

Committee: Scrutiny

Date: 6 March 2025

Title: Establishment of a Community Infrastructure Levy (CIL) for Uttlesford

Portfolio Holder: Cllr John Evans, Cabinet Member for Planning, Infrastructure and Stansted Airport

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Summary

1. This report outlines what a Community Infrastructure Levy (CIL) is, why it would be beneficial to establish one for Uttlesford, and how the council can go about implementing it in order to start charging and collecting CIL income in 2026. The establishment of a CIL is a Corporate Plan priority and thus officers have already commenced background work to support its establishment.
2. Grant funding and specialist support is available from Essex County Council (ECC) to bring forward a CIL, including the production of a CIL viability study. ECC has recently supported Colchester, Epping, and Castle Point councils in this way. This report therefore recommends proceeding with the exploration of bringing forward a CIL by engaging with the support being made available by ECC. Uttlesford officers have already carried out preliminary work including negotiations with ECC and identifying and costing input from required specialists.
3. This paper is intended to be taken to Cabinet on 27 March 2025 to seek agreement to (i) commission a full CIL viability study to assess the potential for a levy to be applied to and charged upon new development in the district (it will then provide the council with recommendations on appropriate potential CIL rates), and (ii) use the financial and specialist support being made available through Essex County Council.

Recommendations

4. That Scrutiny Committee provides its views and any recommendations with regards the process and approach set out for the implementation of CIL.

Financial Implications

5. No direct costs arising from this report. If agreed, ECC provide funding (up to £20k) and people resources (valued at up to £40k) to carry out the work. This is

on the basis that an equivalent sum is subsequently collected as part of the CIL income and utilised to fund ECC-supported projects within Uttlesford (local transport, schools etc) within the first five years of CIL coming into operation. Bearing in mind the types of projects CIL can be spent on (see paragraph 6) funds are very likely to be used on ECC supported projects regardless of whether or not the council makes this commitment to ECC.

Background Papers

6. National Planning Practice Guidance [Community Infrastructure Levy - GOV.UK](https://www.gov.uk/guidance/community-infrastructure-levy)

Impact

Communication/Consultation	The draft CIL charging schedule would be subject to public consultation, likely in June/July 2025.
Community Safety	NA
Equalities	NA
Health and Safety	NA
Human Rights/Legal Implications	Governance arrangements will need to be in place at time of adoption (early 2026).
Sustainability	Once adopted, CIL could be used to support the delivery of 'green' infrastructure.
Ward-specific impacts	Potential positive impact on all wards.
Workforce/Workplace	Use of ECC resources to enable UDC Team to focus on Local Plan over the summer.

Situation

Background and Overview

7. 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.
8. 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 must be set out within a CIL Charging Schedule, where the local authority can set various rates for a range of different development types. It may also be set differentially in different parts of the district should there be marked differences in viability across the district. Higher value areas may end up with a higher rate than lower value areas.
 9. 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. It requires one round of public consultation and is subject to an independent examination (a simplified version of the Local Plan examination).
 10. 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 current Government has confirmed it will not be implementing the Infrastructure Levy, and the current CIL approach will therefore continue for the foreseeable future. Even if Local Government Reform goes ahead and Uttlesford becomes part of a larger unitary council, the CIL would still be applicable to the geographical area of the district as it exists now.
 11. The CIL rates must 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 (developers cannot seek to negotiate them down by reference to other viability measures). Exemptions and discretionary relief can be applied in certain circumstances (perhaps for charities, affordable housing and the like). Funding obtained through the Levy must be used to deliver infrastructure needed to support development in the area.
 12. It is expected that Uttlesford will adopt a new Local Plan in early 2026. A CIL Charging Schedule can be timed to come into force at around the same time. The Council has already produced an Infrastructure Delivery Plan (IDP), which identifies infrastructure projects required in the district and identifies how developer contributions and other funding sources could be used to support their delivery. The IDP highlights the need for additional sources of funding to support the delivery of infrastructure in the area.
 13. CIL provides a mechanism to obtain additional infrastructure funding, alongside other funding, namely section 106 legal agreements (S106). 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 (IFS). 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, smaller development in the area

to also contribute towards the delivery of the school or related development (a multi-use games area at the school for example).

The Process of Producing the Uttlesford CIL

- 14.** A CIL Charging Schedule sets out the levy rates for an area. 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) require the production of a CIL Charging Schedule to include the completion of the tasks listed below (which include proposed timescales for 2025) prior to undertaking the examination in public.

Regulation 14 (April):

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.

Officers have already scoped this and carried out background work in liaison with the consultants the council used to produce the viability evidence for the local plan. As such, it can be completed very quickly.

Regulation 16 (by July):

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 Council's Statement of Community Involvement. The draft Charging Schedule would be brought to Cabinet for agreement prior to consultation. The PPG recommends consultation takes place for a minimum of 4 weeks.

It is envisaged that at this stage the council runs a public exhibition in the council offices; a stakeholder workshop with agents / developers; and a workshop for council and parish council councillors.

Regulation 17-18 (by Sept):

Review and assess consultation representations and amend the draft Schedule to take account of comments as necessary.

Regulation 19 (Oct-Nov):

Seek Cabinet approval for submission of the draft CIL Charging Schedule (October) and subject to agreement, 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.

15. Following the submission of the draft Charging Schedule to the Planning Inspectorate, an appointed inspector will 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 one or two days. There are often limited consultation responses to discuss and few participants compared to a local plan examination. It is far less resource intensive for the Council than a local plan examination.
16. Depending on the examination timetable (which like the local plan is entirely up to the Planning Inspectorate) CIL could then be adopted around April 2026 and become applicable to planning applications from then on. It is envisaged that at this time the council should also refresh and update our adopted **Developer Contributions SPD** in order that CIL is referenced throughout.

Benefits

17. In comparison to the current approach of collecting developer contributions towards new infrastructure through Section 106 agreements, CIL provides a simpler, complementary and more transparent process to collect funds. There are a range of benefits provided by the introduction of CIL, including:
- CIL collects contributions from a wide range of developments, including smaller developments (for example, a single new house) which currently would not provide any contributions towards new infrastructure.
 - CIL will give the council greater flexibility to set its 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.
 - CIL provides developers with clarity about the level of contributions which are required from any development and provides transparency for local people.
 - CIL is non-negotiable and cannot be negotiated down by developers.
 - CIL is arguably fairer, as it relates the contribution required to the size of the development in terms of new floorspace.
18. While there are many benefits provided by the introduction of a CIL, the government notes it may not be justifiable in all areas of the country. The introduction of a CIL must be evidenced by the identification of an aggregate infrastructure funding gap that demonstrates a need for it. The PPG outlines that any significant funding gap identified should be considered sufficient evidence of a need for the introduction of a CIL. Uttlesford can evidence such a need.
19. The Uttlesford IDP identifies infrastructure requirements throughout the district, seeking to address existing needs and needs associated with growth being

allocated through the emerging Local Plan. The Infrastructure Delivery Schedule presented within the IDP identifies a significant amount of new and improved infrastructure needed in the area, and these all need funding. Unfunded projects could therefore form the infrastructure funding gap required to demonstrate a need for the introduction of a CIL.

Key Points

Who Pays the CIL?

20. 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.

21. Generally, 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 Government's self-build criteria¹
- buildings into which people do not normally go (an enclosed sub-station for example);
- buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery (a stand-alone plant room for example);
- structures which are not buildings (such as pylons and solar arrays);
- specified types of development which the council decides should be subject to a 'zero' rate as outlined in the Charging Schedule.

22. Developments granted through retrospective applications (section 73A of the Town and Country Planning Act 1990) are not able to obtain relief or exemption from the levy (other than the minor development exemption).

How Does it Work with S106?

23. 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.

24. The Uttlesford IDP sets out the current and future infrastructure projects required in the district. It is likely that essential infrastructure items which are

¹ The exemption is applicable to homes built or commissioned by individuals for their own use. They must then remain living there for three years. If they move earlier they must pay CIL retrospectively.

directly related to supporting the delivery of new development proposals will continue to be funded through S106 agreements.

How Would the Council Collect the Money?

- 25.** Liability to pay 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. Any planning permissions issued once CIL is adopted are liable even if the application itself was submitted before CIL was adopted.
- 26.** In cases where a developer refuses to pay, the council may take enforcement action. In the extreme we can use a Community Infrastructure Levy Stop Notice, which prohibits development from continuing until payment is made. There is also a final option whereby we could apply to a magistrates' court to make a liability order allowing the council to seize and sell assets of the liable party. Such powers have rarely been required in other councils.
- 27.** The CIL 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 and report this to Members at Reg 19 stage.

How Much Money Will UDC Raise?

- 28.** This will depend on the CIL rates recommended through the production of the viability study and the agreed proposed approach to charging CIL. It will also depend on the economy in terms of how much development is commenced each year. What can be said is that other councils with similar levels of development coming forward to Uttlesford are predicted to attract reasonable sums of infrastructure funding (in Essex, larger councils like Chelmsford attracted £2.13m; and Southend £456k in 2023/4).

Potential for Variations Across the District

- 29.** CIL rates for an area are identified based on the conclusions of the 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 may therefore be different across areas where there are significant variations in components which inform the calculation of a CIL rate (such as land prices, house prices, development costs etc). If such variations are identified within the district, the viability study will likely recommend the use of variable CIL rates.

How Would the Council Handle the Money?

- 30.** Following the adoption of a Charging Schedule, UDC would be recognised as a '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. The council will likely need a part-time (perhaps rising to full-time) specially trained administrative officer to administer it. The council's existing software (IDOX and Exacom) can be used to administer CIL.

- 31.** An Infrastructure Funding Statement (IFS) 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.
- 32.** While the Council could consider an area-based approach to distributing CIL funds (i.e. spending funds only where 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 (and most common) that 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 to be determined by Members and can be amended at any time depending on the particular needs of the area over time. Governance arrangements in respect of this will need to be established by March 2026.
- 33.** Members would determine how funds are distributed between organisations and projects. Precisely how this will work will require further Member agreement. Funding obtained through the levy must be used towards infrastructure which supports growth in the district.

How Will Parish Councils Benefit?

- 34.** The Council must pass 15% of receipts arising in an area to the relevant parish or town council (PC or TC). This rises to 25% where the PC/TC has a 'made' neighbourhood plan (even where it is an older plan). This is termed the 'neighbourhood portion / fund'. It is envisaged there will be more neighbourhood plans coming forward by 2026 and so more areas will gain maximum benefit from CIL.
- 35.** The neighbourhood fund can be spent by a PC/TC on "the provision, improvement, replacement, operation or maintenance of infrastructure...[or] ..anything else that is concerned with addressing the demands that development places on an area". UDC would have a monitoring role where monies that it believes are being inappropriately spent can be reclaimed or monies unspent after five years can be reclaimed for the "district pot". In any financial year when a Parish receive, hold or spend CIL monies they are required to produce a funding statement which must be published on their website and submitted to UDC.

Next Steps

- 36.** Subject to Cabinet approval, the viability study will assess appropriate CIL rates and from there a draft charging schedule can be drawn up.

- 37.** Support will be provided via ECC's consultants. A memorandum of understanding (MoU) has been agreed with ECC at officer level to enable access to this support, including grant funding to be used to commission a viability consultant to produce the CIL viability study.
- 38.** Following the production of the CIL viability study, officers would review the emerging conclusions and recommended rates to confirm that a CIL would be appropriate for the district. Subject to officers' satisfaction with the recommended CIL rates, the ECC specialist consultants would begin producing a draft CIL Charging Schedule and associated Regulation 16 consultation materials for further consideration by Cabinet (likely in June / July) prior to their formal publication.
- 39.** To summarise the route forward, Cabinet would be brought the draft charging Schedule for review prior to consultation (likely in June); then the consultation responses and final version for review (likely in October). Following the examination it will be brought before Members for adoption along with proposed governance arrangements (likely April 2026). UDC then starts charging developers.
- 40.** All dates are to be confirmed and must work around the Local Plan examination dates (which are not yet known).

Alternatives

- 41.** The Council could remain reliant upon the use of S106 agreements only in order to obtain developer contributions. This tends to extract no contributions from non-major developments (less than 10 dwellings) and so will result in less income than if CIL was adopted. Thus, there is more chance that without CIL some infrastructure projects identified within the IDP will remain unfunded for longer.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
CIL does not go ahead, whether it is found unviable or fails at examination.	1 – Unlikely, as officers and specialist consultants in place to deliver project.	2 – Loss of up to £60k in public money if fails although ECC will not claim this back from UDC. Otherwise, no difference to	Team and specialists in place. Following tried and tested preparation methods.

		the current position.	
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1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.