

WAVERLEY BOROUGH COUNCIL

EXECUTIVE - 6 JUNE 2017

Title:

**COMMUNITY INFRASTRUCTURE LEVY: PRELIMINARY DRAFT CHARGING
SCHEDULE**

**[Portfolio Holder: Cllr Brian Adams]
[Wards Affected: All]**

Summary and purpose:

The purpose of this report is to seek approval from the Executive to consult on the proposed Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule (PDCS). This sets out the Council's approach to collecting developer contributions towards infrastructure. This matter has previously been considered by the Corporate Overview and Scrutiny Committee on 20 March 2017 and the Environment Overview and Scrutiny Committee on 22 May 2017.

How this report relates to the Council's Corporate Priorities:

The implementation of CIL will support the corporate priorities relating to Community Wellbeing, Environment and Value for Money.

Financial Implications:

CIL will make an important contribution towards the funding of infrastructure to support new development.

Legal Implications:

The ability to set a CIL charge is given by the Planning Act 2008 (as amended) and the Community Infrastructure Levy Regulations 2010 (as amended).

Introduction

1. The Community Infrastructure Levy (CIL) is a tariff system that enables contributions to be collected from development towards infrastructure projects. Unlike planning obligations, there are no restrictions on where or on what infrastructure projects CIL funds can be spent, provided projects have been identified by the Council. There is no statutory requirement for local authorities to adopt CIL. However, CIL Regulations that came into force in 2015 have limited the opportunity for the Council to pool developer contributions towards infrastructure using conventional Section 106 agreements.

Outcome from the Corporate Overview and Scrutiny Committee meeting on 20 March 2017

2. This matter was considered at the meeting of the Corporate Overview and Scrutiny Committee on 20 March 2017, when the consultants who have been supporting the Council on the development of CIL, gave a presentation on the prospective CIL rate. At that meeting the Committee raised a number of comments and concerns. The Committee was particularly unhappy about the following:
 - in relation to residential development, the identification of Farnham with the Blackwater Broad Rental Market Area (BRMA), rather than the Guildford BRMA. The Committee felt that the resulting differential in potential CIL charge unfairly disadvantage development in Farnham. The lower rate of CIL could also make Farnham more attractive to developers, as it would be 'cheaper' to develop there; and could influence planning decisions, as development in the east of the borough would generate more CIL revenue for the Council. The Committee felt that the approach needed to be more equitable, and treat the whole of Waverley in the same way.
 - the lack of clarity in respect of the implications for CIL of the Council's obligations in relation to avoidance and mitigation measures that may be required in those areas affected by the Thames Basin Heaths and Wealden Heaths SPAs. For example, CIL was described as a mandatory tax on development, but developers may offer an alternative mitigation, such as providing their own SANG.
 - the lack of indexation of CIL rates to ensure that they kept pace with inflation, without the need for a periodic review to incorporate an inflationary uplift.
 - the lack of clarity around the potential revenue generated via CIL, and the infrastructure funding gap.
 - the lack of a 'plain English' version of the document that would enable members of the public to understand the proposals, and comment.
3. The Committee resolved that these comments should be forwarded to the Executive for consideration. Since the Committee, officers and the consultants have been working to address these matters.
4. In relation to the potential different rates in the different Broad Market Rental Areas (BRMAs), the consultants have undertaken more work to review the viability data, including discussing the matter with relevant housing associations. This has identified that the housing associations do pay lower prices for rental units in the Blackwater BRMA (which includes Farnham), than in the Guildford BRMA that covers the rest of the Borough. In itself, this could be a potential justification for setting a different CIL rate based on the BRMAs. However, officers are also mindful of the concerns raised by Members about the challenges arising from setting different rates for different BRMAs. As a result, the consultants, through their further modelling work, have identified a rate that would apply to the whole Borough (see the section below on 'Setting the charge').

5. In relation to the SPAs, the consultants are still investigating this further to establish whether there is a justification for setting a different CIL rate within the zone of influence of the Wealden Heaths SPAs. As members know, there is already an Avoidance Strategy in place in relation to the Thames Basin Heaths SPA, with defined contributions towards avoidance/mitigation measures based on the number/size of dwellings. These have already been factored into the consultants' viability assessments, resulting in a lower potential CIL rate for developments affected by the Thames Basin Heaths SPA. The position in relation to the Wealden Heaths SPA is less clear cut, with development proposals being assessed on a case-by-case basis. This means that some schemes are required to provide avoidance/mitigation measures and others are not. This depends on the size of the scheme and its proximity to the SPA, but there is no defined formula that can be factored into viability considerations.
6. East Hampshire District Council has adopted its CIL relatively recently and is also within the zone of influence of the Wealden Heaths SPA. Therefore, the consultants are currently investigating the extent to which this issue affected the set CIL rate in East Hampshire. In relation to indexation, officers understand that CIL can be index linked based on the difference between the year when the CIL Charging Schedule took effect and the year that planning permission is granted.
7. In relation to the link between the infrastructure funding gap and the level of CIL, the important point to emphasise is that the CIL rate must be derived from viability evidence. Therefore, in view of the need for infrastructure, the objective is to maximise the potential CIL income without compromising development viability.
8. In relation to the final point, officers will review the working of the Preliminary Draft Charging Schedule prior to consultation to ensure that it is as easily understandable as possible, given the technical nature of the subject matter. It is also the officers' intention that, when the consultation takes place, there will be some FAQs on the web site to provide more explanation on CIL.

Setting the charge

9. The Preliminary Draft Charging Schedule will set out the approach taken by the Council in setting its proposed rate of CIL. The CIL Regulations state that in setting a charge local authorities should strike a balance between a desire to fund infrastructure through CIL and development viability. Therefore a CIL charge should not push the margins of viability or place at serious risk the delivery of development across the Borough. In justifying CIL charges, the Council must demonstrate an infrastructure funding gap and that the charges set are viable.
10. Attached as Annexe 1 is the latest draft PDCS. This has been informed by three key pieces of evidence, namely the Local Plan, the accompanying draft Infrastructure Delivery Plan (IDP) and the viability evidence produced on the Council's behalf by Three Dragons/Troy Planning.
11. As stated above, in order to justify CIL, the Council must demonstrate that there is a funding gap between the infrastructure required and the funding available from other sources. Table 1 in the draft PDCS gives an indication of the potential funding gap, based on evidence from the Infrastructure Delivery Plan (IDP) that was

updated in December 2016 and is one of the evidence documents supporting the Local Plan.

12. Following the Corporate O & S meeting in March, the consultants have undertaken some further viability modelling, particularly in relation to flats, taking account of changes in house prices. Taken together with the original modelling, the consultants have identified a CIL rate for residential development that could be applied across the Borough. In reaching a conclusion on this, the consultants have been mindful of the issue of potential different rates based on the Broad Rental Market Areas (BRMA) (see above). They have identified a potential rate for residential development of **£433** per sq m. In terms of location, the exception to this is in relation to those areas affected by the Thames Basin Heaths SPA. Here a lower rate of **£405** per sq m is proposed, taking account of the current requirement to contribute towards the maintenance of the Farnham Park SANG and the wider access management and monitoring of the SPA itself.
13. The consultants also previously identified that there is the potential to apply a higher CIL rate to residential developments that are below the threshold for requiring affordable housing. This separate rate is set out in the attached draft PDCS.
14. At one stage the consultants were considering whether, based on evidence of build costs, there was a case for setting a higher CIL rate for retirement/extracare housing. However, in the light of the further modelling work, the consultants are recommending that this should now be covered by the general rate indicated above. For non-residential development, the consultants have identified that the only use that can sustain CIL is retail, and the PDCS sets out the potential CIL rates for retail uses.
15. There are some exemptions from CIL. These include affordable housing and self build housing. In terms of CIL receipts, the Regulations require that a meaningful proportion of the income generated locally is passed to local communities. Therefore, 15% of local receipts are passed to the relevant town or parish council. This rises to 25% where a Neighbourhood Plan has been prepared and has passed referendum.
16. It will be noted that the PDCS provides an estimate of potential CIL income. However, it is not possible to provide a precise estimate, given the various assumptions that need to be made about the timing and type of development. The consultants have used the Local Plan housing trajectory as the basis for estimating future CIL receipts. As it stands, the consultants estimate that CIL could generate in the region of £80 - 85 million, linked to housing delivered over the Local Plan period.
17. The PDCS also provides contextual information and background details regarding CIL. This includes a first draft of the Infrastructure (Regulation 123) List. This sets out broadly the types of infrastructure or specific infrastructure projects that the Council may fund in whole or part through CIL. The inclusion of a project or type of infrastructure on the list does not signify a commitment from the Council to fund the listed project or type of infrastructure. Nor does the order of the list imply a preference or priority.

Consideration by the Environment Overview and Scrutiny Committee on 22 May 2017

18. The latest version of the PDCS was considered by the Environment Overview and Scrutiny Committee on 22 May 2017. At that meeting the consultants who have been working on this matter for the Council gave an updated presentation, focussed particularly on the work carried out to address the comments made at the earlier Corporate Overview and Scrutiny Committee and to provide further explanation on the additional modelling that has resulted in a revised proposed CIL charge compared with that originally presented. A copy of the presentation given to the Environment Overview and Scrutiny Committee is attached as Annexe 2.
19. The Environment Overview and Scrutiny Committee made the following comments:-
20. In conclusion, the Committee recognised the need to proceed to the formal consultation stage on the CIL PDCS, and agreed that the proposed PDCS was suitable for this purpose.
21. The Committee thanked the Executive for recognising Corporate O&S Committee's reservations about the proposals in the earlier draft, and for instructing officers to undertake further work with the Council's consultants to address the areas of concern.
22. Members of the Committee suggested that some of the material used to present/explain the report would usefully be included in the actual report as it would help the future reader better understand the report.
23. The Committee was pleased to see that it was no longer proposed to have separate CIL rates for the different BRMAs, that the rate proposed was higher than previously proposed, and was proposed to be charged on flatted schemes. However, there remained some opposition to the principle of offering a lower rate of CIL in relation to developments within the SPA 5km buffer zone which would also be required to make a payment in mitigation of the impact of development (e.g. a contribution to provision of SANG), and a feeling that there should be a single rate of CIL proposed for the whole borough. Other members appreciated that viability requirements mean that the CIL needs to lower where a developer is also paying a SANG contribution.
24. The Committee was also pleased to see that the CIL rate would be index-linked in order to maintain its value against inflationary pressures.
25. The Committee noted that the CIL rates had to pass the viability test for developers, and could not be calculated to meet the infrastructure funding gap. However, the Committee felt that Table 1 in the consultation document should be clearly cross-referenced to the latest Waverley Infrastructure Delivery Plan as the evidence document for the funding gap.
26. The Committee felt that there could be a clearer explanation of the difference between developer contributions under the Council's SPA Avoidance Strategy (comprising a contribution to SANG and a contribution towards the Strategic Access and Management and Monitoring (SAMM) of the SANG) agreed under S106

agreement, and how the provision of new SANG would be funded via CIL as an infrastructure requirement.

27. Notwithstanding the fact that the CIL PDCS was a relatively technical document, the Committee emphasised the importance of ensuring that the consultation document is as clear and transparent as possible, to reduce the risk of misinterpretation and promote useful feedback.

Officer comment

28. In relation to the issue of the SPA, officers remain of the view that it is appropriate to have a different charge within the area affected by the Thames Basin Heaths SPA, because there is a known cost in terms of the contributions required for the maintenance of the Farnham Park SANG and the Strategic Access Management of the Thames Basin Heaths SPA itself, as set out in the adopted Avoidance Strategy. It is right that these additional costs are factored into the viability assessment that determines what level of CIL is appropriate.
29. It is recognised that the provision of new SANG would be treated as infrastructure that could potentially need to be provided through CIL. However, having regard to the remaining capacity of the SANG at Farnham Park, it is not envisaged that the Council will need to find additional SANG for the Thames Basin Heaths for sometime, by which time, the Council is likely to have reviewed its CIL.
30. In relation to the Wealden Heaths SPA, there is not a defined approach to mitigation/avoidance measures set out by Natural England. Planning applications within the zone of the Wealden Heaths are assessed on a case by case basis. The in terms of CIL the expectation is that these would need to be assessed on a case by case basis. However, the consultants are continuing to investigate how this matter has been dealt with in other areas affected by the Wealden Heaths SPA and an oral report will be made on this.
31. In relation to the clarity of the document, officers will be working on some FAQs to sit alongside the consultation material. The consultants have also been asked to provide an Executive Summary for the PDCS.
32. In terms of the list of infrastructure set out in Table 1 on page 16 of the draft PDCS, this is a summary of the information in the Infrastructure Delivery Plan rather than a complete list of projects. Its purpose is to demonstrate that there is a funding gap.

Conclusions and Next Steps

33. Subject to the additional information regarding the Wealden Heaths SPA, and the amendment to include an Executive Summary, the Executive is asked to agree the Preliminary Draft Charging Schedule for consultation. The intention is that this would be quite a focussed consultation with key stakeholder groups including towns and parishes, landowners/developers, business representatives and neighbouring authorities. This was the approach previously, given the technical nature of the subject. Following the consultation, the Council will prepare the Draft Charging Schedule and this will also be subject to consultation prior to the Charging Schedule being submitted for examination.

Recommendation

It is recommended that the Executive approves the Preliminary Draft Charging Schedule, attached as Annexe 1, for consultation.

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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