 bed)	£-937
60 unit Retirement home – Greenfield Urban	£85
60 unit Retirement home – Brownfield Urban	£266
60 unit Retirement home – Greenfield Village	£116
60 unit Retirement home – Brownfield Village	£293
50 unit Extra-care home – Greenfield Urban	-£39
50 unit Extra-care home – Brownfield Urban	£139
50 unit Extra-care home – Greenfield Village	-£10
50 unit Extra-care home – Brownfield Village	£164

Draft charging schedule

19. Using this information, a draft charging schedule indicating proposed CIL rates has been produced (Table 4). While Tables 1, 2 and 3 indicate the maximum level CIL could be set at, PPG advises that CIL rates should not be set at the very margin of viability across the bulk of sites (our emphasis), partly so that they remain robust over time as circumstances change. Best practice is to apply a buffer to the different typologies and headrooms available to take account of possible changes in the market (for example interest rates, labour costs, materials costs). A higher buffer represents a cautious approach while a lower buffer is higher risk and could discourage development or direct it outside of the charging area (subject to other market forces). In this instance an approximately 68% buffer has been applied to residential rates.

Table 4: Draft charging schedule

Development type	Recommended CIL charges (psm)
Residential dwellings	£200
Residential dwellings within strategic sites ST7, ST8, ST9, ST14 and ST15	£0
Residential dwellings within other strategic sites (designated as ST sites in both the Local Plan and Policy Map)	£100
Sheltered / Retirement accommodation	£100
Extra care accommodation on Brownfield sites	£100
Extra care accommodation on Greenfield sites	£0
Purpose Built Student Housing without an affordable housing contribution	£150
Purpose Built Student Housing with 100 or fewer student bedrooms and an affordable housing contribution	£50
Convenience retail with up to 450 sqm gross internal area	£100
Comparison retail built outside the City Centre boundary	£100
Comparison retail built inside of the City Centre boundary	£0
All other development	£0

20. The buffer applied to non-strategic and windfall housing is considered to strike a balance between revenue for future growth and potential other impacts which may arise. The setting of the CIL rate should also be considered in combination with the anticipated Local Plan adoption in late 2023. At adoption, the policy requirements of the Local Plan would be applied with full weight. Modifications proposed to a number of policies introduce non-mandatory requirements related to higher affordable housing contributions and accessibility standards. High CIL rates may limit the ability for development to achieve these policy objectives.
21. In combination with the introduction of a Local Plan, there may be some slowing of development in the short term. Additionally, as CIL is not negotiable, there is a risk that developers could come forward with viability arguments in relation to affordable housing and other policy

obligations with a resulting reduction in the levels of affordable housing provision or contributions to other mitigation. Identified priorities within the Local Plan related to accessibility standards and climate change mitigation could potentially be put at risk.

22. CYC should apply a judgement taking into account all factors (not just potential headroom) when setting CIL levels. For context, Table 5 provides examples of other authorities' rates for residential development below:

Table 5: Example CIL rates in England

Authority name	Date of adoption	Rate per sqm
Adjoining boroughs		
East Riding of Yorkshire Council	Draft 2017	5 different zones - £90, £60, £20, £10, £0
Hambleton DC	April 2015	£55
Ryedale DC	March 2016	Low value areas – £45 Other areas - £85
Selby DC	January 2016	3 different areas - £50, £35, £10
Harrogate	July 2020	3 different areas £50, £0, £0

Other examples		
Birmingham	Draft 2022	High value area - £125 Low value area - £50
Brighton	October 2020	Zone 1 – £175 Zone 2 – £150 Zone 3 - £75
Lambeth	January 2022	4 different zones – £500, £350, £250, £200
Westminster	2016	3 different zones – £550, £400, £200

23. Table 5 indicates that the residential CIL rate proposed for York would be higher than adjoining boroughs. The rate is not differentiated by area, unlike adjoining boroughs, as the evidence does not suggest that areas in York can be clearly differentiated by costs. This also results in a Charging Schedule which is easier to understand and administer and there is no potential that it could negatively influence the types of residential schemes in terms of mix that are bought forward.

24. While headrooms within residential development in the city indicate that higher CIL rates would be possible, if a lower buffer were used, it is recognised that rates in adjoining authorities are lower and an excessive CIL rate in York could result in developers choosing to delay development or to potentially consider sites in adjoining boroughs where the CIL costs are lower.
25. A further consideration is that, while the viability testing for CIL attempts to forecast potential market changes and the buffers suggested provide further comfort that the levy is achievable, there is uncertainty in financial markets. This increases the risk that a higher CIL could result in viability issues impacting on the provision of affordable housing and other planning policy requirements.
26. Other considerations to note are the zero rating of strategic sites ST7, ST8, ST9, ST14 and ST15. This is as a result of the low headroom available for CIL and evidenced in Table 2. It is noted that these sites are already required by Local Plan policies to provide significant on-site infrastructure. Other strategic sites are considered to evidence sufficient headroom to pay CIL, albeit at a lower level than housing on non-strategic and windfall sites. Further detail in relation to the on-site costs for strategic sites is detailed in Appendix 1.
27. In relation to non-residential development, development has been more clearly differentiated as a result of the mixed picture in regards to available headroom. This is evidenced in the rates set for older persons accommodation where there is headroom available for retirement accommodation, and hence a CIL is proposed. Extra care accommodation presents a more mixed picture, with development on greenfield sites being unviable as a result of the higher affordable housing ask. For this reason, it is recommended that different rates be charged for extra care accommodation on greenfield and brownfield sites.
28. Rates for student accommodation are also differentiated reflecting the available headroom. Policy H7 of the draft Local Plan has been modified to require an affordable housing contribution from off-campus purpose-built student accommodation, where the site is not owned by one of the universities at the time of adoption of the Local Plan. This added cost to certain types of student accommodation has reduced the available headroom and is reflected in the lower £50 CIL rate for student accommodation where this criterion is applied. The higher rate for student housing is indicated where affordable housing is not payable.

This is predominantly on-campus accommodation or where the University is the direct provider.

29. Rates for retail are similarly differentiated and reflect the likely situation with retail development in the city. It is not anticipated that further large out of centre supermarkets will be built in the CYC area but that growth in smaller 800+sqm Lidl/ Aldi supermarkets will remain strong. Local and metro convenience stores are dominating the small local convenience sectors and are usually built at around 250-450sqm. Table 3 shows that there is headroom in small scale local convenience and large-scale comparison goods stores. These are expected to come forward in out of city centre locations, as city centre retail is shown not to be viable.
30. All other forms of development are not considered to display sufficient headroom to support a CIL charge.

Infrastructure funding gap

31. The introduction of CIL must also be supported by evidence of an infrastructure funding gap – this is the shortfall in funding between the expected total cost of infrastructure needed to support development in the authority over the plan period and the level of funding likely to be forthcoming from other sources of funding for infrastructure. The evidence for this is contained within the document ‘Infrastructure Funding Gap’ attached at Annex A. Information has been drawn from the latest infrastructure delivery plan (considered as part of the Local Plan examination process) to demonstrate the funding gap for York. The revenue from CIL cannot exceed this identified shortfall.
32. The total infrastructure funding requirement for York is identified at approximately £249 million based on the available information. It should be noted that the funding for this infrastructure will not come solely from CIL but it is anticipated that a number of sources would contribute. The PPG (Paragraph: 017 Reference ID: 25-017-20190901) recognises that there can be difficulty in identifying funding sources, particularly beyond the short term. Also, that any significant funding gap should be considered sufficient evidence of the desirability of CIL funding, where other funding sources are not confirmed.
33. It is intended that work will begin in January 2023 to update the Infrastructure Delivery Plan for York, which will be submitted with other CIL evidence base documents when the CIL is submitted for examination.

34. Based on the housing trajectory and the proposed CIL rates above, it is calculated that CIL could raise the following sums (see Table 6 below) over the life of the Plan. The projected revenue from CIL should not exceed the identified funding gap.

Table 6: Predicted CIL return

	No. of units (dwellings)	Average size of units (sqm)	CIL rate per sqm	Total CIL	AH rate	Other reliefs	Total CIL after CIL reliefs
Strategic sites (ST in the Local Plan)	1,115	91.8	£100	£10,598,561	28.2%	5.0%	£7,227,466
Housing sites (H in the Local Plan)	1,601	88.4	£200	£28,311,600	25.0%	5.0%	£20,172,015
Windfall sites	2,591	88.4	£200	£45,818,461	0.0%	0%	£45,818,461
Total	5,347			£84,728,623			£73,217,942

Option 2

35. Option 2 is not to progress with the consultation and halt work on the CIL Charging Schedule but for the reasons outlined above, this option is not considered appropriate and is therefore not recommended. While it is noted that the Government is looking at replacing CIL with an Infrastructure Levy the timescale for introduction is unclear, the legislation will take several months or even years to enact legislation and the Government has described the introduction of this new levy as a 'test and learn' approach suggesting a staggered rather than immediate roll out. Furthermore, the Government's statements on the proposed CIL, consistently indicate a levy type approach (an evolution of CIL rather than a fundamental change of direction). In this context, moving forward with CIL may enable an easier transition to the proposed 'Infrastructure Levy' intended to replace CIL and S106.

Council Plan

36. As well as supporting delivery of the emerging Local Plan, introduction of a CIL for York will contribute to the attainment of 'Creating homes and world-class infrastructure' outcome, as set out in the Council Plan 2019-2023 (Making History, Building Communities) and indirectly support other objectives.

Implications

Financial

37. The Local Plan has identified a requirement of £270.7m to deliver the infrastructure to deal with the impact of future growth as identified in the draft Local Plan. Of this value only £21.7m has identified funding available. This leaves a viability gap of £249m as included in the report.
38. The Community Infrastructure Levy will provide the council an opportunity to raise significant sums towards these costs of major infrastructure. The levy provides greater certainty to the values that can be raised to fund key infrastructure projects to support the growing city and will provide more flexibility to deliver infrastructure priorities than s106 agreements allowed. The infrastructure will not solely be funded from the levy as there are other funding streams available however it has the potential to be a significant contributor.
39. The ultimate value of CIL will be dependent on the scale of fees charged and the speed of development within the city. If the levy is set too high delivery may be slower but the infrastructure requirement may be lower. If the CIL is set too low the level of levy collected will provide more significant funding gaps for the infrastructure required.
40. If the CIL is adopted it is proposed that the funding retained by the council will be included in Members considerations of the annual capital programme so that Members will prioritise the scale and timing of infrastructure delivery funded through this mechanism.
41. The Regulations allow the authority to charge a fee to cover administrative expenses of both setting up and operating the CIL. This fee covers actual expenses but cannot exceed 5% of the value of the CIL collected in any one financial year.
42. There have been significant costs incurred supporting the Local Plan Examination and delay in progressing to public consultation, examination and adoption of the CIL may result in additional costs. The current evidence base for CIL includes documents prepared during the last year for the Local Plan examination. A delay may result in these documents requiring updating to provide accurate evidence for the introduction of CIL.

Human Resources (HR)

43. 5% of the CIL receipts can be retained by the Council for administration of the levy. It is intended to recruit to a new role of CIL officer, who will administer collection of the CIL receipts.

Equalities

44. The Council needs to take into account the Public Sector Equality Duty under Section 149 of the Equality Act 2010 (to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it in the exercise of a public authority's functions). An equalities impact assessment (EQIA) of the CIL has been undertaken and is attached at Annex D. The EQIA has identified that the CIL is likely to have a positive effect on social considerations through the provision of infrastructure including education, transport, health care, and open space.

Legal

45. The power to charge by way of the Community Infrastructure Levy was introduced by Part 11 (Sections 205-225) of the Planning Act 2008. The Community Infrastructure Levy Regulations 2010 (as amended) deal with the detailed implementation of CIL and cover matters such as the procedure for setting CIL, the charging and collecting of the levy and liability for payment. A charging authority cannot adopt CIL unless it has first produced a charging schedule based on appropriate available evidence, which has informed the preparation of the charging schedule.
46. Setting and reviewing the Community Infrastructure Levy must follow a statutory process, as defined in the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended). In addition, there is considerable Government Planning Policy Guidance dealing with the approach to be adopted in setting and reviewing rates within the Charging Schedule.
47. The statutory process requires demonstrable evidence of how the Council has derived the Charging Schedule and liable development, and consultation of that evidence. There is also a requirement to consider the outcome of that consultation prior to setting or reviewing a rate, which includes external validation by an independent examiner with the Charging Schedule being subject to any modifications recommended by the examiner.

48. This report sets out the steps that have been taken to produce the draft charging schedule in accordance with the relevant legislation and the process that will be followed to consult upon it before bringing it back to a future meeting of the Executive for approval and adoption.

Crime and Disorder

49. There are no crime and disorder implications.

Information Technology

50. There are no IT implications

Property

51. There are no property implications.

Other

52. There are no other known implications.

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Report Approved ✓
Date: 13th January 2023

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All

For further information please contact the author of the report

Background Papers:

Local Plan examination evidence base:

- HS/P2/M6/IR/1b Local Plan Viability Update Addendum, City of York Council;
- HS/P3/M1/AHP/1a Appendix 1- Local Plan Viability Technical Note on Changes to Policy H10 Affordable Housing;
- HS/P3/M10/HM&D/1a Appendix 1 Local Plan Viability Technical Note on Changes in Policy HO3, City of York Council;
- HS/P3/M10/HM&D/1b Appendix 2 Local Plan Viability Technical Note on Accessible Home Standards;
- HS/P3/M10/HM&D/1c Appendix 3 Local Plan Viability Technical Note on Older Person Accommodation;
- EX/CYC/107/3 Student Housing Policy H7 Note August 2022;
- EX/CYC/99a Viability Assessment of strategic site ST7 - July 2022;
- EX/CYC/99b Viability Assessment of strategic site ST14 - July 2022; and
- EX/CYC/99c Viability Assessment of strategic site ST15 - July 2022
- EX/CYC/107/1 Housing Trajectory Note August 2022
- EX/CYC/79 Phase 2 Infrastructure Note May 2022
- EX/CYC/107/8 Infrastructure Gantt Chart May 2022 Revised August 2022

Annexes

Annex A: Infrastructure Funding Gap

Annex B: CIL Viability Study – Porter Planning Economics

Annex C: Draft charging schedule

Annex D: Equalities Impact Assessment

Appendix 1 – Strategic sites and identified costs

List of Abbreviations Used in this Report

CIL – Community Infrastructure Levy

NPPF – National Planning Policy Framework

PPG – Planning Practice Guidance