

Report for: **Cabinet**

Date of Meeting:	21 October 2021
Subject:	Harrow Community Infrastructure Levy (HCIL) – approval of Discretionary Social Housing Relief policy / statement
Key Decision:	Yes – policy / statement applies to all wards and has financial implications
Responsible Officer:	Beverley Kuchar – Interim Chief Planning Officer
Portfolio Holder:	Councillor Graham Henson, Leader of the Council; Strategy, Regeneration, Partnerships & Devolution Portfolio Holder
Exempt:	No
Decision subject to Call-in:	Yes
Wards affected:	All wards
Enclosures:	Appendix 1 - Discretionary Social Housing Relief policy / statement

Section 1 – Summary and Recommendations

The Community Infrastructure Levy (CIL) is a power which enables the Council to raise funds for infrastructure from new development. Harrow adopted its CIL Charging Schedule on 16 September 2013 and has been charging CIL since 1 October 2013.

Charging authorities are permitted under the Community Infrastructure Regulations 2010 (as amended) to offer a number of discretionary reliefs from a charge to CIL. For these provisions to be applied, a charging authority needs to publish statements about the availability of each in its area.

This report seeks Cabinet's approval for a policy that will enable the Council to offer discretionary social housing relief to affordable housing that does not meet the requirements for mandatory social housing relief.

Recommendation:

Cabinet agree the Discretionary Social Housing Relief policy / statement set out in Appendix 1.

Reason: (for recommendation)

The Community Infrastructure Regulations 2010 ('CIL Regulations') requires charging authorities publish statements about the availability of discretionary social housing relief in its area for such relief to be applied.

Section 2 – Report

1.0 Introduction

- 1.1 The Community Infrastructure Levy (CIL) is a charge where Charging Authorities (typically local authorities) collect contributions from new developments in their area, in order to fund new infrastructure support growth. It is applied at a rate per square metre of net new floor space, depending on development type.
- 1.2 Various exemptions, or ability to apply for relief are available under the CIL Regulations 2010. These include mandatory social housing relief (covering social / affordable rented or shared ownership tenures), exemptions for charities (for buildings in operational use), and for self-build dwellings. In addition, Charging Authorities may introduce discretionary relief for certain areas identified in the CIL Regulations. For CIL discretionary relief to be offered, the Charging Authority must approve and publish a statement to that effect. One such discretionary relief relates to social housing relief for affordable housing that does not qualify for mandatory relief under the CIL Regulations.
- 1.3 This report proposes a policy / statement that will allow the Council to offer discretionary social housing relief and outlines the rationale for doing so.
- 1.4 The Council also collects CIL on behalf of the Mayor of London ('MCIL'). MCIL is used to fund strategic transport infrastructure, such as Crossrail / Elizabeth Line. This report and proposed policy / statement does not cover MCIL.

2.0 Options considered

- 2.1 Harrow currently does not offer discretionary social housing relief as it has not previously adopted a policy enabling this. The option to introduce such a policy did not exist at the time the Council adopted its

CIL charging schedule in 2013, with the option being introduced by amendments to the CIL Regulations in 2014. Since that time there has been no pressing need for such a policy to be introduced and the Council has the option to continue not to have a policy.

2.2 However, recently the potential benefit of a policy in ensuring that wider social or economic development objectives are not adversely affected by CIL has become evident through the granting of planning permission for a specific development proposal to which the policy would apply; details of that development and the general benefits and costs of introducing the discretionary policy are addressed below .

2.3 If the Council was not to adopt the policy, developments such as the 'Pocket Living' scheme on the former Halfords site, Sheepcote Road (see section 5 below) may not proceed in Harrow.

3.0 Background

3.1 As noted above, Harrow currently does not offer discretionary social housing relief as it has not previously adopted a policy enabling this. The Council has however adopted a discretionary policy on 'In Kind Land and Infrastructure Payments', which was adopted by Cabinet on 10 March 2016 (minute 356). This policy enables the Council to accept land or physical infrastructure in-lieu of monetary payment of CIL and was used to facilitate the provision of the Greenhill Library as part of the Harrow Square development, College Road, Harrow.

4.0 Current situation

4.1 Mandatory Social Housing Relief is a mandatory CIL discount that can be applied to most social rent, affordable rent, and intermediate rent dwellings, provided by a local authority or private registered provider, and shared ownership dwellings. The vast majority of affordable housing granted permission in Harrow is able to benefit from mandatory social housing relief from CIL and there has been no pressing need to introduce a discretionary policy that would apply to other forms of affordable housing.

4.2 Mandatory social housing relief can also apply to dwellings where the first and subsequent sales are for no more than 70% of their market value ("First Homes") as a result of changes to the CIL Regulations in 2020. To be eligible, a planning obligation (via a 's106 agreement') must be entered into prior to the first sale of the dwelling to ensure that any subsequent sale of the dwelling is for no more than 70% of its market value. Regulation 49 (as amended by the 2015 Regulations and the 2020 (No. 2) Regulations) defines where such social housing relief applies.

4.3 A charging authority may offer separate discretionary relief for dwellings sold for no more than 80% of their market value subject to specific criteria set out in regulation 49A(2).

5.0 Why a change is needed

- 5.1 The Government's recent introduction of the 'First Homes' affordable housing tenure extends mandatory social housing relief to properties that are sold at no more than 70% of their market value as the Government considers that the 30% discount makes them 'affordable'. Such homes (i.e. discount market sale) are considered an 'intermediate' affordable housing tenure (shared ownership being another example of intermediate tenure, but where only part of the property is purchased, and the rest rented from the developer).
- 5.2 There may however be instances where discount market sale properties offered at no more than 80% of market value are considered to make a positive contribution to the affordable housing stock within Harrow. Whilst a lower level of discount (20%) compared to First Homes, they still fall within the definition of affordable housing in the National Planning Policy Framework (NPPF) but are not eligible for mandatory social housing relief.
- 5.3 The proposed Pocket Living development at the former Halfords site, 11 Sheepcote Road, Harrow (planning reference P/3305/20) is one such example. This scheme was approved at the Planning Committee meeting on 17 March 2021. It proposes 100% affordable housing, in the form of 1 bed 1 person units sold at no more than 80% of market value. The 100% affordable housing offer exceeds the strategic affordable housing targets of 40% and 50% in the Harrow Local Plan and the London Plan respectively. Additionally, the applicant was able to demonstrate the proposed discounted sale homes would be more affordable than options in Harrow's private rented sector housing and also shared ownership housing (which qualifies for mandatory relief). Therefore, whilst not offering a mix of affordable housing tenure (typically weighted towards affordable rent / social rent tenures that benefit from mandatory relief), the scheme was able to be supported.
- 5.4 Given the ongoing evolution of affordable housing tenures, products and delivery models, other schemes that make a beneficial contribution to the borough's affordable housing stock but not meet the requirements for mandatory relief could also be proposed.
- 5.5 However, as it currently stands, the Council does not have a policy allowing discretionary relief. By adopting such a policy, all schemes that are sold at a 20% discount to market and make a positive contribution to the boroughs affordable housing stock will have an opportunity to make an application for relief from CIL which can be considered on a case-by-case basis having regard to the proposed statement.

6.0 Proposed Policy / Statement

6.1 Appendix 1 includes the proposed 'Statement of Availability on Discretionary Social Housing Relief under Regulations 49A and 49B'.

6.2 The proposed statement allows the Council, at its discretion, to offer CIL relief for discounted market sales. This refers to housing units being sold at 80% or less of their market value. The ability to offer this discretionary relief was introduced under the February 2014 amendments to the CIL Regulations. To be able to offer the relief, a charging authority needs to publish a statement about how discounted market housing will be 'allocated' in its area, to the extent that the authority is responsible for 'allocating' that housing type. The meaning of 'allocation' in this context is not entirely clear in the CIL Regulations. It is considered that it should be interpreted as meaning that the charging authority should set out its approach to how discounted market units should be brought forward for sale (for example, to people who meet certain income criteria).

6.3 In relation the requirement to set out the approach to how discounted market units should be brought forward for sale, the proposed Statement in Appendix 1 indicates:

For the purposes of regulation 49B(1)(a)(iii) of the CIL Regulations 2010, intending claimants for this relief should note the following. Where a proposed development includes housing of the type for which discretionary social housing relief is claimed, the Council will require the entry into a planning obligation in the form of a section 106 agreement in terms that are acceptable to the Council. Those terms will generally include a requirement that sales of dwellings for which this relief is made available are targeted in the first instance towards lower income households who have a connection (through living or working) with the London Borough of Harrow in accordance with the GLA's Intermediate income requirements. Intending purchasers of individual units will need to confirm their agreement, through the terms of their purchase, to these requirements.

6.4 Requiring the developer to enter into a S106 agreement will secure the 'benefits' of the proposed affordable housing that justify the discretionary relief being given. It is noted that some boroughs (Wandsworth) have been more detailed in their discretionary relief policies (i.e. marketing arrangements, specifying income levels etc). Including such detail in the policy itself is considered to limit flexibility and risk becoming outdated. The proposed approach secures the benefits of the affordable housing via S106 agreement, with the draft policy / statement outlining the key matters to be addressed. Without binding commitments secured through a S106 agreement, the scheme would not be eligible for discretionary social housing relief.

6.5 For a discounted market sales scheme qualifying for Discretionary Social Housing Relief, the calculation of relief will follow the same methodology as mandatory Social Housing Relief (that is, the relief

which can be claimed by developers providing rented or shared ownership social housing), i.e. relief will be 100% of CIL liability.

- 6.6 As noted above, Harrow, alongside other boroughs, have granted planning permission for schemes such as those promoted by Pocket Housing, who provide a form of discounted market sales but do not have relief from CIL. The basis of offering CIL relief would be to stimulate and encourage new providers for the intermediate housing market. A number of boroughs have adopted such a policy, including Lambeth and Wandsworth.

7.0 Implications of the Recommendation

- 7.1 The main implication will be to expand the range of developments where social housing relief will be applicable. In such instances, Harrow CIL will not be payable on that part of the development that constitutes discount market sale units being sold at no more than 80% of market value, in perpetuity.
- 7.2 The financial impact of allowing discretionary relief is anticipated to be modest as there has been limited interest in discount market sale units in Harrow since the implementation of Harrow CIL in 2013 and the introduction of discretionary social housing relief in amendments to the CIL Regulations in 2014. Additionally, the Government's new First Homes discount market sale tenure is anticipated to become the predominant form of discount market units due to Government policy prioritising this form of intermediate affordable housing tenure. Such units are eligible for mandatory social housing relief.
- 7.3 The proposed relief policy could potentially impact upon the delivery of low-cost rent tenures (such as London Affordable Rent), a priority in Harrow, reflected in both the Local Plan and the Harrow Housing Strategy) by encouraging the provision of the discounted market sale units and also impacting upon overall financial viability of a development (and therefore overall level of affordable housing). The impact is expected to be minor as the overarching Local Plan policy / priority remains low-cost rent tenures and any provision of discount market sale properties (at 20% discount) instead of / at the 'expense' of low-cost rent tenures would need to have broader public benefits (such as 100% affordable housing provision compared to the 40% target in the Harrow Local Plan) in order to be granted planning permission. Additionally, as noted above, the discretionary relief policy will be largely superseded by development of First Homes tenures (30% discount rather than 20% discount), which will benefit from mandatory social housing relief under the CIL Regulations.
- 7.4 The overwhelming need for affordable housing in Harrow is for London Affordable Rent and Social Rent homes that are affordable to households on the Council's Housing Register. The Council's Housing Service support the proposed policy which will assist the provision of housing to Harrow first time buyers such as the approved Pocket Living scheme, as long as it does not lead to this tenure hindering the

negotiation of the most needed types of affordable housing. These issues are addressed in 7.3

Ward Councillors' comments

- 7.5 As the statement / policy would apply to all wards, comments from individual ward councillors were not sought.

Performance Issues

- 7.6 Adopting the statement will assist in bringing forward development sites where discount market sale units not eligible for mandatory social housing relief. This will assist in the Council demonstrating a five-year housing supply (of schemes granted permission or likely to come forward in that time, relative to Harrow's housing target) and passing the Housing Delivery Test (housing completions measured over the previous three years, relative to Harrow's housing target), two key performance measures in the planning system.

- 7.7 Paragraphs 7.1-7.2 address financial performance implications.

- 7.8 Staffing implications are modest given the limited interest in discount market sale units and any requests for discretionary relief would be dealt with using the same processes as for mandatory relief.

Environmental Implications

- 7.9 The application of discretionary CIL relief for social housing will not have any direct environmental implications. Any development will be assessed for environmental implications as part of the planning process.

Data Protection Implications

- 7.10 The application of discretionary CIL relief for social housing will not have any specific data protection implications. Data will be processed using established CIL processes.

8.0 Risk Management Implications

- 8.1 Risks included on corporate or directorate risk register? **No**
- 8.2 Separate risk register in place? **No**
- 8.3 The relevant risks contained in the register are attached/summarised below. **N/A**

8.4 The following key risks should be taken into account when agreeing the recommendations in this report:

Risk Description	Mitigations	RAG Status
Non-compliance with legislation	<ul style="list-style-type: none"> ▪ Draft report and statement reviewed / approved by HB Law / Monitoring Officer ▪ Approval of any relief applications reviewed / agreed by an officer more senior to that who considers any request. 	Green
Not introducing the discretionary relief policy may mean some developments do not proceed	<ul style="list-style-type: none"> ▪ Introducing the policy recommended in this report would mitigate this risk. 	Green
The cost of introducing the policy (in the form of foregone CIL income) could be greater than the benefit (in the form of affordable housing that may not otherwise be built if policy not introduced).	<ul style="list-style-type: none"> ▪ Policy only applies if a eligible development secures planning permission. The grant of permission means the benefit of the scheme has been assessed and found to be positive ▪ The draft policy / statement includes requirements for any benefits of the scheme (i.e. affordable housing provision above the minimum required by policy) to be secured by S106 planning obligations legal agreements in order to be eligible for discretionary relief. ▪ As noted in the report, the proposed policy has been prompted by a specific proposal (but others would also benefit) but recent changes to Regulations mean that similar types of affordable housing (but sold at a greater discount) will automatically benefit from social housing relief. It is therefore unlikely the discretionary relief policy is likely to be utilised at a significant rate going forward. ▪ The impact of the policy (number of schemes to which discretionary relief is granted, monetary value of relief granted) will be monitored and withdrawal of the policy 	Amber

Risk Description	Mitigations	RAG Status
	considered if costs deemed to outweigh the benefits.	
The introduction of discretionary social housing relief for affordable housing could potentially result in a reduction in CIL receipts although it is difficult to quantify the value. This would mean less funding for the Council to spend on its capital infrastructure.	<ul style="list-style-type: none"> ▪ The impact of the policy (number of schemes to which discretionary relief is granted, monetary value of relief granted) will be monitored and withdrawal of the policy considered if monitoring indicates an unacceptable impact upon funding for the Council to spend on its capital infrastructure. 	Amber
Discretionary relief process is abused	<ul style="list-style-type: none"> ▪ Statement drafted to be precise as to when discretionary relief will be granted. ▪ Assessment of planning applications will include the merits of the proposed discount market sale units in meeting housing need in the borough (i.e. typically the focus in on affordable housing that is eligible for mandatory relief, but in some instances, other non-eligible forms of affordable housing maybe acceptable). 	Green
Disqualification events are not identified and applicable CIL payments secured.	<ul style="list-style-type: none"> ▪ S106 planning obligations agreements will secure the discount market sale requirements in perpetuity (i.e. beyond the seven-year requirement for CIL relief) and put in place monitoring / reporting arrangements. 	Green

9.0 Procurement Implications

9.1 No procurement implications arise as a result of the proposed statement.

10.0 Legal Implications

- 10.1 The legal basis and implications of the proposed statement are addressed in the body of the report above.
- 10.2 Part 3 of the Planning and Building Control Scheme of Delegation agreed by the Planning Committee on 12 December 2018 gives the Chief Planning Officer authority to 'consider and determine claims for relief or exemptions from liability to pay CIL' (paragraph 5) – the proposed discretionary social housing relief policy will be administered under that delegated authority.

11.0 Financial Implications

- 11.1 The introduction of discretionary social housing relief for affordable housing could potentially result in a reduction in CIL receipts although it is difficult to quantify the value. This would mean less funding for the Council to spend on its capital infrastructure.

12.0 Equalities implications / Public Sector Equality Duty

- 12.1 An Equalities Impact Assessment (EQIA) has been undertaken as the proposed statement represents a new policy (with potential financial implications) that could have an impact upon groups with protected characteristics.
- 12.2 The EqIA found the provision of affordable housing generally has either a positive or indeterminate impact upon groups with protected characteristics. The proposed discretionary relief statement facilitates an alternative form of affordable housing (discount market sale units sold at 80% of market value or less) and is therefore also positive. Potentially in facilitating this form of affordable housing (an intermediate tenure), this could impact negatively upon low-cost rent tenures but overarching Local Plan policy would continue to prioritise such tenures.
- 12.3 The EqIA concluded that there are no anticipated adverse influences under any protected characteristic.

13.0 Council Priorities

- 13.1 The proposed statement will help deliver the Council priorities relating to tackling poverty and inequality by facilitating a wider range of affordable housing tenures. It will also facilitate building homes by extending social housing relief to a wider range of affordable housing tenures. It will also indirectly support health and social care inequality objectives by facilitating high quality accommodation with the associated health benefits of this. It will also stimulate economic activity during construction and by increasing the population within the borough.

Section 3 - Statutory Officer Clearance

Statutory Officer: Jessie Man

Signed on behalf of the Chief Financial Officer

Date: 13 September 2021

Statutory Officer: Jimmy Walsh

Signed on behalf of the Monitoring Officer

Date: 15 September 2021

Corporate Director: Dipti Patel

Signed off by the Corporate Director Community

Date: 7 October 2021

Head of Procurement: Nimesh Mehta

Signed by the Head of Procurement

Date: 10 September 2021

Head of Internal Audit: Susan Dixon

Signed by the Head of Internal Audit

Date: 6 October 2021

Mandatory Checks

Ward Councillors notified: NO, as it impacts on all Wards

EqlA carried out: YES

EqlA cleared by: Shumaila Dar, Head of Equality, Diversity and Inclusion, 7 October 2021

Section 4 - Contact Details and Background Papers

Contact: David Hughes, Planning Policy Manager, 02087 366082, david.hughes@harrow.gov.uk

Background Papers:

Harrow CIL Charging Schedule: [Community infrastructure levy – Harrow Council](#)

National Planning Policy Guidance (Community Infrastructure Levy) - [Community Infrastructure Levy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/community-infrastructure-levy)

Pocket Living / Halfords – Planning Committee report and minutes: [Agenda item - 1/02 Halfords P/3305/20 \(harrow.gov.uk\)](https://www.harrow.gov.uk/committees/planning-committee/2020-21/1-02-halfords-p330520)

Equalities Impact Assessment (EqIA) – 7 October 2021

Call-in waived by the Chair of Overview and Scrutiny Committee

NO

Appendix 1

LONDON BOROUGH OF HARROW

COMMUNITY INFRASTRUCTURE LEVY

STATEMENT REGARDING AVAILABILITY OF DISCRETIONARY SOCIAL HOUSING RELIEF

In accordance with Regulations 49A and 49B of the Community Infrastructure Levy (CIL) Regulations 2010, Harrow Council hereby gives notice that Discretionary Social Housing Relief is available in the London Borough of Harrow.

This statement is effective from 1 November 2021.

Discretionary Social Housing Relief relates to a chargeable development that includes one or more 'qualifying dwellings' under Regulation 49A. In order for a dwelling to be a 'qualifying' dwelling for these purposes, a number of conditions (specified in the CIL Regulations) must be satisfied. These include the requirement that the dwelling must be sold for no more than 80% of its open market value at the time of sale.

There may be instances where the development ceases to be eligible for discretionary social housing relief.

For further information on this relief and how to apply for it please see Regulations 49 to 54 of the CIL Regulations 2010.

For the purposes of regulation 49B(1)(a)(iii) of the CIL Regulations 2010, intending claimants for this relief should note the following. Where a proposed development includes housing of the type for which discretionary social housing relief is claimed, the Council will require the entry into a planning obligation in the form of a section 106 agreement in terms that are acceptable to the Council. Those terms will generally include a requirement that sales of dwellings for which this relief is made available are targeted in the first instance towards lower income households who have a connection (through living or working) with the London Borough of Harrow in accordance with the GLA's Intermediate income requirements. Intending purchasers of individual units will need to confirm their agreement, through the terms of their purchase, to these requirements.

The Council will work with developers and others wishing to bring forward schemes potentially eligible for this relief to compile details of potential individual purchasers within the Borough who are likely to meet the criteria relating to household income and local connection (contained in any section 106 agreement) for sales of dwellings that are eligible for this relief. The Council will not maintain a waiting list but will work with partners in finding applicants to purchase accommodation. Within the framework outlined here, it will be for individual buyers and sellers to agree on sales and purchases in the usual way.

Should the developer be unable to sell all the units to households in accordance with the Council's policy and the section 106 agreement provisions for the sale of dwellings eligible for CIL Discretionary Social Housing Relief, then CIL will be liable on the relevant dwellings and on the relevant proportion of the "qualifying" communal development.

Note: *Discretionary Social Housing Relief is available only in respect of the Harrow CIL and does not apply in respect of liability for the Mayor of London's CIL.*