

Report to the Cabinet

Report reference: C-019-2024-25

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**Epping Forest
District Council**

Portfolio: Shaping Our District (Cllr K Williamson)

Subject: Exploring the establishment of a Community Infrastructure Levy for the District

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Recommendations/Decisions Required:

- (1) That the Council uses financial and specialist support and advice being made available through Essex County Council to explore the potential for bringing forward a Community Infrastructure Levy (CIL) in the District.**
- (2) That the Council proceeds with commissioning a CIL viability study to assess the potential for a levy to be applied to new development in the District and provide recommendations on appropriate potential CIL rates.**

Executive Summary

This report outlines what the Community Infrastructure Levy (CIL) is, and why it would be beneficial for a levy to be established for the District.

This report recommends exploring the potential to bring forward a CIL in the area by commissioning a CIL viability study to assess the potential CIL rates which could be applied, and the impact of such rates on the ability of new development to continue to come forward.

Grant funding and specialist support and advice is available from Essex County Council (ECC) to support local authorities in bringing forward a CIL, including the production of a CIL viability study. This report therefore recommends proceeding with the exploration of bringing forward a CIL for the District by engaging with the support being made available by ECC.

Reasons for Proposed Decision

The CIL is a charge which can be levied by local authorities on new development in their area for the purposes of delivering new or improved infrastructure. While the CIL provides an opportunity to obtain additional funds for the delivery of infrastructure to support growth, it can also have the potential to impact upon the financial viability of new development by increasing developer costs.

The development of a CIL therefore requires the production of evidence to inform the CIL rates which will be subject to public consultation and examination.

This process will therefore require Council resources in order to explore the potential for bringing forward a CIL, followed by producing the required evidence and associated materials to develop the draft levy. However, the demand upon Council resources at this stage would be limited due to the availability of ECC grant funding and support associated with bringing forward a CIL.

Other Options for Action:

To not explore the potential for bringing forward a CIL in the District. This would result in the Council being reliant on the use of S106 agreements only in order to obtain developer contributions, and could therefore result in the Council not maximising its ability to obtain financial contributions from developers towards new and improved infrastructure in the District.

Report:

Background

1. The Community Infrastructure Levy (CIL) was first introduced by the Planning Act 2008, as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. For the purposes of CIL, infrastructure is defined at section 216 of the Planning Act 2008 to include:
 - Roads and other transport facilities;
 - Flood defences;
 - Schools and other education facilities;
 - Medical facilities;
 - Sporting and recreation facilities; and
 - Open spaces.
2. The CIL is a charge which can be levied by local authorities on new development in their area for the purposes of delivering new or improved infrastructure. The levy rates are set out within a CIL Charging Schedule, where the local authority can set various rates for a range of different development types and locations. Local authorities can choose to introduce a CIL depending on the local circumstances of the area.
3. The regulatory process for producing a CIL Charging Schedule is set out within the [CIL Regulations \(as amended\) 2010](#), which came into force on 6 April 2010, requiring public consultation and an independent examination of the Schedule to be undertaken before it can be adopted. Regulation 16 of the CIL Regulations requires public consultation to be undertaken on the draft CIL Charging Schedule. This is the only public consultation required prior to its submission for independent examination.
4. Through the Levelling-up and Regeneration Act 2023, the previous Government proposed amendments to the CIL through the introduction of a mandatory Infrastructure Levy. The new Labour Government has now confirmed that they will not be implementing the Infrastructure Levy, and the current CIL approach will therefore continue for the foreseeable future.

5. The CIL rates should be set at a level which ensures that they will not render new development in the area financially unviable, and once adopted the rates set are non-negotiable. Exemptions and discretionary relief can be applied in certain circumstances. Funding obtained through the Levy should be used to deliver infrastructure needed to support development in the area.
6. Following the adoption of the [Epping Forest District Local Plan](#) last year, the Council is now in a position to progress the production of a CIL Charging Schedule. To support the production of the local plan the Council produced an [Infrastructure Delivery Plan](#) (IDP), which set out infrastructure projects required in the District and identified how developer contributions and other funding sources could be used to support the delivery of new infrastructure projects. The IDP highlights the need for additional sources of funding to support the delivery of new infrastructure in the area.
7. The CIL provides a mechanism to obtain additional infrastructure funding, alongside other funding such as Section 106 agreements (S106). The use of S106 and CIL can operate together. The Council must outline how developer contributions and CIL funds are proposed to be used in its annual Infrastructure Funding Statement. A new development, for example, may trigger the need for a new school and a S106 planning obligation may apply to the development to provide the school. CIL could also then be applied to other development in the area to also contribute towards the delivery of the school.

The process of producing a CIL

8. A CIL Charging Schedule sets out the levy rates for an area¹. Similar to the Local Plan production process, the production of a Charging Schedule includes a statutory stage of consultation and an examination in public undertaken by an independent inspector appointed by the Planning Inspectorate. The CIL Regulations (as amended) 2010 and the Planning Practice Guidance (PPG) requires the production of a CIL Charging Schedule to include the completion of the tasks listed in the table below prior to undertaking the examination in public.

Table 1: Key tasks in the preparation and submission of a CIL Charging Schedule, as outlined in the CIL Regulations

Relevant CIL Regulation	Task
Regulation 14	The preparation of an evidence base to inform the production of a draft Charging Schedule. This would be undertaken through the production of a CIL viability study which would recommend CIL rates for the area, and where necessary a focused review of an IDP to appropriately demonstrate an infrastructure funding gap.
Regulation 16	Publication of the draft Charging Schedule for public consultation. The Regulations do not specify a required consultation time period, or how the consultation should be undertaken. The approach to consultation can therefore be determined by the Council, in accordance with the Councils Statement of Community Involvement. The PPG notes however that there is an expectation that consultation on a new Charging Schedule would take place for a minimum of 4 weeks.

¹ [PPG Paragraph: 011 Reference ID: 25-011-20190901](#)

Regulation 17	Review and assess consultation representations and amend the draft Schedule to take account of comments as necessary.
Regulation 19	Submission of the draft Charging Schedule for examination. Submission documents include the draft Charging Schedule, a consultation statement, and a statement of modifications setting out changes made since the Regulation 16 consultation.

9. Following the submission of a draft Charging Schedule to the Planning Inspectorate, an appointed inspector would review and test the Charging Schedule and accompanying documents through questions submitted to the Council and where necessary examination hearings. Usually CIL Charging Schedule examination hearings last for around one or two days, subject to the matters to be discussed and the number of participants.

The need to introduce CIL in the District

10. In comparison to the current approach of collecting developer contributions towards new infrastructure through Section 106 agreements, the CIL provides a simpler, complementary and more transparent process to collect funds. There are a range of benefits to an area provided by the introduction of a levy, which are summarised below:
- The CIL collects contributions from a wide range of developments, including smaller developments which may not ordinarily provide any contributions towards new infrastructure. This provides additional funding towards infrastructure projects that support growth and benefit the local community.
 - The CIL gives local authorities greater flexibility to set their own priorities on projects benefitting the wider community affected by development, unlike Section 106 funds which require a direct link between a contributing development and an infrastructure project.
 - The CIL provides developers with clarity about the level of contributions which are required from any development and provides transparency for local people.
 - The CIL is non-negotiable and therefore does not require the production of complex agreements.
 - The CIL is fair, as it relates the contribution required to the size of the development in terms of new floorspace.
11. While there are many benefits provided by the introduction of a CIL, a Levy may not be needed or appropriate in all areas of the country. The introduction of a levy should therefore be evidenced by the identification of an aggregate infrastructure funding gap that demonstrates a need for the Levy. The PPG outlines² that any significant funding gap identified should be considered sufficient evidence of a need for the introduction of a CIL.
12. The IDP identifies infrastructure requirements throughout the District, seeking to address both existing needs and needs associated with growth being allocated through the Local Plan. The Infrastructure Delivery Schedule presented within the IDP identifies a significant amount of projects to provide new and improved infrastructure in the area, and a number of projects where a definite and/or agreed funding source has not yet been identified. These currently unfunded projects could therefore form the infrastructure funding gap required to demonstrate a need for the introduction of a CIL. Where the recommendations of this Report are agreed,

² [PPG Paragraph: 017 Reference ID: 25-017-20190901](#)

further work will be undertaken to establish and quantify an infrastructure funding gap for the District.

How CIL would work in the District

13. The following sections briefly outline how a CIL would work in the District following the adoption of a Charging Schedule by the Council.

a) What development would be liable to pay the levy?

14. Most buildings that people normally use are liable to pay the levy. The development of a new building or an extension which results in 100 sqm or more of net increase in gross internal floor space would be liable to pay the levy. Development which is less than 100 sqm but which involves the creation of an additional dwelling would also be liable. The conversion of a building that has not been in use for some time would also be liable for the levy.

15. The following types of development would not be required to pay the levy:

- development of less than 100 square metres, unless this consists of one or more dwellings and does not meet the Governments self-build criteria³;
- buildings into which people do not normally go;
- buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery;
- structures which are not buildings, such as pylons and wind turbines;
- specified types of development which local authorities have decided should be subject to a 'zero' rate as outlined in the Charging Schedule.

b) How the levy works alongside Section 106 contributions

16. There is flexibility in how CIL funding can be used alongside S106 contributions. Both CIL and S106 contributions can be used fund the same infrastructure item if needed.

17. The IDP sets out the current and future infrastructure projects required in the District. It is likely that essential infrastructure items which are directly related to supporting the delivery of new development proposals will continue to be funded through S106 agreements. The use of this approach would be assessed within an accompanying viability study to ensure that strategic sites remain viable with the imposition of both S106 requirements and a CIL charge.

c) Infrastructure projects which could be funded through CIL

18. The CIL would be used in combination with S106 agreements to obtain additional funds for a wide range of community infrastructure projects throughout the District, and to obtain infrastructure funding from smaller developments where S106 agreements may not usually be produced.

³ See CIL Regulation 42 for further details.

19. The IDP will be used to quantify an infrastructure funding gap which could potentially be funded through the CIL. Infrastructure projects identified within the IDP which do not have funding sources identified, and could therefore be funded through the CIL, include projects relating to green infrastructure, open space, sports facilities, and transport improvement projects where the needs for the infrastructure are not directly attributable to specific new developments.

d) How the levy will be collected

20. Liability to pay the CIL is triggered by commencement of the development. Following the adoption of a CIL Charging Schedule, planning applications in the area will be expected to include a completed CIL Information and Liability Form, which will help the Council calculate the CIL liability associated with the development and issue a CIL Demand Notice. The notice would be issued upon the commencement of development.
21. The levy should usually be paid within 60 days of the commencement of development, however to support the financial viability of new development an instalments policy can be included within the CIL Charging Schedule. An instalments policy allows levy charges over an identified amount to be paid in instalments over a set period of time. The Council can seek views on any proposed instalments policy through consultation on the draft Charging Schedule.

e) Potential infrastructure funding which could be obtained through the CIL

22. Subject to the CIL rates recommended through the production of a viability study, and the proposed approach to charging CIL, a significant amount of infrastructure funding could be obtained through a levy. The Epping Forest District Local Plan Infrastructure Delivery Topic Paper (October 2018, see page 23 of Appendix 1 of the 2020 IDP) estimated that, based on indicative CIL charges identified through Local Plan viability evidence and based on growth allocated within the Local Plan being liable to pay the levy, between £67.6 million and £95.7 million of CIL funds could be generated through the implementation of a levy in the District.

f) The use of variable CIL rates

23. CIL rates for an area are identified based on the conclusions of a CIL viability study. The setting of CIL rates in an area should be based on the ability of new development to pay a set levy and remain financially viable. Rates will therefore be different in areas where there are significant variations in components which inform the calculation of a CIL rate, such as land prices, house prices, development costs, and the costs of materials. Where such variations are identified within the District, the viability study will be likely to recommended the use of variable CIL rates.

g) How the CIL funds are distributed

24. Following the adoption of a Charging Schedule, Epping Forest District Council would be recognised as the relevant 'charging authority'. It is the responsibility of the charging authority

to collect and distribute all CIL funds. The Council may retain up to 5% of CIL receipts to cover the costs of administering CIL.

25. In the first instance, the Council must pass up to 15% of receipts arising in an area to the relevant parish or town council where the development has taken place. Having set aside any administrative costs and the local element of the receipt, the Council can determine how funds are distributed between organisations and projects. Funding obtained through the levy must be used towards infrastructure which supports growth in the District and should be used based on the needs for new and improved infrastructure.
26. An Infrastructure Funding Statement would be produced by the Council annually to outline the extent of CIL funds which have been received, how received CIL funds are being used, and how future CIL funds are proposed to be used in the future.
27. Beyond the minimum provision of funds which would be provided to parish and town councils for chargeable development within that area, there is no further regulatory requirement to correlate the location of CIL funding received to the spending of the funds. CIL rates are calculated based on the financial viability of new development, and not based on the geographical needs for new infrastructure. While the Council could consider an area based approach to distributing CIL funds based on the location where funds were obtained, it cannot be guaranteed that the District-wide infrastructure needs will correlate with areas where the majority of CIL funding has been obtained. It is likely therefore that the most effective approach for the distribution of CIL funds would be based on an assessment of the overall District-wide infrastructure needs and priorities. The approach to spending CIL funds is determined by the Council as the charging authority, and can be amended at any time depending on the particular needs of the area at the time.

Next steps to exploring the establishment of a CIL for the District

28. The production of a CIL Charging Schedule requires a viability study to be undertaken to determine the impact of the imposition of a levy on the financial viability of new development in the area. The viability study will assess appropriate CIL rates, and is therefore an essential first step in exploring the potential for bringing forward a CIL.
29. The Council has been invited by Essex County Council to use grant funding and specialist direct support being provided by consultants DAC Planning to support the production and implementation of a CIL Charging Schedule. A memorandum of understanding (MoU) has therefore been agreed with ECC to enable access to this support, including grant funding which can be used to commission a viability consultant to produce the CIL viability study. The ECC grant funding and specialist support is capped at £60,000. The additional specialist consultant support can be used as required to assist the Council in bringing forward a CIL, which will include tasks such as:
 - reviewing the CIL viability study;
 - reviewing the IDP to establish and quantify an infrastructure funding gap for the District;
 - producing a draft Charging Schedule;
 - producing Regulation 16 consultation materials;

- reviewing consultation representations;
- making amendments to the Charging Schedule following consultation;
- producing submission materials; and
- preparing for and undertaking the examination in public.

30. Following the production of the CIL viability study, the Council would review the emerging conclusions and recommended rates to confirm that a CIL would be appropriate for the District. Subject to the Council's satisfaction of the recommended CIL rates, the ECC specialist consultants would be requested to begin producing a draft CIL Charging Schedule and associated Regulation 16 consultation materials for further consideration by the Council prior to their formal publication.

Resource Implications:

The development of a CIL requires the production of evidence to inform CIL rates which will be subject to public consultation and examination. This process will therefore require resources in order to explore the potential for bringing forward a CIL, followed by producing the required evidence and associated materials to develop the draft levy. However, the demand upon District Council resources at this stage is limited due to the availability of ECC grant funding and support associated with bringing forward a CIL.

To explore the establishment of a CIL and begin the preparation of a CIL Charging Schedule, Officer time only is required to work with the ECC specialist consultants and engage accordingly with Council Members and other departments as necessary.

Legal and Governance Implications:

The implementation of a CIL would have legal and governance implications for the Council, however at this stage the exploration of bringing forward a CIL has no specific implications for consideration.

Safer, Cleaner, and Greener Implications:

Once adopted, the CIL can be used to support the delivery of new and improved infrastructure for the area.

Consultation Undertaken:

As outlined within the Report, the production of a CIL Charging Schedule would require a formal stage of public consultation, known as Regulation 16 consultation.

Background Papers:

[Epping Forest District Local Plan](#), adopted March 2023

[Infrastructure Delivery Plan](#), 2020

[Planning Practice Guidance](#)

[CIL Regulations \(as amended\) 2010](#)

Risk Management:

Not exploring the potential for bringing forward a CIL in the District could result in the Council being reliant upon the use of S106 agreements only in order to obtain developer contributions, and could therefore result in the Council not maximising its ability to obtain financial contributions from developers towards new and improved infrastructure in the District. This could result in some infrastructure projects identified within the IDP not being delivered due to a lack of resources.