

## FOR PUBLICATION

### INTRODUCTION OF A COMMUNITY INFRASTRUCTURE LEVY (CIL) CHARGING SCHEDULE, INFRASTRUCTURE LIST AND INSTALMENTS POLICY (J010R)

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MEETING: COUNCIL

DATE: 14 OCTOBER 2015

REPORT BY: DEVELOPMENT AND GROWTH MANAGER

WARD: ALL

COMMUNITY ASSEMBLY: ALL

KEY DECISION

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FOR PUBLICATION

BACKGROUND PAPERS FOR PUBLIC REPORTS: NONE

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#### **1.0 PURPOSE OF REPORT**

1.1 To inform Members of the outcome of the Community Infrastructure Levy (CIL) public examination and recommend the introduction of a CIL Charging Schedule, Infrastructure List and Instalments Policy.

#### **2.0 RECOMMENDATIONS**

- 2.1 To approve the introduction of a CIL Charging Schedule, as set out in Appendix 1 of this report, collection to commence from 1 April 2016.
- 2.2 To approve the CIL Infrastructure List, as set out in Appendix 2 of this report.
- 2.3 To approve the CIL Instalments Policy as set out in Appendix 3 of this report.

- 2.4 To grant delegated authority to the Development and Growth Manager, in consultation with the Deputy Leader and Cabinet Member for Planning, to develop and implement the processes necessary to manage and monitor the collection and spending of CIL receipts.

### **3.0 BACKGROUND**

- 3.1 The council approved the introduction of a Community Infrastructure Levy (CIL) in December 2011. In accordance with the CIL regulations, viability evidence work was prepared by consultants during 2012 and recommended CIL zones and rates were put forward to Members in 2013 and subsequently approved.
- 3.2 A statutory period of consultation was undertaken on a Preliminary Draft Charging Schedule during 2013. This was the first stage of CIL consultation, the aim being to ensure that stakeholders and the local development market (agents, landowners, etc) had the opportunity to make comments on the CIL viability evidence and proposed CIL charges and zones.
- 3.3 The outcomes of this consultation were reported to Members during October 2013. Members agreed to a further period of statutory consultation on a Draft Charging Schedule which was reported to and approved by Members in 2014. This was the final stage of CIL consultation before the Draft Charging Schedule was submitted for independent examination. The CIL examination subsequently took place over two days during August 2014.
- 3.4 This report will provide a brief overview of the outcomes of the CIL examination and make a number of recommendations as to how the council progresses.
- 3.5 For reference, the proposed CIL Charging Schedule, Infrastructure List and Instalments Policy are attached as Appendices 1, 2 & 3 respectively.
- 3.6 This report and its recommendations were considered by Cabinet at its meeting on 6 October, 2015 and it was resolved that the report and its recommendations be supported.

## **4.0 KEY ISSUES TO CONSIDER**

### **CIL Examination**

- 4.1 The CIL examination was presided over by an Inspector appointed by the Planning Inspectorate and took place during August 2014. A number of consultees requested attendance at the hearing sessions, including agents acting on behalf of local landowners and representatives of the local development industry.
- 4.2 During the hearing sessions, some changes to the CIL evidence base were proposed, including changes to the Infrastructure List and minor revisions to some of the residential viability evidence. There were no proposals to change the CIL charging zones or rates.
- 4.3 The changes to the Infrastructure List related to the addition of education provision to the list and the removal of land remediation. The former was included on the basis that education tends to be a strategic infrastructure requirement and more suited to CIL. The latter was removed on the basis that land remediation ought to be included as a developer cost, rather than as infrastructure provision. Excluding these two changes, the current Infrastructure List is the same as that approved by Members prior to consultation on a Draft Charging Schedule in 2014.
- 4.4 After a brief period of stakeholder consultation on these changes, the Inspector issued his CIL report in November 2014 which provided a recommendation as to how the council should proceed. His report concluded that in setting the CIL charging rate, the Council had regard to detailed evidence on infrastructure planning and the property market and had carried out robust viability appraisals based on sound assumptions.
- 4.5 He considered that the CIL Charging Schedule provided an appropriate basis for the collection of the levy and that there was sufficient evidence to support it. Importantly, the levy was set at a level that would not put the overall development of the area at risk. As such, he made no recommendations for modifications and confirmed that the

CIL Charging Schedule satisfied the requirements of the relevant CIL legislation and should be approved.

#### 4.6 **Next Steps**

4.7 Before a charging authority can introduce a CIL Charging Schedule and begin collecting the levy, the Charging Schedule must be formally approved by resolution of Full Council. The resolution should include an appropriate commencement date (i.e. when a Charging Schedule takes effect and developers begin to pay the levy).

4.8 On approval of a Charging Schedule, and when a commencement date is set, the Charging Schedule should include, in accordance with the CIL regulations:

- i. The name of the charging authority.
- ii. The rates (set at pounds per square metre) at which CIL is to be chargeable in the authority's area.
- iii. A map which identifies the location and boundaries of the zones (based on an Ordnance Survey map; showing National Grid lines; and reference numbers/explanation where necessary).
- iv. An explanation of how the chargeable amount will be calculated.

4.9 The proposed Charging Schedule, including maps of CIL zones and rates, is included at Appendix 1.

#### **Commencement Date**

4.10 It is recommended that the Charging Schedule commences at the beginning of the 2016 financial year. This is expedient for accounting reasons but will also provide adequate time for the Council to have the necessary resources and procedures in place to ensure proper management of the CIL process. The Council is also currently in the process of appointing a new post, who subject to Charging Schedule approval, would be dedicated to CIL matters. It may take a number of months before this person is in post.

4.11 Moreover, this time period will allow the local development industry to prepare for CIL commencement and finalise any

outstanding planning issues or commitments before CIL goes 'live'.

### **Formal Publicity**

- 4.12 After approval of a Charging Schedule and prior to its formal introduction, a charging authority will be required to:
- i. Publish the charging schedule on its website and make it available for public inspection.
  - ii. Indicate when the charging schedule was approved and when it takes effect.
  - iii. Publicise the Charging Schedule by local advertisement.
  - iv. Give notice to those persons who requested to be notified of the approval of the charging schedule that it has been so approved.
  - v. Send a copy of the charging schedule to Derbyshire County Council, as a 'consenting authority' (i.e. a potential recipient of CIL).

## **5.0 OTHER ISSUES TO CONSIDER**

- 5.1 As part of CIL preparation there is a requirement for a charging authority to show what types of infrastructure projects CIL will fund in an Infrastructure List. Currently the Council's Infrastructure List shows that CIL funds will contribute to strategic green infrastructure, transport infrastructure, strategic flood defence and education provision. The full Infrastructure List, including specific infrastructure projects, is included at Appendix 2.
- 5.2 Given that this list includes those infrastructure items the council put forward as a way of justifying the introduction of a CIL, and that it has been the subject of formal consultation, charging authorities should not remove an item from it on an ad-hoc or informal basis.
- 5.3 Should the charging authority wish to make changes to the list, there will be a requirement for appropriate consultation with relevant stakeholders, such as the local community and local development industry (although it is at the discretion of charging authorities as to what consultation methods are utilised and how it should take).

## **CIL Instalments Policy**

- 5.4 Prior to the publication of a Draft Charging Schedule, Members approved the introduction of a CIL Instalments policy. The benefit of an Instalments Policy is that it will allow developers to pay CIL over a number of weeks or months (depending on the level of CIL liability) rather than the total on the commencement of development (which could make it financially problematic for developers, given their business models). The proposed Instalments Policy is shown at Appendix 3. It is recommended that the Instalments Policy is introduced alongside the Charging Schedule and Infrastructure List.

## **Neighbourhood Funding**

- 5.5 Given that 15 per cent of CIL levies will go to those Parish or Town Councils where CIL liable development takes place in their areas, there will be the requirement to liaise with Staveley Town Council and Brimington Parish Council at the outset. The aim should be to establish effective CIL accounting and reporting mechanisms.

## **Changes to CIL Regulations**

- 5.6 Since the previous report on CIL progress, the government has issued further changes to the regulations and guidance relating to CIL, primarily the Community Infrastructure Levy (Amendment) Regulations 2014 (and elements of the 2010 Regulations and changes to the National Planning Practice Guidance (NPPG). These include:

- Introducing an exemption for self-build housing and residential annexes
- Restricting the ability of Local Authorities to 'pool' S106 planning obligations
- Introducing a 10 unit or less threshold on affordable housing contributions (dropped after a successful legal challenge)
- An announcement that Starter Homes will be exempt from both CIL and S106 (further primary legislation will be needed)

- 5.7 In general these changes are unlikely to have a significant impact on the operation of CIL within the borough. The

proportion of applications for self-build housing and residential annexes is very low and unlikely to significantly reduce CIL revenue. The introduction of CIL will take most areas where the pooling of S106 agreements (Public Open Space and Education) out of the S106 regime. The impact of removing Starter Homes from both S106 and CIL is more difficult to assess at this stage as there is no detail on how this is expected to operate.

5.8 The government has announced a review of the operation of CIL, but this is not expected to report until late 2016.

## **6.0 CONCLUSION**

6.1 Given the successful outcome of the CIL examination, the Council is now in a position to approve and set a date for the introduction of a CIL Charging Schedule, as well as an Infrastructure List and CIL Instalments Policy. The Council can then begin collecting the levy with a view to funding local infrastructure improvements.

6.2 It is recommended that the commencement date for a Charging Schedule is 1 April 2016, the beginning of the next financial year. This will be expedient for accounting reasons but will also allow time for the Council to have the necessary resources and procedures in place to properly manage and administer the CIL process.

## **7.0 CORPORATE ISSUES**

7.1 In writing this report consideration has been given to the following corporate issues:

- Capital or revenue financial implications
- Legal and human rights
- Public consultation
- Environmental sustainability and bio-diversity
- Risk management
- Equalities

7.2 Each of these issues is dealt with below.

## **Capital or revenue financial implications**

- 7.3 The financial ramifications of introducing a CIL were reported to Cabinet in December 2011 and in subsequent reports. Importantly, the CIL regulations permit charging authorities to finance initial set-up and ongoing administration costs from up to 5 per cent of CIL receipts. Therefore, over time, it should be possible to recover the costs of preparing the CIL evidence base and Charging Schedule (including examination costs) and other on-going administration or staffing costs.

## **Legal and human rights**

- 7.4 The preparation of CIL has been in accordance with the statutory requirements of the Planning Act 2008 and CIL regulations 2010 (as amended).

## **Public consultation**

- 7.5 All public consultation has been in accordance with the statutory requirements of the Planning Act 2008 and CIL regulations 2010 (as amended).

## **Environmental sustainability and bio-diversity**

- 7.6 Local authorities have a duty to have regard to the conservation of biodiversity in exercising their functions in accordance with the Natural Environment and Rural Communities Act which came into force on 1 October 2006.
- 7.7 The introduction of a CIL will provide funds to protect enhance and promote the borough's existing green infrastructure assets.

## **Risk Management**

- 7.8 The potential risks of introducing a CIL Charging Schedule are shown below. .

Description of the Risk	Impact	Likelihood	Mitigating Action
The introduction of a CIL Charging Schedule makes residential and retail development unviable and deters new development in the borough.	H	L	<p>The Council has the discretion to remove a Charging Schedule at any time and revert to use of S106 alone</p> <p>The CIL charging schedule can be reviewed and up[dated subject to consultation and examination</p>
The Council does not introduce CIL and misses out on much needed funding for infrastructure projects	H	H	The Council utilises a scaled-down Section 106 system in an attempt to remedy infrastructure deficiencies.
CIL funding is not spent on Local Infrastructure needs	H	L	<p>CiL can only be spent on items contained within the regulation 123 list, which can be reviewed and updated if required.</p> <p>The Council is legally required to monitor and publish CIL revenue and spending on an annual basis</p> <p>Formal arrangements will be put in place with Derbyshire County Council to set priorities for CIL spending</p>

## Equalities Impact Assessment (EIA)

7.9 A preliminary EIA has been undertaken and no negative impacts on protected groups have been identified (shown at Appendix 4). The overall impact of the Council's Community Infrastructure levy is positive as it will provide funds for new physical and social infrastructure. These infrastructure improvements will benefit the whole community, however certain improvements such as educational facilities and

improvements to parks and open spaces will be of particular benefit to certain protected groups, in this case young people

## **8.0 ALTERNATIVES**

- 8.1 As the CIL charging schedule must be the subject of statutory consultation and formal examination, it must be implemented as recommended or not at all.
- 8.2 In the event that the CIL charging schedule is not adopted, the only viable alternative is to continue to negotiate infrastructure contributions through the use of Section 106 planning obligations. Unlike CIL contributions, these obligations are negotiated with the developer and are subject to viability considerations which can reduce the level of contributions. The government has also introduced limits on the pooling of S106 contributions which limit the council's ability to combine contributions from multiple developments for large scale infrastructure projects such as highways improvements or new school capacity provision.

## **9.0 RECOMMENDATIONS**

- 9.1 To approve the introduction of a CIL Charging Schedule, as set out in Appendix 1 of this report, collection to commence from 1 April 2016.
- 9.2 To approve the CIL Infrastructure List, as set out in Appendix 2 of this report.
- 9.3 To approve the CIL Instalments Policy as set out in Appendix 3 of this report.
- 9.4 To grant delegated authority to the Development and Growth Manager, in consultation with the Deputy Leader and Cabinet Member for Planning, to develop and implement the processes necessary to manage and monitor the collection and spending of CIL receipts.

## **10.0 REASONS FOR RECOMMENDATIONS**

- 10.1 To allow the council to introduce a Community Infrastructure Levy Charging Schedule and begin collecting developer funds for local infrastructure improvements.

For further information on this report, contact Alan Morey on - Tel  
345790