

London Borough of Enfield

Portfolio Report

Report of: **Brett Leahy**

Subject: **Community Infrastructure Levy Discretionary
Social Housing Relief Statement**

Cabinet Member: **Cllr Nesil Caliskan**

Executive Director: **Joanne Drew**

Key Decision: **KD 5539**

Purpose of Report

1. Charging authorities are permitted to offer several reliefs from a community infrastructure levy charge, under the Community Infrastructure Regulations 2010 (as amended 2019).
2. The council adopted a Community Infrastructure Levy (CIL) in April 2016 alongside the Charging Schedule for its area. The charging authority must publish a statement about the availability of Discretionary or Exceptional circumstance CIL relief available in its area, with mandatory relief from CIL available in certain circumstances, such as for certain types of affordable housing.
3. Under the CIL regulations, relief from the levy must be granted for mandatory relief where certain conditions are met. For discretionary or exceptional circumstance relief there must be a relevant policy in place before relief can be considered.
4. This report sets out the proposed policy statement required under the CIL regulations for the introduction of discretionary social housing relief only.

Proposal(s)

5. It is recommended that the Leader of the Council agrees to approve the policy statement regarding discretionary social housing relief under Regulation 49A and 49B (Appendix 1) to allow the council, at its discretion, to offer CIL relief for discounted market sales dwellings.
6. Discounted market sales (DMS) refers to housing being sold at below 80% of its market value for the purposes of Discretionary Social Housing Relief. Should the housing be sold at below 70% its market value then Mandatory Social Housing Relief would apply.
7. A charging authority must publish within this statement how discounted market housing will be 'allocated' in its area to qualifying buyers. The approach to allocation

for discounted market sale schemes for discretionary social housing relief, will be based upon the Councils Intermediate Housing Policy (July 2020), unless an alternative marketing strategy is agreed with the Council within a S106 agreement.

8. Calculation of discretionary social housing relief will be based upon the same methodology as mandatory social housing relief. The methodology is based on the formula contained within CIL Regulation 50 and Paragraph 6 Schedule 1.

Reason for Proposal(s)

9. The basis for offering discretionary social housing CIL relief would be to encourage and support the delivery of intermediate housing products within the London Borough of Enfield, broadening opportunities and potentially increasing the numbers of affordable homes available to qualifying Enfield residents under the Councils Intermediate Housing Policy (July 2020).
10. The DSHR relief policy supports the delivery of DMS dwellings where viability prevents these specific types of affordable housing products from qualifying for mandatory social housing relief under CIL regulation 49. Mandatory relief is granted where DMS dwellings are marketed at 70% or below of their market sales value.
11. Without a DSHR policy in place any scheme that aims to provide DMS dwellings above 70% and below 80% will remain CIL liable. This has the potential to affect the viability of DMS development schemes where they are unable to deliver within the thresholds to qualify for mandatory CIL relief, remaining liable for CIL while deemed affordable housing under the National Planning Policy Frameworks definition of affordable housing. These units would be included in monitoring and reporting of Affordable Housing within the Annual Monitoring Report (AMR) which analyses the performance of a monitoring year between the 1 April to the 31 March.
12. For context, the Council have been working with Naked House Community Builders (a not-for-profit developer) to develop smaller sites to provide a total of 22 new homes for local first-time buyers at a market discount across 3 sites under the Enfield Custom Build Homes Scheme funded by the GLA. The Council's Cabinet approved disposal of these sites in 2016 (KD4200) and 2019 (KD4613) as part of the Small Sites Housing Programme (KD3920). In early 2022, the Planning Committee resolved to grant planning permission for the development schemes. Should this policy be agreed Development Management would require Naked Homes to enter into a S106 agreement reflective of the DSHR policy to benefit from this relief. Naked House is a new housing model generally involving the phased construction of 'genuinely affordable' dwellings. The housing model is based on an initial build which comprises of a smaller 'no-frills' dwelling (aka the 'naked state'). This model would allow for flexibility for further extensions as household needs change over time. For the development scheme to be viable and deliver affordable discounted market sale homes the developer intends to market these new dwelling between 70% - 80% of their full market value, and without a DSHR policy in place within the Councils area these DMS dwellings remain liable for Enfield CIL, Mayoral CIL would apply regardless of this policy. Should Mandatory Relief be granted where DMS are discounted to 70% or below market rate, CIL relief would apply to both Enfield and Mayoral CIL.
13. If the recommendation to adopt the DSHR policy statement is accepted, it would support the deliverability of this approved scheme and allow similar qualifying development schemes to come forward across the Borough where they meet the viability test. This relief is not mandatory and will be granted at the council's discretion on a case by case basis where the applicant has sufficiently demonstrated DMS dwellings cannot be marketed at below 70% of the market sales value but can

demonstrate they can be marketed at below 80% of market sales value. In such cases, evidence of Discounted Market Sales percentage would need to be demonstrated at the point of securing the S106 agreement.

Relevance to the Council Plan

14. The DSHR policy aligns with the Enfield Council Plan (2020-2022) to support the building of more and better homes that are affordable to Enfield residents. The policy will support increasing the supply of intermediate housing products, particularly for people who are not eligible for social or affordable rented housing but who cannot afford to buy at full market rates.

Background

15. The Community Infrastructure Levy (CIL) is a tariff-based approach to raising funds for new infrastructure. Funds can be pooled from CIL liable development from across the borough to support the delivery of infrastructure. The borough's CIL Charging Schedule took effect on 1st April 2016 in accordance with the Community Infrastructure Levy Regulations 2010 (as amended) and Part 11 of the Planning Act.
16. Mayoral CIL (April 2019), a rate of £60sqm GIA, applies to all types of development with NIL rates for Healthcare and Education, in addition to Enfield CIL. No Discretionary or Exceptional relief policies are in place for Mayoral CIL only Mandatory relief applies. From April 2012 to March 2019, the Mayoral CIL rate was £20sqm GIA.
17. The CIL Regulations 2010 (as amended) allows for exemptions, or the ability to apply for relief. These include, where individual developments qualify within the regulations for mandatory social housing relief (which covers social rented or shared ownership), exemptions for charities (for buildings in operational use), and for self-build.
18. Charging Authorities can introduce discretionary relief, in addition to existing CIL relief exemptions for certain areas, as identified in the CIL Regulations (as amended). The local authority must approve and publish a statement for CIL discretionary relief to be offered within its area.

Main Considerations for the Council Safeguarding Implications

19. None to be considered

Public Health Implications

20. Secure housing is a basic human need and is essential to maintaining and improving health. Enfield's Joint Health and Wellbeing Strategy both references and links to the Council's Housing and Growth Strategy accordingly. Increasing capacity within the housing sector in Enfield will therefore further help to meet housing needs.

Equalities Impact of the Proposal

21. An Equalities Impact Assessment (EQIA) has been prepared alongside this report, equalities impacts have been fully considered as a part of this process. Local authorities have a responsibility to meet the public-sector duty of the 2019 Equality

Act. The act gives people the right not to be treated less favourably because of any of the protected characteristics. We need to consider the needs of these diverse groups when proposing new policies so that our decisions do not unduly or disproportionately affect access by some groups more than others.

22. An Equality Impact Assessment has been completed to identify mitigation measures that may be required. It has identified there are not expected to be any negative impacts arising from introduction of Discretionary Social Housing Relief in the borough. There are expected to be benefits from the introduction of the Discretionary Relief to support the delivery of Affordable Housing in the borough.

Environmental and Climate Change Considerations

23. None to be considered.

Risks that may arise if the proposed decision and related work is not taken

24. Reduced opportunities for the council to secure affordable market sale homes should the discretionary social housing relief not be introduced. This would result in dwellings still being liable for borough CIL.
25. We anticipate there may be a small number of proposals coming forward to deliver discounted market sales as an affordable housing product within the London Borough of Enfield following amendments to the CIL regulations and introduction of CIL Regulation 49 (7B) (a) condition 6 which allows for mandatory CIL relief to be granted where a dwelling is discounted by at least 30% of its market sale value.
26. Schemes unable to meet CIL Regulation 49 (7B) (a) condition 6, can still offer dwellings below 80% market value to be deemed an affordable housing product however in the absence of the DSHR policy would remain liable for Enfield CIL, which could impact on the viability and deliverability of the scheme.
27. As it is at the council's discretion to grant DSHR to proposals where the council believe viability is not a limiting factor on the scheme it can still charge CIL on such developments.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

28. This policy could result in reduced CIL income for the council, however there is an opportunity to support the increased delivery of affordable housing products available to qualifying residents.
29. Under the CIL regulations where a qualifying dwelling cannot be sold in line with the regulations and a disqualifying event takes place the local charging authority will require compensation at an amount to be determined from the liable party under the agreed planning obligation entered into. The council need to ensure ongoing monitoring processes are in place to ensure if a disqualifying event takes place it is not missed, and enforcement is pursued.
30. Development Management and the Housing and Regeneration would monitor and notify of enforcement action that may be required if a disqualifying event takes place to inform the Infrastructure Planning Team of enforcement actions that may be required in relation to CIL or S106 planning obligations

Financial Implications

31. The introduction of the DSHR policy will enable the council, at its discretion, to accept the provision of affordable housing (discounted market sale dwellings) and grant relief from CIL liability in appropriate cases where the development does not qualify for mandatory social housing relief. This would mean that the borough would not be collecting CIL from these types of development, thereby reducing its CIL income.
32. Detailed financial assumptions have been set out in Appendix 2, Table 02, for projected CIL charges against unit types within the four CIL charging zones in the borough. The calculations related to CIL can be complex, it is not feasible to estimate the total CIL liability or CIL relief for future unknown schemes that may benefit from DSHR.
33. It is anticipated the loss of CIL to the Council will be the buffer between 70 – 80% of DMS dwelling and schemes that apply for DSHR will do so because viability prevents them from marketing DMS homes at below 70% of the Market Sales Values where mandatory CIL relief would have been granted in the first instance.
34. Any loss in CIL income is anticipated to be from smaller schemes (i.e. the number of dwellings is between one and nine) where National Planning Policy Framework (2021) does not require affordable housing to be delivered.
35. It is considered that any reduction in CIL income will be offset by the benefits arising from delivery of affordable homes held in perpetuity and would benefit residents who qualify under the Councils Intermediate Housing Policy (July 2020).

Legal Implications

36. Under the Community Infrastructure Regulations 49A(2)(c)(i) &(ii) a planning obligation should be entered into prior to the first sale of the dwelling to ensure any subsequent sale of the dwelling is below 80% of its market value and/or the liability to pay CIL in relation to the dwelling remains with the liable party (person granted discretionary social housing relief).
37. CIL liability is discharged after first sale, therefore if a disqualifying event takes place during subsequent sales, without a planning obligation in place the qualifying dwelling could be sold at market rate and the Council will be unable seek financial compensation for the loss of an affordable dwelling. Therefore, a Planning Obligation should be set out to ensure if a disqualifying event takes place the council can seek to recover monetary compensation from the liable party in relation to the affected property.

Workforce Implications

38. The council will be required to monitor qualifying developments and the respective individual dwellings within each scheme that benefit CIL relief under the DSHR policy. Monitoring will be required to take place in perpetuity in line with the planning obligation entered into.
39. Officer time will be required within both the Development Management Team and Infrastructure Planning Team, in addition to the Housing Team and Legal Team to assess, administer and monitor applications that seek and are granted DSHR, like the requirements in place at present.

40. Within the Development Management Team, the provision of affordable housing will need to comply with the relevant planning policies and where schemes do not meet the policy targets in terms of quantum, unit and tenure mix, a third-party viability testing would be undertaken during the planning application stage at the applicant's cost. This would need to be undertaken with or without the Discretionary Social Housing CIL Relief, therefore the impact on officer time is limited.
41. Within the Infrastructure Planning Team, CIL liable schemes are reviewed to ensure CIL is calculated accurately on all schemes, including those where Mandatory Social Housing Relief is to be applied, due to the complex nature of CIL calculations. It is anticipated schemes that will seek DSHR will be those that previously would have sought Mandatory Social Housing Relief but due to viability will seek to secure DSHR in relation to DMS units. There may be an increase in officer time required where schemes that are not required in planning policy to deliver affordable housing seek to provide DMS, this is the case for the Naked Homes schemes.
42. The Housing Team will mainly be responsible for monitoring the affordability and eligibility compliance of the DMS units.
43. Any scheme with DMS requires a S106 planning obligation to be in place to ensure DMS units are maintained as affordable units in perpetuity. This will require ongoing monitoring for any notification of a disqualifying event. There may be future cost and resource implications resulting in enforcement where a disqualifying event takes place however this would be applicable for a DMS unit whether it is eligible for Mandatory or Discretionary Social Housing Relief.

Property Implications

44. DSHR will only be granted to developments where it can be demonstrated the developer cannot deliver affordable dwellings of 70% or below their Market Sales Value.
45. The proposals in this report relate to all property developments throughout the Borough, not just the Council's own developments. As such, the policy proposals will affect the Council in the same way as any other developer bringing forward new housing in the Borough.
46. As such the implications for the Council will be felt in any its own developments caught within the ambit of the policy proposals and these will be taken into account on a case-by-case basis as they come forward.

Other Implications

47. **Procurement Implications:** The proposals to update on community infrastructure levy charge, under the Community Infrastructure Regulations 2010 do not in themselves have any direct implications on Procurement.
48. The Council has a Sustainable and Ethical Procurement Policy that was approved at Cabinet February 2022. Services need to ensure that all procurement activity (specifically over the threshold) is aligned to this policy, specifically those related to supporting social value and delivering Council objectives and plan.

Options Considered

49. There is no requirement to introduce Discretionary Social Housing Relief within a charging authorities' area. Consideration has been given to do nothing and not

introduce the DSHR policy. This option has been rejected as it excludes some affordable housing products from being eligible for CIL relief, this may prevent some schemes from coming forward as affordable housing due to viability factors. The introduction of the DSHR aims to address this gap.

50. Detailed consideration has been given to the preferred option of introducing the DSHR policy within Enfield and how this would support the Council in its objective to deliver affordable housing in its area.

Conclusions

51. Income from CIL liable developments plays a role in supporting the Council to deliver infrastructure projects to mitigate the impact of development in its area. Whilst introducing DSHR may slightly reduce the Borough's income from CIL this will be compensated for by helping to deliver much needed affordable housing that may not have otherwise been viable to deliver within Enfield.

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Date of report

Appendices

Appendix 1: Enfield Council Community Infrastructure Levy (CIL) STATEMENT REGARDING DISCRETIONARY SOCIAL HOUSING RELIEF

Appendix 2: Justification and recommendations for the adoption of the Discretionary Social Housing Relief (DSHR) policy in the London Borough of Enfield

Appendix 3: Equality Impact Assessment (Discretionary Social Housing Relief)

Appendix 4: Equality Impact Assessment (LBE Intermediate Housing Policy (Adopted 2020))

Background Papers

The following documents have been relied on in the preparation of this report:

- The Community Infrastructure Regulations (2010) (As Amended)
- The Council Plan 2020-2022
- LBE Intermediate Housing Policy (2020)