

Strategic Planning, Sustainability and Transportation Committee

**12 September
2017**

Is the final decision on the recommendations in this report to be made at this meeting?

No

Maidstone Borough Community Infrastructure Levy (CIL) Charging Schedule: Approval

Final Decision-Maker	Council
Lead Head of Service	Rob Jarman, Head of Planning and Development
Lead Officer and Report Author	Andrew Thompson, Principal Planning Officer, Strategic Planning
Classification	Public
Wards affected	All

Strategic Planning, Sustainability and Transportation Committee is asked to consider this report along with the modified Maidstone Borough Community Infrastructure Levy (CIL) Charging Schedule and associated documents.

This Committee **Recommends to Council:**

1. That the Maidstone Borough Community Infrastructure Levy (CIL) Charging Schedule (Appendix A) in accordance with Section 213 of the Planning Act 2008 with an effective implementation date of 1 July 2018 be approved;
2. That the CIL Regulation 123 List (Appendix B) and CIL Instalments Policy (Appendix C) be approved.

This report relates to the following corporate priorities:

- Keeping Maidstone Borough an attractive place for all and securing a successful economy for Maidstone Borough:
The Maidstone Borough Community Infrastructure Levy (CIL) Charging Schedule will provide funding to support the delivery of the Maidstone Borough Local Plan (2011-2031) and will assist in the delivery of the Council's corporate priorities.

Timetable	
Meeting	Date
Strategic Planning, Sustainability and Transportation Committee	12 September 2017
Council	27 September 2017

Maidstone Borough Community Infrastructure Levy (CIL) Charging Schedule: Approval

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 Following consultation during August and September 2016, Council agreed, at their December 2016 meeting, to submit the Draft Charging Schedule for independent examination. David Spencer BA DIPTP MRTPI from the Planning Inspectorate was appointed to undertake the examination, and hearings took place on 14 June 2017.
 - 1.2 The Examiner's Report was published on 31 July 2017 (and was circulated to all Councillors by email) and recommends that the Council should approve the Charging Schedule subject to a number of modifications. Under Section 213 of the Planning Act 2008, as amended by the Localism Act 2011, the Council must have regard to the Examiner's recommendations, and the reasons for them, before the Charging Schedule can be approved.
 - 1.3 This report therefore sets out the Examiner's recommendations and reasons for the Committee's consideration and concludes that Council can be recommended to approve the modified Charging Schedule, Regulation 123 List and Instalments Policy, with an effective implementation date of 1 July 2018.
 - 1.4 Further reports regarding proposed administrative and governance arrangements are due to be considered by this Committee later in this municipal year.
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2. INTRODUCTION AND BACKGROUND

Context

- 2.1 The Council's Community Infrastructure Levy (CIL) Charging Schedule has been developed alongside the Maidstone Borough Local Plan (MBLP) (2011-2031) in accordance with national guidance. The two documents share evidence on infrastructure and viability, and have largely been twin-tracked through the preparatory stages to ensure they complement and are consistent with one another.
- 2.2 Policy ID1 of the MBLP sets out the Council's intention to introduce the CIL in Maidstone and establishes the overall framework for developer contributions whereby the CIL will be used to collect monies towards strategic infrastructure measures, whilst section 106 agreements will continue to be used to secure site specific infrastructure requirements and affordable housing.
- 2.3 Many of the infrastructure requirements identified in the MBLP and the accompanying Infrastructure Delivery Plan (IDP) will support multiple

development sites, or indeed, the Plan as a whole, and are recognised as strategic infrastructure measures. As the Committee will be aware, the tightening of the tests governing the use of section 106 agreements, and the introduction of the limits on pooling such obligations, present increasing restrictions on the effectiveness of section 106 agreements as a means of securing funding towards strategic infrastructure projects.

- 2.4 The introduction of the CIL in Maidstone will therefore provide greater flexibility to the Council, as Charging Authority, to collect and spend monies on strategic infrastructure projects to support the delivery of the MBLP. Through the mechanism known as the neighbourhood portion, the CIL will also provide a source of funding for Parish Councils and local communities to be spent on local infrastructure priorities in areas where CIL-liable development takes place.

Examination

- 2.5 The Draft Charging Schedule was submitted for independent examination in April 2017 and David Spencer BA DIPTP MRTPI from the Planning Inspectorate was appointed as the Examiner. Alongside the Draft Charging Schedule, a Statement of Modifications was also submitted, to reflect two changes to the urban boundary which had arisen during the MBLP examination. The scope of the examination was to assess whether:

- *The Council has complied with all legal and procedural requirements in preparing the draft charging schedule;*
- *The draft charging schedule is supported by appropriate available evidence, including the actual and expected costs of infrastructure and economic viability of the area;*
- *The proposed charging rates are informed by, and consistent with, the evidence;*
- *The evidence shows that the proposed rates would not put at risk the overall development of the area as proposed in the relevant development plan; and*
- *The draft charging schedule includes an appropriate map showing the charging zones.*

- 2.6 Similarly to the MBLP examination, the Examiner then raised a series of Matters, Issues and Questions (MIQs) to which the Council and other representors provided responses. Despite the reasonable level of representations received at Publication Stage, only Kent County Council and the Joint Parish Group provided any written statements to the hearings. The Joint Parish Group were the only representors to provide verbal evidence at the hearing sessions on 14 June.

- 2.7 Although the MIQs and the hearing sessions covered a range of matters, two key issues were given particular attention: firstly, the justification for two main residential rates (urban at £93 per sqm and rural at £99 per

sqm), given their similarity, and secondly the definition and application of the various rates.

- 2.8 In terms of the residential rates, the Council sought to justify the proposed approach based on the existing viability evidence. Officers also provided additional analysis to demonstrate the negative impact on projected CIL receipts should the two rates be aligned at the lower residential rate of £93 per sqm.
- 2.9 The Examiner also queried whether the application of some of the rates was sufficiently defined within the Charging Schedule itself. Additional text was therefore proposed in the Council's responses to the MIQs to provide clarity and explanation on how the residential rates, extra care and retirement housing rates and the retail rates, as submitted, would be applied.
- 2.10 In respect of the definition of extra care and retirement housing, this was also an issue raised by DHA Planning on behalf of Kent Medical Campus at Publication stage. In providing this clarifying text, DHA Planning were able to withdraw their objection to the Draft Charging Schedule, and this was set out in the Statement of Common Ground agreed between the Council and DHA Planning and submitted to the Examiner alongside the Council's MIQ responses.

Examiner's Report

- 2.11 The Examiner's Report (Appendix D) was published on 31 July and recommends, overall, that the Charging Schedule should be approved, subject to modifications.
- 2.12 The Examiner concludes that the Council has acted in accordance with national policy and guidance in preparing the CIL alongside the MBLP, and that the timing of the Charging Schedule's submission provided for sufficient certainty on the MBLP policies so as to enable the CIL to be examined and advanced to adoption at the same time.
- 2.13 On infrastructure evidence, the Examiner concludes that the Council's IDP provides a legitimate and up to date assessment of the infrastructure necessary to deliver the MBLP strategy as a whole. In noting that the "minimum" infrastructure funding gap of £38m would be reduced by the £20m projected in CIL receipts, the Examiner considers there is a clear need to introduce CIL in the Borough.
- 2.14 On viability and rates, the Examiner concludes that the evidence underpinning the rates is robust and that there would be no serious risk to the viability of development in the Borough. The Examiner comments that early engagement with developers, and modifications between the Preliminary Draft and Draft Charging Schedule stages, have effectively limited the concerns which may have otherwise been raised by the development industry.
- 2.15 In summary therefore, the Examiner is satisfied that the charging rates, as submitted, strike the required "appropriate balance" between development viability and infrastructure funding.

- 2.16 The Examiner's recommendations and his reasons for these recommendations are set out in full at Appendix D for Committee's consideration.
- 2.17 In summary, modification **EM1** provides definition on the application of the residential charges in terms of the Use Classes Order, and is recommended for clarity to confirm that the rates would also apply to flatted forms of development. Modification **EM2** provides definition on the application of the extra care and retirement charges in terms of the Use Classes Order and key development characteristics to provide similar clarification and is supported by the available viability evidence. Modification **EM3** provides definition to the term "wholly or mainly" in respect of the convenience or comparison retail charges in terms of the principal retail use, and is necessary to ensure the charges can be understood and applied.
- 2.18 Modification **EM4** replaces the submitted A4 size plans showing the charging zones with larger plans, to include National Grid References, for enhanced legibility and compliance with the CIL Regulations. The Examiner concludes that he does not need to specifically recommend the changes to the residential charging zone boundaries reflected in the Statement of Modifications, and that these changes have effectively already been incorporated into the Charging Schedule.
- 2.19 Modification **EM5** introduces a reference to the Council's Instalments Policy for clarity whilst modification **EM6** introduces a reference to the circumstances where the CIL Charging Schedule would be reviewed for consistency with national guidance.

Approval of the Charging Schedule

- 2.20 The modified Charging Schedule (Appendix A) incorporates the Examiner's recommended modifications and the amendments to the charging zone boundaries reflected in the Statement of Modifications. Minor changes to factually update the document are also incorporated. The Examiner was clear that it was not his role to scrutinise the Regulation 123 List or the Instalments Policy, and so these documents remain unchanged.
- 2.21 CIL Regulations require that the Charging Schedule specifies the date on which it will take effect. Other than preventing the Charging Schedule being published and taking effect on the same date, there is no prescribed timescale in this respect.
- 2.22 The implications of the date are significant as relevant planning applications which remain undetermined at the take effect date may be liable for charges under the CIL, even where they were validated before the Charging Schedule took effect. This includes applications which have received a resolution to grant permission subject to completion of a section 106 agreement from the Council's Planning Committee, where the agreement remains unsigned and the decision not formally issued. It is good practice therefore to provide a reasonable period of notice to developers, infrastructure providers and other stakeholders who will be affected by the

introduction of the Charging Schedule, and to provide assistance and information through the transition.

- 2.23 The introduction of the CIL in Maidstone will also require the development of appropriate internal administrative arrangements for the day-to-day operational tasks involved in implementation such as processing forms, calculating liabilities, issuing notices and collecting and reporting monies. New systems and processes will need to be developed and existing staff trained in preparation for the implementation of the CIL.
- 2.24 It is widely recognised that the CIL is a costly system to develop and examine. It is also a complex system to administer and govern and indeed the Regulations provide that the Council can retain up to 5% of CIL receipts to cover such costs. It is anticipated that the Council will need to recruit at least one additional officer to provide necessary capacity regarding the latter elements.
- 2.25 A further consideration is the impact of the Charging Schedule's introduction for the Development Management Team who, up to 1 April 2018, will be transitioning to implement the outcomes of the Planning Review and dealing with the backlog in undetermined applications. It is critical that the introduction of the CIL complements this timetable and does not frustrate or even add to the issue of dealing with the backlog.
- 2.26 After consideration of the above, a take effect date of 1 July 2018 is recommended. This timetable would provide a reasonable lead-in period for developers and for the necessary preparations to facilitate an orderly transition to the new system.

Administrative and governance arrangements

- 2.27 The effective implementation and delivery of the CIL in Maidstone will depend largely of the delivery of new arrangements for administration and governance:

Administration arrangements: The discharge of the day-to-day operational tasks involved in processing forms and data, issuing acknowledgements and notices, collecting, monitoring and reporting monies and making neighbourhood portion payments to Parish Councils;

Governance arrangements: The decision making framework by which CIL monies held by the Council as Charging Authority are allocated to individual infrastructure projects necessary to support the delivery of the Local Plan and neighbourhood portion monies for unparished areas spent on behalf of local communities.

- 2.28 As set out above, appropriate administrative arrangements must be agreed and in place for the Charging Schedule's implementation date to ensure an orderly transition to the CIL regime. In contrast, decisions on the allocation of CIL monies are unlikely to be taken until sometime after this transition, when liable permissions are being commenced, and a reasonable sum of CIL monies accumulated.

- 2.29 Given the differing urgency, and the likely complexity of each of these workstreams it is considered appropriate to prioritise progress on the administrative arrangements. It is proposed therefore to bring a report to Committee in November to set out the key issues for consideration, including the involvement of Parish Councils and whether establishing a member working group or sub-committee may be appropriate given the range of matters to be addressed.
- 2.30 Having examined the approaches taken by other new Charging Authorities, and discussed this directly with Sevenoaks DC (Kent's first Charging Authority) it is understood that this is a fairly typical approach given the complexity of establishing effective arrangements for administration and governance.
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3. AVAILABLE OPTIONS

- 3.1 Strategic Planning, Sustainability and Transportation Committee is asked to consider this report, along with the modified Maidstone Borough Community Infrastructure Levy (CIL) Charging Schedule and associated documents, and:
- 3.2 **Option 1:** Recommend that Council approve the Maidstone Borough Community Infrastructure Levy (CIL) Charging Schedule (Appendix A) in accordance with Section 213 of the Planning Act 2008, with an effective implementation date of 1 July 2018, and approve the CIL Regulation 123 List (Appendix B) and CIL Instalments Policy (Appendix C).
- 3.3 **Option 2:** Reject the Maidstone Borough Community Infrastructure Levy (CIL) Charging Schedule (Appendix A).
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4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Committee is asked to consider the report, which sets out the Examiner's recommendations and reasons, and select Option 1 as the preferred option.
- 4.2 The introduction of the CIL in Maidstone will provide funding to support the delivery of the MBLP. The Examiner has recommended that the Charging Schedule can be approved, subject to the modifications, and the take effect date will provide a reasonable period within which to transition to the new arrangements.
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5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 The CIL proposals have been subject to statutory consultation exercises and member decisions throughout their development which have shaped the content of the Charging Schedule.
- 5.2 Strategic Planning, Sustainability and Transportation Committee resolved to approve the amended CIL Regulation 123 List at their October 2016

meeting, and to recommend that Council submit the Draft Charging Schedule for examination. Council subsequently agreed to submit the Draft Charging Schedule and associated documents for examination in December 2016.

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 If agreed, the recommendations will be taken to Council's meeting on 27 September to facilitate the approval of the Charging Schedule and associated documents, with their effective implementation on 1 July 2018.
- 6.2 Further reports on the administrative and governance arrangements are expected to be brought to this Committee later in this municipal year, with the first, on administrative arrangements, to be considered in November.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	The CIL Charging Schedule will support the delivery of the Local Plan and will assist in the delivery of the Council's corporate priorities.	Head of Planning and Development
Risk Management	The CIL will help to overcome some of the existing challenges in securing the delivery of necessary strategic infrastructure. Any delay in the introduction of CIL could exacerbate these issues.	Head of Planning and Development
Financial	The CIL will provide a significant source of funding towards delivery of the infrastructure needed to support development in the borough. Up to 5% of annual CIL receipts can be retained by the Council for use towards the cost of developing the CIL and for ongoing administration and governance.	Head of Finance
Staffing	Day to day administration, monitoring and management of the CIL will require at least one additional officer to provide necessary capacity and existing staff will need to be trained to ensure effective implementation of the CIL. Additionally, more	Head of Planning and Development

	detailed infrastructure planning work is likely to be required to inform decision making on the allocation of CIL monies.	
Legal	Legal advice has been sought at varying stages of preparation of the CIL and associated documentation to ensure conformity with Regulations	Legal Team
Equality Impact Needs Assessment	The IDP identifies the infrastructure necessary to support development in a sustainable manner, and therefore seeks to minimise the potential equality impacts of new development in the borough. The CIL will play a key role in delivering key strategic and community infrastructure which should benefit those equality groups most in need.	Policy & Information Manager
Environmental/Sustainable Development	The CIL will play a key role in delivering the infrastructure required to support planned development in order to mitigate the environmental and social impacts of new development, promote sustainable communities and facilitate economic development and growth within the borough.	Head of Planning and Development
Community Safety	The CIL will play a key role in the delivery of infrastructure schemes required to mitigate the safety impacts of new development such as transport schemes and potentially policing infrastructure.	Head of Planning and Development
Human Rights Act	N/A	Head of Planning and Development
Procurement	Consultants are used to prepare specialist or technical evidence to support the CIL and the Local Plan and are appointed in accordance with the Council's procurement procedures.	Head of Planning and Development & Section 151 Officer

Asset Management	N/A	Head of Planning and Development
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8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix A: Maidstone Borough Community Infrastructure Levy (CIL) Charging Schedule (September 2017)
 - Appendix B: CIL Regulation 123 List (September 2017)
 - Appendix C: CIL Instalments Policy (September 2017)
 - Appendix D: Examiner's Final Report (July 2017)
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9. BACKGROUND PAPERS

None