

READING BOROUGH COUNCIL

REPORT BY DIRECTOR OF ENVIRONMENT, CULTURE AND SPORT

TO:	STRATEGIC ENVIRONMENT, PLANNING & TRANSPORT COMMITTEE		
DATE:	19 <sup>th</sup> March 2014	AGENDA ITEM:	12
TITLE:	COMMUNITY INFRASTRUCTURE LEVY - CONSULTATION ON DRAFT CHARGING SCHEDULE		
LEAD COUNCILLOR:	CLLR TONY PAGE	PORTFOLIO:	REGENERATION, TRANSPORT AND PLANNING
SERVICE:	PLANNING	WARDS:	ALL
LEAD OFFICER:	ALISON AMOAH	TEL:	0118 9372286
JOB TITLE:	PRINCIPAL PLANNER	E-MAIL:	Alison.amoah@reading.gov.uk

**1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1 The purpose of the report is to set out the key issues arising from the consultation on the Preliminary Draft Charging Schedule for the Community Infrastructure Levy (CIL) (Feb-April 2013) and to seek approval to consult on a proposed Draft Charging Schedule (Appendix 1), the next stage of consultation.
- 1.2 Council officers have prepared a Statement of Consultation, which includes a summary of the key issues raised regarding the Preliminary Draft Charging Schedule, This is attached at Appendix 2. This has fed into the production of the Draft Charging Schedule and further supporting evidence/ background information.
- 1.3 Additional viability work was commissioned following the Preliminary Draft Charging Schedule consultation.
- 1.4 Evidence to support the Council's CIL along with the Council's proposed CIL rate or rates, will be published for consultation. Following consultation on the Draft Charging Schedule, subject to there not being a need for any major changes, it will be submitted for examination by an independent person appointed by the Council. Once adopted, the Council will collect CIL from developers on commencement of development.
- 1.5 Once CIL is in place it will still be possible to secure Section 106 for affordable housing, employment and skills training, and site-specific mitigation. A draft revised Section 106 obligations SPD will be also consulted on, alongside the Draft Charging Schedule for CIL. This document identifies the types of site related infrastructure for which obligations will be sought in line with the relevant legal tests as set down in Regulation 122 (2) of the CIL Regulations and reiterated in the National Planning Policy Framework. This is the subject of a separate report to this Committee.

**2. RECOMMENDED ACTION**

- 2.1 That Committee note the results of the consultation on the Preliminary Draft Charging Schedule and the contents of the Statement of Consultation at Appendix

2, and approves the Council's responses as highlighted in shaded boxes in that Statement.

- 2.2 That Committee approves the CIL Draft Charging Schedule, attached at Appendix 1, for consultation for a period of 6 weeks.
- 2.3 That Committee approves the Draft Regulation 123 List, attached at Appendix 3, (the list of infrastructure types and projects) that it is intended CIL would be used for, once it is in place.
- 2.4 That SEPT Committee gives delegated authority for the Head of Planning, Development and Regulatory Services to make minor changes, if required, before Submission to the Secretary of State, in consultation with the Lead Councillor.

### 3. POLICY CONTEXT

- 3.1 The Community Infrastructure Levy (CIL) was brought into force on 6<sup>th</sup> April 2010 by the Community Infrastructure Regulations 2010 (amendments to the Regulations followed in 2011, 2012, 2013 and 2014 (Feb)) made under the Planning Act 2008. The Regulations empower Local authorities to impose a levy, but do not compel them to do so.
- 3.2 The Regulations are supported by statutory guidance and other guidance documents, as listed in the Background Papers Section (10) below. The Guidance provides an overview of CIL along with specific details of how to set charges and the procedures for preparing and introducing a Charging Schedule and what is eligible for CIL relief.
- 3.3 CIL is intended to be the primary means to fund infrastructure in the future. It will be the main source of developer contributions towards infrastructure beyond the immediate needs of the site. It comprises a fixed simple charge rate/s £per m<sup>2</sup> of net additional development of 100m<sup>2</sup> or more or 1 dwelling or more. Payment of this CIL charge is mandatory; there is no scope for discounts or alternative charges<sup>1</sup>.
- 3.4 Certain developments are non-chargeable (i.e. developments into which people do not normally go, such as wind turbines). There are also exemptions from paying CIL for charities. All affordable housing gets relief from CIL. Local authorities can also offer Exceptional Circumstances Relief, and there are provisions in the Regulations to offset CIL through the payment of infrastructure or land in kind.
- 3.5 No CIL will be payable on floorspace subject to demolition or resulting from change of use, where it has been in continuous lawful use for six continuous months within the last three years. Some redevelopment will therefore pay relatively low levels of CIL, as the existing floorspace is taken into account in calculating the charge.
- 3.6 There are various quite complicated rules in relation to CIL charging. It is substantially different to Section 106.
- 3.7 Once CIL is introduced locally, or from April 6<sup>th</sup> 2015, the use of Section 106 will be very scaled back. It will not be possible to use Section 106 and CIL for the same infrastructure and the pooling of Section 106 will be limited to no more than five developments for an infrastructure project or type of infrastructure. Local authorities need to go back to 6<sup>th</sup> April 2010 to determine whether five or more have already contributed before a new obligation is entered into<sup>2</sup>.

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<sup>1</sup> Except in the circumstances where discretionary relief is offered by the Council and a claim is accepted

<sup>2</sup> Pooling restrictions do not apply to affordable housing or obligations for matters which are not infrastructure.

- 3.8 CIL is payable on commencement of development (or in instalments if an instalment policy has been introduced<sup>3</sup>). There are a variety of enforcement measures with regard to the collection of CIL.
- 3.9 CIL will apply to all new consents granted after the date of the introduction of CIL<sup>4</sup>. Once CIL is introduced, any unsigned Section 106 legal agreements will not be able to be pursued. There will therefore be a need for a transitional period after the CIL charging schedule is found acceptable before CIL is introduced.
- 3.10 In order to introduce CIL a local authority needs to provide appropriate evidence. The Government expects that charging authorities will implement the levy where their appropriate evidence includes an up-to-date relevant Plan for the area. There is also the need to provide information to show that there is an overall infrastructure funding gap, and the identification of a CIL infrastructure funding target. An assessment of viability is required, to demonstrate that the proposed rate/s of CIL will not threaten delivery of the Plan as a whole.
- 3.11 CIL receipts are paid to the Council and will go into a single pot. There will be considerable flexibility as to how money will be spent. Funds collected through CIL are not tied to a specific development. There is no requirement that it is spent on the provision of specific infrastructure to mitigate an individual development's specific impacts. It can be used to fund a wide range of infrastructure to support the development of the area. This will be set out in a list known as the Council's Regulation 123 list (at Appendix 3). It is intended for the provision of new infrastructure and should not be used to remedy any pre-existing deficiencies, unless those deficiencies will be made worse by the new development. It can be used to increase capacity or to repair existing infrastructure, if this will support further development, as well as the on-going cost of maintenance.

## 4. THE PROPOSAL

### a) Current Position

- 4.1 The Council consulted on the Preliminary Draft Charging Schedule and supporting evidence during February-April 2013. A total of 33 responses were received and the key issues raised were as follows:
- Specific viability of retirement housing and other specialist accommodation;
  - Need to apply the policy compliant situation within the viability assessments, in particular for affordable housing;
  - Specific representations regarding retail assessments and the inputs used;
  - CIL rates considered to be too high, with insufficient 'headroom' provided;
  - Concern over the viability assessment methodology and the inputs used;
  - Request for the Council to introduce non-mandatory provisions - e.g. exceptional circumstances relief, payment in kind, etc.;
  - Evidence does not adequately consider issues associated with strategic development, including longer construction and delivery timescales and differing risk profiles.

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<sup>3</sup> Note that the CIL Regulations do not require the instalment policy to form part of the charging schedule

<sup>4</sup> Please note that under Regulation 128 no liability to CIL arises in respect of development if, on the day that planning permission is granted for it, it is situated in an area in which no charging schedule is in effect. Planning permission, for this purpose, would include an outline permission. That approval of reserved matters may happen after a charging schedule is in effect would not create a CIL liability.

- Support for an instalment policy and suggested instalments;
  - Further work needs to be undertaken on infrastructure evidence and a draft Regulation 123 list needs to be produced;
  - Provide clarity on definitions of chargeable area, lawful use and CIL liable development, and when CIL will be reviewed.
- 4.2 Further detail of responses received and the Council's recommended responses to these are set out in a Statement of Consultation, at Appendix 2.
- 4.3 At present the Council secures developer contributions negotiated through Section 106 for a whole range of infrastructure projects. These comprise a mix of pooled and individual site related contributions. The receipt of Section 106 planning obligations has generated an average of about £3million per year over the past 10 years. However, irrespective of whether the Council introduces CIL or not, from April 6<sup>th</sup> 2015, the use of Section 106 will be severely restricted, with its main role to provide specific infrastructure to enable a development to happen and affordable housing (which gets CIL relief). It will only be possible to pool up to five obligations, which have been entered into since April 2010. Therefore, if five or more have been pooled for a specific item or type of infrastructure then it will not be possible to pool any more obligations for that infrastructure<sup>5</sup>. This severely limits the use of Section 106 agreements and if the Council does not introduce CIL then there will be a severe fall in developer contributions towards infrastructure provision.

**b) Option Proposed**

- 4.4 It is proposed to introduce CIL so that the Council can continue to maximise benefits from development for infrastructure to support the development of the area. This will be used to fund strategic infrastructure. It is proposed to consult on the Draft Charging Schedule, the next stage document, from the end of March to mid-May 2014.
- 4.5 A system of Section 106 obligations will continue to operate alongside CIL, but such obligations cannot be used to fund the same infrastructure as CIL. Therefore, there is the need to set out those items of infrastructure that it is intended that CIL will fund, through the Regulation 123 List. Those items that Section 106 will fund is set out in a new draft Section 106 Supplementary Planning Document (SPD) that is referred to in a separate report to this committee. The draft Section 106 SPD sets out the development specific mitigation measures, which will continue to be sought through Section 106.
- 4.6 A review of the original viability assessment (finalised in February 2013) has been undertaken by consultants, BPS (Feb 2014). The purpose was to review the original viability work, consider a number of the criticisms contained in various representations and to assess how recent movements in the market may have affected the results. More specifically the consultants were asked to consider:
- The impact of market movements on residential site over 15 units;
  - The impact of market movements on residential sites under 15 units;
  - Review of house price growth forecasts to assess whether the original sensitivity was appropriate and adequate
  - To seek to identify the proportion of total development costs that CIL would represent
  - To consider the out of town retail and non-food markets and to see if there is any evidence to suggest that the original CIL level was overstated.

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<sup>5</sup> It would be possible, however, to include the infrastructure on the Council's Regulation 123 list.

- 4.7 Although there has been an increase in average house prices since the original study, both build costs and land prices have also been increasing. Taken together, build costs and land prices have been increasing faster than house prices and are forecast to continue to do so. In a rising market, competition for land is increased and land values rise in response. This has the effect of squeezing margins and thus viability, at least in the short term. The number of viable scenarios which show higher levels of viability is reduced, as compared to the February 2013 Appraisal. The midpoint of the viable scenarios suggests that a reduced rate of £120/ m<sup>2</sup> per sqm be adopted for residential/ hotels/ sheltered housing/ private rented hostel accommodation (including student accommodation) compared to the £140 proposed in the Preliminary Draft Charging Schedule. This will also ensure that the proposed CIL charge is not set at the margins of viability and allows some headroom. This has been an important factor arising in recent examinations into CIL charging schedules.
- 4.8 In relation to the proposed charge for retail uses, the review of the viability assessment has determined that “it is important to draw a distinction between large format retail warehousing with open A1 consents and similar space limited to the sale of bulky goods”. Additionally there is a “further distinction to be drawn between small scale retailing and retail parks and small convenience stores”. In recognition of these variations it is proposed to amend the retail rates to £150/m<sup>2</sup> for retail (A1) of 2000sqm and more and £0/ m<sup>2</sup> for schemes under 2000sqm Boroughwide (excluding the Central Area). In the Preliminary Draft Charging Schedule a CIL rate of £200/m<sup>2</sup> was proposed for retail outside of the defined Central Area. The proposed reduction in the rate reflects the slight reduction in competition between the large chains for some larger sites and reductions in scale of larger store opening programmes.
- 4.9 The key changes in the Draft Charging Schedule document and additional background evidence produced, arising from the consultation responses on the Preliminary Draft Charging Schedule (2013), and as a result of further viability work are as follows:
- Amended CIL charge rate for residential of £120/m<sup>2</sup> from the originally proposed £140/m<sup>2</sup>
  - £0 rate for care homes (those providing nursing care and fully catered);
  - A differentiation of retail rates based on size with a proposed rate of £150/ m<sup>2</sup> for schemes of 2000sqm and above and £0 for schemes under 2000 sqm;
  - The inclusion of a draft Regulation 123 list, i.e. the list of infrastructure projects/ types that the Council intend to use CIL for;
  - A refined Infrastructure Schedule, which sets out the estimated infrastructure funding gap and that to which CIL could contribute;
  - Details of S106 receipts and projects supported;
  - An amended instalment policy<sup>6</sup>
  - A draft revised Section 106 Planning Obligations Supplementary Planning Document to operate alongside CIL
  - Updated economic viability evidence prepared by consultants BPS.
- 4.10 In terms of the required evidence the Council has an up-to-date LDF comprising an adopted Core Strategy (2008), Reading Central Area Action Plan (2009) and a Sites and Detailed Policies Document (2012).
- 4.11 The Council produced an Infrastructure Delivery Plan in July 2011, and the Schedule forms part of the adopted Sites and Detailed Policies Document (October 2012). This has been updated and refined.

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<sup>6</sup> This is provided for information only as it does not form part of the formal information which needs to be examined.

- 4.12 In recent examinations of CIL it is clear that Examiners require CIL rates to be set within the context of full policy compliance, in particular with regard to affordable housing percentages. The original economic viability assessment for CIL identified that the viable options would only be achieved with affordable housing at a lower percentage than the adopted Core Strategy Policy position, albeit in line with figures which had been achieved over recent years. In order to ensure that development is able to contribute appropriately to the provision of infrastructure within the Borough through CIL, it was decided to progress an Alteration to the Local Plan in respect of Policies CS16 and DM6 to reduce the existing affordable housing target requirements. A separate report on the consultation and next stage is being reported to this Committee.
- 4.13 A number of respondents considered that the inclusion of retirement housing within the general housing category does not adequately reflect the different viabilities of these development types. Our Consultants, BPS noted that although they generally have less efficient gross to net floor area ratios within the built space they can often increase their overall density by virtue of not having to provide high levels of parking or external amenity areas. The view has been taken, therefore, that there is no special case to justify treating sheltered housing schemes as being radically different from other forms of housing. However, having looked in more detail at care homes, where nursing care is provided, it was accepted that the economics of this land use are substantially different from general housing and therefore it is proposed to exclude this from the residential charge.
- 4.14 Issues were raised that strategic sites, such as Station Hill, should be treated differently to other sites and should attract a £0 or reduced CIL charge. It is recognised that some current developments do not 'fit' the scenarios as modelled, but the CIL statutory guidance makes it clear that a broad approach to viability across an area should be taken. The approach adopted has been to include typical site scenarios based on developments identified from allocated and windfall sites.
- 4.15 The view of some respondents is that the proposed rates were set at the margins of viability, allowing no 'headroom'. The updated Viability Assessment, undertaken by BPS, assesses the impact of any market changes since the original Assessment was undertaken (Feb, 2013) and this has been reflected in a reduced rate for residential schemes that allows for 'headroom'.
- 4.16 The CIL Regulations enable local authorities to introduce non-mandatory exemptions. Respondents favour the introduction of Exceptional Circumstances Relief and offering the payment in-kind provisions of the Regulations. It is not the intention of the Council to offer Exceptional Circumstances Relief or payment -in kind at present. The circumstances in which such policies would be likely to be used are considered to be rare and it would impose an additional level of complexity in the administration and management of CIL. Policies of this kind could be introduced at any stage and therefore this will be kept under review, especially in the context of the Draft CIL Regulations, which, for example remove the restriction that a Section 106 agreement needs to be in place which imposes a higher contribution towards infrastructure costs than the CIL liability.
- 4.17 Issues were raised by respondents that a Draft Regulation 123 list (i.e. a list of infrastructure that it is intended CIL will contribute towards) should have been published at the Preliminary Draft Charging Schedule stage. The Draft Amendment Regulations (released in December 2013, post the consultation on the Preliminary draft Charging Schedule, but not yet formally introduced) identify that a draft infrastructure list is appropriate available evidence to inform the preparation of a charging schedule. A Draft Regulation 123 list has therefore been prepared as background for the Draft Charging Schedule and this is attached at Appendix 3.

Committee is asked to agree this list. It is intended to review the Regulation 123 list annually and any changes will be justified and subject to appropriate local consultation.

- 4.18 Up to 5% of the CIL collected within each year can be used for administrative purposes, i.e. for every £1m of CIL collected the Council, can allocate up to £50,000 to cover administration costs<sup>7</sup> from Year 4 onwards.
- 4.19 After the Draft Charging Schedule stage, providing no substantive changes to the document are required, a submission draft Schedule will be submitted to an independent examiner for examination. Once approved by an examiner the Charging Schedule will need to be formally adopted through full Council. The draft programme proposes adoption of CIL by April 2015 to meet the changes to the Section 106 regime as set out in the recently published 2014 CIL regulations (published in February 2013).

**c) Other Options Considered**

*(i) Not introducing CIL*

- 4.20 The CIL Regulations do not require local authorities to introduce CIL. However, post April 2015, the Council will be very much restricted in its use of S106. The impact of this will be that in the absence of CIL, there will be significantly less developer contribution towards infrastructure within the Borough, which will undermine the ability to achieve sustainable growth.

*(ii) Different CIL rates*

- 4.21 The evidence demonstrates that a charge of £120/m<sup>2</sup> for residential can be made without having a significant effect on the viability of development or the provision of affordable housing to be meet policy objectives. Setting the CIL rate too low is likely to significantly reduce the level of CIL funding available for infrastructure.

**5. CONTRIBUTION TO STRATEGIC AIMS**

- 5.1 The introduction of CIL will contribute to achieving the Council's following strategic aims, through providing funding for a range of infrastructure to support development:

- To develop Reading as a Green City with a sustainable environment and economy at the heart of the Thames Valley;
- To establish Reading as a learning City and a stimulating and rewarding place to live and visit;
- To promote equality, social inclusion and a safe and healthy environment for all.

**6. COMMUNITY ENGAGEMENT AND INFORMATION**

- 6.1 It is proposed to undertake public consultation for six weeks. This will involve emailing relevant parties on the LDF team's consultation database, including government departments, adjoining local authorities, developers and agents, other users of the planning system and local interest groups. It is also proposed to advertise the consultation via local press and the RBC website. This will be in accordance with the Part 3 of the relevant CIL Regulations (as amended).

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<sup>7</sup> For years 1-3, the total amount to be used for administration purposes must not exceed 5% of the total CIL collected in that period and any expenses incurred before the charging schedule was published.

## **7. EQUALITY IMPACT ASSESSMENT**

- 7.1 In taking the decision to introduce CIL and to consult on the Draft Charging Schedule the Council has had regard to the general equality duty imposed by the Equality Act 2010 (S.149). This requires public authorities, in the exercise of their functions, to have due regard to the need to eliminate discrimination, harassment and victimisation etc.; to advance equality of opportunity between people who share a relevant protected characteristic and people who do not; and to foster good relations between people who share a relevant protected characteristic and those who do not.
- 7.2 The Council carried out a Scoping Assessment at the Preliminary Draft Charging Schedule Stage (approved by Cabinet February 2013), which is included at Appendix 4. This identified that the process of introducing CIL and the operation of CIL will not have a direct impact on any groups with protected characteristics and that an Equality Impact Assessment (EqIA) is not relevant as it will apply to all developers and will be based purely on the floor area of a scheme. No issues were raised during the consultation to the Preliminary Draft Charging Schedule to suggest that the operation of CIL will have a direct impact on any groups with protected characteristics. A further Scoping Assessment has not been undertaken.

## **8. LEGAL IMPLICATIONS**

- 8.1 The Community Infrastructure Levy was introduced by the Planning Act 2008, and allows a Planning Authority to adopt a charging schedule to secure costs associated with the provision of infrastructure to support the development of an area and that they are funded (wholly or partly) by owners or developers of land (s205(2) of the Planning Act 2008). The charging authority may approve a charging schedule only if the examiner under s212 has recommended approval. Under s213(2) the Council must approve the charging schedule at a meeting of the Council and by a majority of votes of the members present.
- 8.2 The charging schedule will not take effect until it has been published in accordance with the CIL Regulations (as amended)<sup>8</sup>. All relevant consents granted after the CIL implementation date will be required to pay CIL at the approved rate/s as the CIL charge is a mandatory non-negotiable charge. Statutory exemptions exist for charitable development and affordable housing.
- 8.3 Approval is currently sought for consultation on the Draft Charging Schedule, which is the second stage of consultation. This is being undertaken in accordance with Part 3 of the CIL Regulations.

## **9. FINANCIAL IMPLICATIONS**

- 9.1 The costs of setting up, consulting on and administering CIL can be recouped from future CIL receipts as set out in Regulation 61 (1) and (3) of the Community Infrastructure Levy Regulations 2010.
- 9.2 The introduction of CIL should bring in similar levels of revenue per annum as compared to S106 planning obligations.

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<sup>8</sup> The Community Infrastructure Levy Regulations 2010; The Community Infrastructure Levy (Amendment) Regulations 2011; The Community Infrastructure Levy (Amendment) Regulations 2012; The Community Infrastructure Levy (Amendment) Regulations 2013.



### Value for Money

- 9.3 The introduction of CIL will ensure that the Council maximises developer funding towards infrastructure, and on the basis that the Council has the means to recoup administration costs, then it represents value for money.

### Risk Assessment

- 9.4 There are risks associated with not introducing CIL, in that from April 6<sup>th</sup> 2014 (2015 in the draft CIL Regulations 2014) the use of S106 will be very scaled back, with very limited pooling potential (i.e. no more than 5 contributions for an item or type of infrastructure). If the Council do not introduce CIL, then the level of revenue that will be secured from developments will be much less than currently.

## 10. BACKGROUND PAPERS

- Planning Act 2008
- Localism Act 2011
- The Community Infrastructure Levy Regulations 2010 (SI. 948)
- The Community Infrastructure Levy (Amendment) Regulations 2011 (SI. 987)
- The Community Infrastructure Levy (Amendment) Regulations 2012 (SI.2975)
- The Community Infrastructure Levy (Amendment) Regulations 2013 (SI.982)
- Draft The Community Infrastructure Levy Draft (Amendment) Regulations 2014
- Community Infrastructure Levy: Guidance (CLG, April 2013)
- Community Infrastructure Levy Relief: Information Document (CLG, May 2011)
- Community Infrastructure Levy: An Overview (CLG, May 2011)
- Reading Borough Council Section 106 Supplementary Planning Document, Final Revised, adopted November 2013;
- Reading Borough Council Infrastructure Delivery Plan (July 2011)
- Refined Infrastructure Schedule February 2014
- Reading Borough Council Core Strategy (2008)
- Reading Borough Council Reading Central Area Action Plan (2009)
- Reading Borough Council Sites and Detailed Policies Document (2012)
- Reading Borough Council Viability Assessment Report, BPS, Feb 2013
- Reading Borough Council Viability Assessment Report Appendices, BPS, Feb 2013
- Reading Borough Council Updated Viability Assessment Report, BPS, February 2014