

Central Bedfordshire Council

Executive - 31/03/2015

Community Infrastructure Levy (CIL) and the Planning Obligations Strategy

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This report relates to the Community Infrastructure Levy (CIL) and Planning Obligations Strategy which is a key decision.

Purpose of this report

1. The report outlines the findings of the CIL viability refresh report, the recommended CIL charges and alternative options and provides an update on the progress and timetable for the adoption of CIL and the revised Planning Obligations Strategy.

RECOMMENDATIONS

The Executive is asked to:

1. **consider the findings of the Viability Refresh Report and recommend to Council the proposed CIL charging rates for:**
 - i) **residential schemes as set out in paragraph 12 of the report;**
 - ii) **non residential schemes as set out in paragraph 16 of the report.**
2. **recommend that Council agrees the Draft Charging Schedule and draft Regulation 123 list for the purposes of publication and submission to the Secretary of State for Examination;**

3. that subject to endorsement by Council authority be delegated to the Director of Regeneration and Business, in consultation with the Executive Member for Regeneration, to:

- i) agree changes to the buffers;**
- ii) agree minor changes prior to publication the Regulation 123 List, future exemptions from CIL and payment plan timeframes;**
- iii) agree minor modifications as a result of the consultation prior to submission; and**
- iv) agree minor modifications during examination if suggested by the Inspector.**

4. that the Draft Revised Planning Obligations Strategy be approved for consultation.

Overview and Scrutiny Comments/Recommendations

2. Overview and Scrutiny recommended the following:

- that the Committee support the CIL charging rates detailed in the report with a buffer of 30% on residential rates but that the Executive should review the evidence base and explore the feasibility of a 20% buffer;
- that the Draft Charging Schedule be approved for formal publication and submission for Examination as detailed in the report; and
- that the Strategy be approved for consultation alongside the publication of the Draft Charging Schedule as detailed in the report.

Background

- 3. CIL is a discretionary development land tax, which the Council can choose to adopt to help fund local infrastructure. CIL charges are fixed, non-negotiable and enforceable. They are based on simple formulae which relate the size of the charge imposed to the size of the proposed development, expressed as a charge per square metre (psm) of net additional floorspace created.
- 4. The process for setting and implementing the Charge is set out in the CIL Regulations 2010 and Amendments in 2011 and 2012. There is also new Statutory CIL Guidance (December 2012) and further regulation will be forthcoming. Under the CIL Regulations changes to the use of s106 Planning Obligations will become law from 6 April 2015. This will significantly restrict current infrastructure funding practices whether or not a local CIL charge has been adopted.

5. S106 agreements will be focused on addressing the specific mitigation required by a new site specific development. CIL has been developed to address the broader impacts of development. So s106 can still be charged on certain site specific infrastructure whereas CIL is a levy on all new development. CIL can be charged by geographical area, by floorspace and by types of development.
6. The introduction of CIL is achieved through an Examination in Public which follows two rounds of public consultation. Charging authorities may revise their charging schedule in whole or in part. Any revisions must follow the same processes as the preparation, examination, approval and publication of a charging schedule.
7. Regulation 123 List
In order to clarify what types of infrastructure will in future no longer fall under S106, the Council will publish alongside the Draft Charging Schedule, a list of infrastructure types and projects that it intends will be, or may be, wholly or partly funded by CIL. This is known as the Regulation 123 list. The list can be changed to keep it up to date, or to take into account changes in circumstances and / or infrastructure needs identified in the future. When charging authorities wish to revise their regulation 123 list, they should ensure that these changes are clearly explained and subject to appropriate local consultation. However, where a change to the regulation 123 list would have a very significant impact on the viability evidence that supported examination of the charging schedule, this should be made as part of a review of the charging schedule. The draft list is included in Appendix B.
8. Refreshed Viability report and proposed new rates
In January 2013 the Council commissioned Three Dragons to complete a viability study to assess what CIL rates could be charged. These figures were input into the Preliminary Draft Charging Schedule. The Council initially consulted on its Preliminary Draft Charge Schedule (PDCS) in January / February 2013. The majority of respondents considered the proposed rates to be too high as evidenced by comparison with other authorities, whilst a number felt the burden of paying CIL should be more widely shared by both residential and business sectors.
9. At the request of Members, officers jointly recommissioned Three Dragons, EC Harris and Lambert Smith Hampton to refresh the original viability report of January 2013 which was used to set the initial CIL charging rates in the Preliminary Draft Charging Schedule.

10. A new viability report was completed in January 2015. The study is based on the assumptions in the 2013 Three Dragons January 2013 Affordable Housing and Community Infrastructure Levy (CIL) study, updated to take into account the policy and guidance changes that have taken place in the interim, along with the additional details emerging from the process of planning for the sustainable urban extensions in Central Bedfordshire, and updated development values, land, build and finance costs.
11. It sets out findings of the viability assessment for residential and non-residential development using a set of policy proposals which take into account the Council's aspiration to set high development standards, continue to secure affordable housing to meet local need and use potential CIL funding to support delivery of necessary infrastructure in the district. It also takes account of the proposed approach to the Sustainable Urban Extensions (SUE's) planned for Central Bedfordshire, where these important development sites are proposed to deliver many of their own infrastructure requirements.
12. The process to identify the CIL rate is to identify the maximum chargeable CIL rate on the margin of what would be financially viable to develop and then to reduce that rate by 30%. This reduced rate is known as a 'buffer'. The consultants have based this 30% 'buffer' percentage on recent decisions by the Planning Inspectorate at CIL examinations'. There has also been an increase in infrastructure and build costs and, land values which has meant that together with the buffer the charge rates have reduced since the previous viability report of January 2013.

The recommended 2015 rates identified are as follows:

Sites of 10 dwellings or fewer in Value Area A - £330/sq m
Other residential development in Value Area A - £130/sq m
Sites of 10 dwellings or fewer in Value Area B - £245/sq m
Residential development in Value Area B - £75/sq m
Sites of 10 dwellings or fewer in Value Area C - £135/sq m
Residential development in Value Area C - £40/sqm
Housing for older persons (sheltered and extra care) - £0/sqm
Residential development on SUEs - £0/sq m

Options for Consideration

13. Buffers
The viability consultants have used a 30% buffer because it is the most commonly supported by Inspectors at Examination. Although the 30% is commonly used, it is not set in case law and other buffer levels have been used elsewhere. In the event that the new rates with a 30% buffer are considered to be too low and unacceptable on sites of 11 units and above the buffer could be varied and lowered having the effect of raising the rate.

This has been done in Leeds where a high value area with increasing values known as the “Golden Triangle” has implemented a lower buffer on the maximum CIL charge. Overview and Scrutiny Committee have supported this option and have recommended to Executive that the evidence is reviewed to identify whether a lower buffer rate of 20% could be justified at Examination. It is considered that CBC, with its proximity to London and good transport links may be able to evidence this.

The 20% buffer scenario is set out below for consideration by Members.

Area	2015(30%)	2015(20%)
A	130/sqm	£147/sqm
B	£75/sqm	£84/sqm
C	£40/sqm	£48/sqm

The figures identified are broadly comparable with our neighbouring authorities with a 30% buffer. If we are to look at our closest neighbouring authority in Bedford Borough their CIL rates are slightly higher as land values are lower in Bedford Borough than they are in CBC. The difference in CIL rates is marginal and the top end CIL rate in Central Bedfordshire (with a 30%) buffer is higher than the highest CIL rate in Bedford Borough.

Sites of 10 units or under

13. The Viability report also suggests that a higher rate could be charged on sites of 10 and below. This is because of the recent change to planning guidance which removed the need to provide both affordable housing and S106 contributions on small sites. This would result in those sites being more viable. However, we would be the only local authority in the region to have a different CIL charge for smaller schemes because the guidance only came into effect on the 28th November 2014. Other neighbouring local authorities have had their CIL in place before this guidance came in.

Commercial Development

14. Commercial Rates have also changed. The analysis has demonstrated that of the non-residential development types considered; only retail uses are currently able to support a CIL.
15. The recommended rates are the following non-residential CIL charges:
 - Out of centre convenience of below 280 sq m trading area £40/sq m
 - Larger convenience retail including supermarkets £85/sq m
 - Out of centre comparison retail/retail warehouse £50/sq m
 - All other uses including town centre retailing £0/sq m

16. **Revised Planning Obligations Strategy**

Central Bedfordshire Council has previously operated a Planning Obligations Supplementary Planning Document (SPD) for the North and for the South of CBC, alongside site specific S106. These Planning Obligations SPDs contained a tariff based approach to planning obligations for a number of contribution types. The CIL Regulations 2010 (as amended) mean that from 6th April 2015 this approach can no longer be applied in Central Bedfordshire. A revised Planning Obligations Strategy has been prepared which will supersede both of these SPDs and they will be formally revoked at the same time. It is intended that the draft Strategy and the draft Charging Schedule are published for consultation together and then the revised Strategy will be adopted alongside CIL later this year.

17. Following the adoption of a CIL Charging Schedule, it is expected that CIL will become the main source of infrastructure funding to be obtained through the planning application process. However, it will still be appropriate to seek S106 contributions for certain items of infrastructure.
18. The split between those infrastructure items that will be funded by CIL and those that can be funded by Planning Obligations is shown in the Draft Planning Obligations Strategy.

Council Priorities

19. CIL revenues may be used to support growth by investing in new infrastructure and could therefore be utilised across all of the following Council's Priorities:
- Enhancing Central Bedfordshire – creating jobs, managing growth, protecting our countryside and enabling businesses to grow.
 - Improved educational attainment.
 - Promote health and wellbeing and protecting the vulnerable.
 - Better infrastructure – improved roads, broadband reach and transport.
 - Great universal services – bins, leisure and libraries.

Corporate Implications

Legal Implications

20. The Community Infrastructure Levy, when approved, will be part of the statutory development framework for the area.
21. CIL was introduced in 2008 by the previous government; it was adopted by the present Coalition in the 2010 CIL Regulations, which have been amended on a regular basis since.

The Government's approach nominates CIL as a development tax to be sought by Local Planning Authorities (LPAs) and seeks to ensure that use of section 106 under the 1990 Planning Act, whilst still extant, is reduced. The 2010 regulations introduced statutory restrictions on the use of s106 agreements including a date, 06 April 2015, after which only a maximum of 5 individual s106 contributions can be pooled towards an infrastructure project. These restrictions will apply whether or not a LPA chooses to adopt a CIL charge.

Financial Implications

22. The 2010 CIL Regulations govern the approach to CIL which nominates CIL as a development tax to be sought by Local Planning Authorities (LPAs) and seeks to ensure that use of section 106 under the 1990 Planning Act, whilst still extant, is reduced. The 2010 regulations introduced statutory restrictions on the use of s106 agreements including a date, 06 April 2015, after which only a maximum of 5 individual s106 contributions can be pooled towards an infrastructure project. These restrictions will apply whether or not a LPA chooses to adopt a CIL charge. The Community Infrastructure Levy will raise funds for the delivery of important infrastructure. The Council has funded the work to date from the existing Development Plan budget.

In financial terms, CIL has a number of advantages over the existing s106 approach to collecting developer contributions in that:

- The levy due is transparent and non-negotiable, based on a cost per square metre (psm) of net additional floorspace.
- The CIL liability becomes due from commencement of development, although the Charging Authority (CA) may adopt phased payments.
- Up to 5% may be deducted at source to cover administrative costs.
- Communities that have a neighbourhood plan or neighbourhood development order (including a community right to build order), and secure the consent of local people in a referendum, will get 25% of the CIL revenues from the development that takes place in their area.
- Local authorities must also allocate at least 15% of levy receipts to spend on priorities that should be agreed with the local community in areas where development is taking place who do not have a neighbourhood plan.
- The Charging Authority decides where and how the revenues are spent, apart from the proportion passed over to parish and town councils.

- More predictable and the cost more certain for developers once established, speeding up planning permissions.
 - Increase fairness by broadening the range of developments contributing to infrastructure costs.
 - Allow the cumulative impact of small developments to be better addressed and appropriate mitigation measures taken.
 - Provide a potential means of funding important sub-regional infrastructure projects.
 - Prove a flexible measure, with relatively few restrictions on its application, enabling Councils to identify and fund the infrastructure they need.
 - Be transparent, charging authorities must report on CIL revenues received and expenditure undertaken for each financial year.
23. From 6 April 2015 s106 cannot be charged via a tariff based approach. The Council has an interim position on s106 contributions that can be secured prior to the implementation of CIL.
24. Many developers have been seeking to gain planning permission for schemes prior to the adoption of CIL, preferring to pay s106 contributions which should by legal definition be directly related to their own sites rather than pay CIL charges for off-site projects.
25. The revised viability study sets out suggested new charging rates. Appendix C explains how these rates compare to the income received from the current S106 arrangements.
26. Although the suggested rates are lower than previously identified, Charging authorities are able to keep charging schedules under review. This means that levy charges can be changed to take account of changes in market conditions so that they remain relevant to the funding gap for the infrastructure needed to support the development of the area.

Equalities Implications

27. Public authorities have a statutory duty to promote equality of opportunity, eliminate unlawful discrimination and to foster good relations in respect of nine protected characteristics; age disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

28. Adequate supporting infrastructure is essential to ensuring that new developments provide residents and occupiers with a good quality of life. Growth should contribute to the formation of neighbourhoods and communities that enjoy and sustain an attractive mix of housing; a wide range of local employment opportunities, shops, schools, faith spaces, health facilities, community and cultural facilities; access to both local jobs and to a range of quality open spaces and countryside.

Sustainability

29. The adoption of CIL and a revised planning obligations strategy will help to ensure that an appropriate level of infrastructure is provided for new development. If services are provided within close proximity to new development then this enhances environmental and social sustainability.
30. CIL can be used to ensure that appropriate measures will secure wider infrastructure improvements providing long-term sustainable development in Central Bedfordshire. The Council's viability assessment for the emerging development strategy considered the impact of CIL alongside proposed policies for resource efficiency (energy and water) and concluded that that these standards were achievable alongside the requirement for developers to pay a CIL charge.

Public Health

31. The adoption of CIL and a revised planning obligations strategy will help to ensure that an appropriate level of health and leisure infrastructure is provided for new development. If residents have good access to leisure facilities then there will be positive outcomes for health and wellbeing. The appropriate provision of medical facilities also has clear public health benefits.
32. Setting and adopting a CIL charge that delivers the emerging Development Strategy will help to meet the Council's duties to promote access to green space, to encourage sustainable transport and to ensure that the built environment maximises opportunities for physical activity. The built environment links closely to mental health, and new developments should actively contribute to acknowledging, or at best addressing social exclusion, both in terms of physical space, but also by facilitating community integration and cohesion. Access to services is equally known to be important to health experience and outcomes. Investment in social and physical infrastructure will therefore help the council to improve outcomes for health and wellbeing

Community Safety

33. We have a statutory duty to consider community safety across all council functions under the Crime and Disorder Act 1998. CIL revenues may be used to fund Police Stations, Community Safety projects and initiatives supporting housing growth, such as school safety zones; safe play areas and other community infrastructure.

Implications for Work Programming

34. The following risks have been identified:
- Failure to deliver the Council's priorities
 - Failure to deliver the necessary infrastructure needed to support development.
 - After 6 April 2015 the Council will be unable to charge for offsite infrastructure requirements, which will result in a loss of income.
 - Failure at examination stage.
35. The above risks can be minimised by endorsing the draft CIL Charging Schedule and draft Revised Planning Obligations Strategy. Although the process of adoption of a CIL charge through examination has inherent risks, these can be minimised by setting rates that are balanced and based on sound evidence.
36. Examiners also have the ability to lower proposed rates well below those sought by CAs, if they feel that the technical arguments do not adequately support such levels or that objectors' concerns that the appropriate balance has not been demonstrably achieved are valid.
37. The Council has received advice from Counsel that it does not need an adopted Development Plan in place, in order to adopt CIL. This has reduced the length of the funding gap until a CIL is in place and the risk that any delay to the Development Strategy will delay the implementation of CIL.
38. In view of the delay in the interim from 6 April 2015 to the adoption of CIL, the Council does intend to maximise the possible level of S106 contributions can be secured by adopting creative approaches to the pooling restrictions.

Conclusion and next Steps

39. The findings of the revised and refreshed viability study have identified lower CIL rates than the previous CIL rates of 2013. The recommended rates of 2015 include a 30% buffer as recommended by Three Dragons this is due to recent decisions at examination which have supported the use of a 30% buffer.
40. However, a Residential CIL rate on schemes of 11 units and above could be set higher by having a lower buffer rate than the standard 30% identified by the consultants. A buffer of 20% buffer can be considered if market evidence supports it. This will increase the CIL revenue for infrastructure and will be more in line with our higher charging neighbouring local authorities such as Dacorum.
41. If the Executive approve the CIL charging rates with a 30% buffer, they will be put into a Draft Charging Schedule which will go out for public consultation before it is submitted to the Secretary of State for examination. Recommendation four gives delegated authority for the Executive member and Director for Regeneration to vary the buffer rates.
42. The current anticipated programme for CIL is as follows:
- Executive 31 March 2015
 - Council 9 April 2015
 - Prepare Final Consultation Draft of Document – April 2015
 - Period of heightened sensitivity – April – May 2015
 - Public Consultation (Regulation 16) 11 May - 4 June 2015
 - Make any changes required – June/July 2015
 - Submit to SOS – July 2015
 - Examination – September 2015
 - Adoption – October/November 2015

Appendices
Appendix A - Draft Charging Schedule
Appendix B - Draft Planning Obligations Strategy
Appendix C - Comparison of CIL and S106 income.
Appendix D - Map of Neighbouring Authorities CIL rates
Background Papers
None.