

ITEM 9 CIL Examination – Adoption of the Community Infrastructure Levy

Report of the Planning Policy & Transport Portfolio Holder

Recommended:

- 1. That the modifications as set out in the CIL Inspector’s report are approved and incorporated into the Test Valley Community Infrastructure Levy (CIL) Draft Charging Schedule.**
- 2. That the CIL Charging Schedule is adopted.**
- 3. That the Head of Planning and Building in consultation with the Planning and Building Portfolio Holder is authorised to implement the CIL Charging Schedule on a date as soon as is practicable after 1 May 2016.**
- 4. That the Corporate Director be authorised to make changes of a minor nature to improve the presentation.**

Recommended to Council

SUMMARY:

- The CIL Inspector’s final report was received on 21 December 2015.
- Subject to modifications, agreed by the Council during the examination process, the CIL Inspector recommends that the Charging Schedule is approved.
- The purpose of this report is to seek approval for adoption of the CIL Charging Schedule in addition to authorising the Head of Planning & Building to agree a date for implementing the CIL Charging Schedule.

1 Introduction

- 1.1 On the 21 December 2015, the Council received the CIL Inspector’s final report (Annex 1) into the CIL Draft Charging Schedule (DCS) (Annex 2).
- 1.2 In accordance with section 212 of the Planning Act (2008), the Inspector has concluded that the Test Valley CIL DCS provides an appropriate basis for the collection of the levy in the charging area and that the Council has sufficient evidence to support the schedule. The DCS can show that the levy is set at a level that will not put the overall development of the area at risk.

2 Background

- 2.1 The Examination hearing into the CIL DCS took place on 27 May 2015, the purpose of which was to assess whether the CIL rates that the Council proposes are reasonable and viable.

- 2.2 At the hearing session, the CIL Inspector explored a list of mandatory questions to satisfy herself that the CIL rates proposed meet the legislative requirements and are set at a viable rate. These questions covered whether the evidence supported the rates and whether the rates are set at such a level as to allow development to come forward viably.
- 2.3 As part of the process the CIL Inspector has sought a series of clarifications and answers to her queries in order to understand the Council's approach to the proposed rates. The Council's response to these queries have been agreed by the Council¹ in correspondence with the Inspector following the hearing session on 27 May 2015 and were the subject of public consultation (28 July – 1 September 2015). The outcome of the changes made subsequent to the hearing session has resulted in 5 modifications as set out below.
- 2.4 The recommended Modifications can be summarised as follows:
- Clarification that the charging schedule does not apply to that part of the Borough within the New Forest National Park
 - Remove greenfield/previously developed land differentiation for retirement housing
 - Clearer, larger scale maps of the residential charging zones (Annex 3)
 - Amended maps for the strategic sites on an OS base with National Grid lines and reference numbers (Annexes 4 – 8)
 - Modification to the charging schedule in the interests of clarity to confirm other types of development are not liable for CIL
- 2.5 The New Forest National Park authority is the CIL Charging Authority for the southernmost areas of Melchet Park and Plaitford and Wellow Parish which fall within the New Forest National Park. The Inspector recommends that this is made more explicit in the Charging Schedule.
- 2.6 The second of the recommendations regarding the differentiation between greenfield/brownfield land for retirement living development was raised by the Inspector on 9 November 2015. The subsequent change which removed the differentiation between greenfield/brownfield land was not consulted upon as Legal Services advised that it was not considered to have a detrimental impact on any other party. The Council undertook an assessment of retirement living schemes received by the Council over the last 10 years, only one of which was on a greenfield site, therefore the proposed modification would not result in a loss of income for the Council.

¹ Cabinet 8 April 2015 (authorised Head of PP&T to agree minor changes during the examination).

- 2.7 The modification for the maps of the residential charging zones 1 – 4 recommends a larger scale to show the boundaries of the areas subject to differential rates for residential development.
- 2.8 The fourth recommendation of the Inspector's requires that the maps of the strategic sites need to show the national grid lines more clearly to meet the requirements of the CIL Regulations (2010, as amended).
- 2.9 The CIL Charging Schedule will charge for residential and large scale retail development only. The Inspector recommends that wording to states that all other development will have a zero rate of CIL is made more explicit in the Charging Schedule document.
- 2.10 It is recommended that the modifications above are incorporated into the CIL DCS in order to meet the legislative requirements of section 212 of the Planning Act (2008) and thus allowing the CIL DCS to be adopted. The Inspector's report is not binding. However, without the recommended modifications being incorporated, the CIL Charging Schedule will not be legally compliant.
- 2.11 The Council must notify the public of its intention to commence charging CIL. Therefore, following formal adoption of the CIL Charging Schedule at Council, the Council must then set a date for the implementation of CIL.
- 2.12 The Charging Schedule can take effect 2 days following the adoption of the CIL DCS. However, there will be a number of planning applications in the process of being determined, including those with S106 agreements. It would be in the Council's best interests to allow a minimum of 16 weeks between adoption and implementation of CIL to allow for the implementation procedures to be put into place and to allow for sufficient advertising and notification. The lead-in time will also allow major planning applications, particularly for those where the process of S106 negotiations have commenced, to be determined. Until the Council commences charging CIL, the Council will continue to seek contributions, where justified, through the S106 mechanism.
- 2.13 The Draft Charging Schedule document will require refinements in order to incorporate the Inspector's modifications. The word 'draft' will need to be removed and the document renamed the CIL Charging Schedule. So that these refinements can be made and modifications incorporated, it is recommended that the Corporate Director is authorised to make these changes.

3 Corporate Objectives and Priorities

- 3.1 The Council has successfully sought developer contributions in the form of S106 Agreements to deliver local community facilities and mitigate the impacts arising from developments. These are necessary to ensure that communities continue to develop the appropriate additional infrastructure to meet the needs generated by development. With the scaling back of S106 Agreements as a mechanism for funding and delivering essential infrastructure, CIL will provide a critical source of funding for the Borough's infrastructure projects.

- 3.2 The proposals in this report will help ensure that the Council can adopt a CIL Charging Schedule and that charging of CIL can commence to deliver community infrastructure and help fulfil the Corporate Plan aim of ‘encouraging all of our communities to reach their full potential.’

4 Consultations/Communications

- 4.1 The Council has publicly consulted upon the DCS as required by the CIL Regulations (2010, as amended).

5 Options

- 5.1 The Council has 2 options resulting from the publication of the CIL Inspector’s report.

Option 1

- 5.2 The first option is whether to approve the recommended modifications in the CIL Inspector’s report.

- 5.3 With the exception of the Inspector’s second recommended modification regarding greenfield/brownfield land differential rates, all other modifications have been agreed with the Council and have been subject to public consultation.

Option 2

- 5.3 Subsequent to the second option, the Council needs to decide whether to adopt the CIL Charging Schedule or not.

6 Option Appraisal

Option 1

- 6.1 With the exception of the greenfield/brownfield differential rate, the modifications proposed by the Inspector are considered to be minor modifications in the interest of clarity and compliance with the CIL Regulations (2010, as amended).

- 6.2 The Inspector wrote to the Council on 9 November 2015 concerning CIL rates for Retirement Living (RL). The DCS proposed £0 per square metre for RL schemes on brownfield sites and £60 per square metre for RL schemes on greenfield sites.

- 6.3 In the Inspector’s view, the DCS did not meet the CIL Regulations (Regulation 13 regarding differential rates) and that the proposal to charge two different rates for RL on brownfield and greenfield land didn’t relate to use or scale, nor was it identified by geographical zones shown on a map. This wasn’t raised by the Inspector during the Hearing or in subsequent correspondence with the Council after the Hearing. She based her advice on the decision of Rother District Council (East Sussex) CIL Inspector’s report published on 1 September 2015.

- 6.4 The preferred option in response to the Inspector's concerns is to lower the rate for all RL schemes to £0 per square metre across the Borough. The Inspector indicated that this approach would be advantageous as it would result in a reduction to the charge and that there may be a case that no additional consultation would be necessary.
- 6.5 The Council's Legal Services confirmed that as there would be no loss of income and that the single rate of £0 for all RL development would be not disadvantage any party, it was considered that no consultation on this modification would be necessary.
- 6.6 As 4 out of the 5 modifications are considered to be minor and the modification requiring a single rate of £0 for RL development does not have an impact on the Council or other parties, it is recommended that the Council approve the modifications in the CIL Inspector's report.

Option 2

- 6.7 As of 6 April 2015, the Council is no longer able to pool more than 5 separate S106 contributions towards the one item of infrastructure.
- 6.8 The Council risks not being able to secure sufficient funding for infrastructure to support the quantity of development across the Borough being currently undertaken and proposed in the Revised Local Plan.
- 6.9 The Community Infrastructure Levy on the other hand is not bound by any pooling restrictions. The Council has an Infrastructure Funding Gap of approximately £88m, therefore the adoption and enactment of the CIL Charging Schedule is of importance to ensure the Council is in a stronger position to secure infrastructure funding and support the infrastructure needs of Test Valley communities. Therefore, the adoption of the CIL Charging Schedule is recommended.

7 Risk Management

- 7.1 An evaluation of the risks associated with the matters in this report indicate that further risk assessment is not needed because the changes/issues covered do not represent significant risks or have previously been considered by Councillors on 14 January 2014 Cabinet, Item 7 and 8 April 2015 Cabinet, Item 8.

8 Resource Implications

- 8.1 There will be no resource implications for the proposal to seek adoption of the CIL Charging Schedule and to authorise the Head of Planning and Building to agree an implementation date following adoption of CIL.

9 Legal Implications

- 9.1 Legal Services may need to be consulted for advice on the Inspector's modifications.

10 Equality Issues - none

11 Other Issues

11.1 Community Safety – none

11.2 Environmental Health Issues – none

11.3 Sustainability and Addressing a Changing Climate – none

11.4 Property Issues – none

11.5 Wards/Communities Affected – all

12 Conclusion and reasons for recommendation

12.1 The proposal to seek the agreement of the Inspector’s modifications and adopt the CIL DCS will allow the Council to commence charging CIL in a timely manner to maximise opportunities for CIL receipts to be collected and allocated for community infrastructure projects. As such, it is recommended that the CIL Inspector’s modifications are approved and that Cabinet agree to the adoption of the CIL Charging Schedule.

12.2 Planning applications under consideration will need to be determined and appropriate resources allocated in the lead up to CIL coming into effect to enable the implementation date to be met. Therefore, it is recommended that the Head of Planning and Building is authorised, in consultation with the Planning and Building Portfolio Holder, to agree a date for the implementation of the CIL Charging Schedule.

12.3 To reflect the Inspector’s recommended modifications and allow publication of the final CIL Charging Schedule, it is recommended that the Head of Planning Policy and Transport be authorised to make changes to the CIL Charging Schedule.

<u>Background Papers (Local Government Act 1972 Section 100D)</u> Community Infrastructure Levy Draft Charging Schedule			
<u>Confidentiality</u> It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
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