

**CABINET
15TH JULY 2014**

**DIRECTORATE OF COMMUNITY AND
ENVIRONMENT
HEAD OF PLANNING'S REPORT
NO. PLN1426**

**PREPARATION OF A COMMUNITY INFRASTRUCTURE
LEVY CHARGING SCHEDULE**

1. INTRODUCTION

- 1.1 This report provides an update on current issues that have arisen from revised regulations and legal advice in relation to the preparation of a Community Infrastructure Levy (CIL) Charging Schedule for the Borough. As a result of these, and other concerns about the impact of a CIL charge, agreement is sought to hold the preparation and introduction of a Charging Schedule until there is more clarity about its long term future.

2. BACKGROUND

- 2.1 CIL was introduced in 2010 and is a charge that can be levied on new development to help to pay for infrastructure that is needed to support the impact of development in an area. The charge is introduced by a local authority through the preparation and adoption of a CIL Charging Schedule.
- 2.2 Once a CIL Charging Schedule is in place, CIL is a mandatory, non-negotiable payment. The levy must be charged in £ per square metre on the NET increase in floorspace (which means a discount can be made for recently occupied converted or replacement floorspace). Any new build is only liable to pay if it has at least 100 sq.m. gross internal floorspace or involves the creation of one or more dwellings (even if below 100 sq.m). CIL receipts can be pooled and used towards the provision and maintenance of infrastructure.
- 2.3 Cabinet first agreed to the preparation of a CIL charge for Rushmoor in December 2011 through the agreement to the Local Development Scheme (the Local Plan work programme) which included the preparation of a CIL Charging Schedule. The proposed timetable has been amended several times since then to take account of numerous changes to the legislation.
- 2.4 Consultation was carried out on the first stage of a CIL Charging Schedule (the Preliminary Draft Charging Schedule), in October/November 2012. This proposed a Borough wide CIL charge of £180/sqm for residential developments and £100/sqm for large retail developments.
- 2.5 The introduction of CIL has always been of some concern. The main reasons are:

- The difficulties of funding Special Protection Area (SPA) mitigation measures (SANG¹s) through CIL as some developments (including those where there is no net increase in floorspace and affordable housing developments) would not be liable for CIL and would not therefore fund their own mitigation.
- Anticipated income levels are likely to be lower than income received through S106 because of the types of development that are exempt from CIL, and the fact that on qualifying developments, it is only liable on net additional floorspace.
- Additional resources would be required to implement a CIL charge.

3. COMMUNITY INFRASTRUCTURE LEVY AND SECTION 106

- 3.1 Whilst the introduction of CIL is discretionary, the CIL Regulations also introduce changes to the way in which S106 planning obligations can be used for the funding of infrastructure. The impact of the regulations are that from April 2015, the Council cannot pool more than five S106 planning obligations towards a specific infrastructure project or type. The base date for calculating whether five obligations have been entered into is April 2010.
- 3.2 The Council currently collects S106 contributions towards SPA mitigation measures, transport and open space. A number of projects, including contributions towards Southwood Woodlands, Hawley Meadows and Rowhill SANGs, and a number of open space improvements and transport schemes already have five planning obligations or more towards them and so will be caught by the S106 pooling restrictions from 2015.
- 3.3 If CIL were in place, S106 would remain but this would be for site specific infrastructure (where pooling restrictions are unlikely to apply), the delivery of affordable housing and for Strategic Access Management and Monitoring contributions which do not comprise infrastructure.
- 3.4 If the Council does not have a CIL Charging Schedule in place by April 2015, one of the risks is that there may be less opportunity for using S106 obligations to fund infrastructure in the future. This issue is discussed further in Section 6 below.

4. RECENT CHANGES IN LEGISLATION AND LEGAL ADVICE

Legislative Changes

- 4.1 The CIL Regulations have been amended every year since CIL was introduced. The changes have predominantly resulted in an increase in the types of development that would be exempt from paying CIL. This now includes affordable housing, charities, self-build properties, residential extensions and some vacant buildings. For those developments which are liable, CIL is also only chargeable on additional net floorspace. All these

¹ Suitable Alternative Natural Greenspace

factors have an impact on the amount of revenue that might be received from a CIL charge and might therefore be used to fund infrastructure.

Legal advice on funding SANGs

- 4.2 Legal advice was sought as to whether there were other ways of funding SANGs outside the CIL regime. This advice has identified that contributions towards the 'maintenance' of infrastructure are not caught by the pooling restrictions in the same way that contributions towards the 'provision' of infrastructure are. As the existing SANGs are up and running, contributions are used towards the maintenance of the site as a SANG and therefore future S106 obligations are not caught by the pooling restrictions. This means that the Council could continue to fund existing SANG through S106, as now, although existing SANG capacity is low.

5. Implications for introducing a CIL Charge in Rushmoor

- 5.1 Paragraph 2.5 of this report sets out the main concerns in establishing a CIL charge in Rushmoor.

Funding SPA mitigation

- 5.2 As a number of developments, including affordable housing, would not be CIL liable, this means that if SANGs are to be funded through CIL, that any CIL charge set has to ensure that it covers the SPA mitigation costs of **all** new residential development. Consequently, a significant proportion of the CIL income would need to be apportioned towards SPA mitigation. The fact that some developments would not be liable for CIL also means that there will be developments which do not make a contribution towards improving other infrastructure upon which they may have an impact, unless these impacts are very site specific.
- 5.3 As set out earlier, it may be possible to continue to use S106 planning obligations for funding existing SANGs. A reduced amount of CIL, determined through development viability testing, would then need to be charged to take account of the fact that the S106 costs for a particular development would be higher. However, the resources required to set up and manage the CIL process would remain the same.

Income

- 5.4 An estimate of CIL income has been made compared to income from S106 on all residential applications approved between July 2011 and October 2013. This showed a slightly higher income through CIL. However, 5% of CIL receipts can be used for administration costs and 15% of CIL receipts must be spent in the neighbourhood in which development takes place. These would have the effect of reducing the amount of CIL that could be spent on other infrastructure.

Resources

- 5.5 As set out earlier, the S106 process would remain if a CIL charge were in place, albeit for a reduced level of obligations. In addition, resources would need to be put in place to calculate, collect and monitor CIL, as well as the setting up of governance arrangements to govern the spending of CIL receipts.

Other Proposed Changes to CIL

- 5.6 There has been much discussion in the press and elsewhere about the future of CIL. There is therefore some uncertainty about whether CIL will remain in its current form. Recent speeches by the Government's Chief Planner seem to suggest though that they expect authorities to be putting CIL in place.

6. POTENTIAL RISKS

- 6.1 The main risk in delaying the introduction of a CIL Charging Schedule until after April 2015 is considered to be the ability to continue to seek infrastructure funding through S106 planning obligations, particularly for those schemes where more than five obligations have already been entered into. If an infrastructure contribution cannot be sought to mitigate the impact of a specific development because more than five obligations have already been entered into, then there is a risk as to whether that development can be granted planning permission. However, officers are exploring ways in which the effectiveness of S106 contributions can be maximised to ensure that development can continue to mitigate the impacts which it creates.
- 6.2 Other risks are that the introduction of any new SANGs may comprise the 'provision' of infrastructure rather than the 'maintenance' of infrastructure and may therefore be caught by the pooling restrictions. This will depend on the type of sites proposed for any new SANG and whether there is already any public access and provision of existing infrastructure within it.
- 6.3 In the longer term, there may be some risk to the delivery of infrastructure at the Aldershot Urban Extension, if more than five 'full' applications are submitted rather than implementing the approved schemes through reserved matters applications. This risk is considered to be relatively low at present.

7. SUGGESTED WAY FORWARD

- 7.1 In view of the complexity of CIL, the resources required to establish a charge and to implement it and the likelihood of no financial advantage towards the funding of infrastructure in the Borough, it is proposed that until greater certainty is known regarding the future of CIL under the current, or a future, Government that the introduction of a CIL Charging Schedule be delayed.
- 7.2 This decision should be reviewed later in 2015 once further clarity on the above is known, and there is further experience of working within a more limited S106 process. As set out earlier, this does come with some risks,

particularly to the income available to some open space and transport schemes, and to the determination of planning applications where no provision for the impact upon infrastructure can be provided due to the pooling restrictions. However, it is considered that there would also be a risk to the levels of income available towards some of these types of infrastructure if a CIL charge was introduced.

8. RECOMMENDATION

- 8.1 It is recommended that the introduction of a Community Infrastructure Levy be postponed until further clarity on its future is known later in 2015.

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