

Wiltshire Council

Cabinet

10 September 2012

Subject: Wiltshire Community Infrastructure Levy – Preliminary Draft Charging Schedule

Cabinet Member: Councillor Fleur de Rhé-Philipe, Economic Development and Strategic Planning

Key Decision: Yes

Executive Summary

The Wiltshire Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule sets out the proposed rates of CIL to be charged on different types of new development in Wiltshire. It is informed by three key pieces of evidence - the submitted draft Wiltshire Core Strategy, the Infrastructure Delivery Plan and an economic viability assessment.

At the Preliminary Draft stage, the Council is undertaking an initial period of consultation on the rates of CIL to be charged on new development. This consultation is not about how Wiltshire's CIL might be spent but rather is focused on the proposed tariffs for different types of new development. The Government is still to report back on the outcome of the consultation on CIL Regulations held last year, which should clarify the level of funding to be made available to local communities.

Comments received through this initial consultation will test Wiltshire's proposed CIL Charging Schedule. The outcome of the consultation and any proposed changes to the CIL Charging Schedule will be reported back to Cabinet in December. This will be followed by a final round of public consultation before it is submitted for independent examination.

Proposals

That Cabinet:

- (i) Approves the CIL Preliminary Draft Charging Schedule at **Appendix 1** as the basis for a six week period of public consultation, as proposed, in accordance with the Council's adopted Statement of Community Involvement.
- (ii) Authorises the Service Director for Economy and Regeneration, in consultation with the Cabinet Member for Economic Development and Strategic Planning, to produce the consultation documentation to accompany the CIL Preliminary Draft Charging Schedule.

Reason for Proposals

To ensure that progress is made on preparing a CIL Charging Schedule that will enable the Council to charge CIL on new development to help pay for infrastructure within the county in accordance with the timetable set out in the recently approved Council's Local Development Scheme. The Council should be in a position to adopt the CIL Charging Schedule prior to April 2014, after which the Council will be severely restricted in its ability to pool infrastructure contributions from new development through the existing mechanism of Section 106 agreements.

Alistair Cunningham
Service Director for Economy and Regeneration

Wiltshire Council

Cabinet

10 September 2012

Subject: Wiltshire Community Infrastructure Levy – Preliminary Draft Charging Schedule

Cabinet Member: Councillor Fleur de Rhé-Philipe, Economic Development and Strategic Planning

Key Decision: Yes

Purpose of Report

1. To:
 - (i) Update Councillors on work undertaken to date in terms of preparing the Community Infrastructure Levy (CIL).
 - (ii) Seek Cabinet approval that the Preliminary Draft Charging Schedule be published for a six week period of consultation.
 - (iii) Set out the arrangements for consultation and next steps.

Background

2. The Wiltshire CIL Charging Schedule, when adopted, will enable the Council to continue pooling contributions from new development across the county to offset a proportion of the costs of delivering local and strategic infrastructure. From April 2014 (or following the implementation of Wiltshire's CIL), the Council will be severely limited in its ability to use the existing mechanism of pooling contributions i.e. planning obligations (generally referred to as Section 106 agreements). The use of Section 106 agreements will largely be limited to securing site-specific infrastructure and affordable housing.
3. As set out in the Council's Local Development Scheme, the timetable for delivering the CIL is as follows:
 - *Oct-Nov 2012* - Preliminary Draft Charging Schedule consultation
 - *Jan-Feb 2013* - Draft Charging Schedule consultation
 - *Mar 2013* - Submit draft Charging Schedule for examination
 - *Apr-Jun 2013* - Independent examination
 - *July 2013* – Adoption

4. Three key pieces of evidence are required to develop a CIL Charging Schedule. These are:
 - (i) An up-to-date local development plan - the submission draft Wiltshire Core Strategy sets out the growth and distribution of new development to be built in Wiltshire up until 2026. CIL is intended to be spent on infrastructure to support this growth.
 - (ii) An infrastructure delivery plan, which identifies the infrastructure required to support this growth. In addition, work has been undertaken to identify the infrastructure funding gap (the gap between the total cost of the infrastructure and the funding available from other sources). For the purposes of meeting the CIL regulations, it is only necessary to demonstrate a funding gap exists in order to justify charging CIL.
 - (iii) An economic viability study, which assesses the effect of implementing a CIL charge on the economic viability of different types of development across Wiltshire.
5. Unlike funds received through Section 106 agreements, CIL revenue does not have to be spent at the site on which it was levied. CIL can be spent on a wide range of infrastructure (e.g. schools, transport, healthcare, open space, leisure, biodiversity, etc.). Currently, CIL is not intended to pay for affordable housing but this may change depending on the outcome of the recent government consultation on Regulations, which is expected in the autumn.
7. As the designated 'Charging Authority', the Council has the option of publishing on their website a list of infrastructure that they intend to fund, wholly or in part, through CIL. The purpose of this list, known as the 'Regulation 123 List', is to avoid developers being charged twice for the same item, or type, of infrastructure. Section 106 agreements cannot be used to ask for infrastructure that is on the CIL list.

Main Considerations for the Council

Developing the CIL Charging Schedule

8. The Wiltshire CIL Charging Schedule has been in preparation since May 2012 once the Core Strategy and its accompanying Infrastructure Delivery Plan was sufficiently advanced. Progress could not be made prior to this because of the requirement to ensure that proposals in relation to CIL are based upon an up-to-date local development plan and an infrastructure planning evidence base.
9. The Council has worked with BNP Paribas to develop the infrastructure evidence base and produce an economic viability report. This work tests the ability of a range of development types throughout Wiltshire to yield contributions towards delivering infrastructure requirements through CIL and has looked at the geographical variations in viability across Wiltshire. Informal discussions have been held with chief officers to inform this work. Proposed levels of CIL have been tested in combination with the Council's other planning requirements, including the provision of affordable housing.

10. The 'Community Infrastructure Levy: Viability Study' sets out recommendations on setting levels of CIL for Wiltshire and can be found accompanying the agenda papers for the meeting on the Council's website at **link to Cabinet agenda**. Hard copies of the Viability Report have been provided to Cabinet Members and available to other Councillors on request. The proposed CIL rates are contained within the Preliminary Draft Charging Schedule at **Appendix 1** to this report. The Executive Summary of the Viability Study is provided at **Appendix 2**.
11. Substantial evidence has been collated in the preparation of the Preliminary Draft Charging Schedule. The proposed Preliminary Charging Schedule is considered to be compliant with the CIL Regulations, government guidance and emerging best practice. Taken together these provide clear advice on producing a CIL Charging Schedule, as set out below:
- (i) In setting the rate of CIL in the Charging Schedule, the Council, as the 'charging authority', must "aim to strike what appears to the charging authority to be an appropriate balance between:
 - Meeting all or part of the infrastructure funding gap; and
 - The potential impact of CIL upon the economic viability of development across its area.
 - (ii) CIL Regulations state that CIL should not be overly complex. CIL is charged on additional floor space per square metre. Some developments in Wiltshire will be mixed-use schemes on sites with existing floor space and a wide variety of charges would make CIL calculation and collection more difficult.
 - (iii) CIL rates must be justified by an objective viability assessment: They cannot be based on wanting to encourage or restrict certain development types or promote specific regeneration locations. In other words, it must be based on economic viability and not on a particular policy stance.
 - (iv) Unlike Section 106 agreements, the CIL Regulations do not allow for CIL to be easily waived or re-negotiated on a site to site basis. It is a charge on the land and if it makes development unviable then the development may not go ahead. Therefore, authorities should not set CIL rates that are at the ceiling of what is considered viable for the majority of their development sites.
12. In summary, the key messages from the government on setting CIL rates are:
- (i) CIL is pro-growth – it should have a positive economic effect on development across Wiltshire.
 - (ii) Whilst the CIL rate needs to be informed by viability evidence, the Council must use its judgement to set an appropriate rate based upon Wiltshire's circumstances.
 - (iii) The CIL rate should not be based upon policy drivers - e.g. they cannot be used to incentivise development in particular localities.

- (iv) The guidance recognises that some individual developments may be unviable because of CIL and that the charging authority cannot rely on 'exceptional circumstances' relief.
13. The Charging Schedule will be subject to independent examination and will need to demonstrate that:
- (i) The charging authority has complied with the required procedures set out in the Planning Act 2008 and CIL Regulations.
 - (ii) The charging authority's draft Charging Schedule is supported by background documents containing appropriate available evidence.
 - (iii) Evidence has been provided that shows the proposed rate would not put at serious risk overall development in the area.

Consultation

14. At this stage, the consultation should focus on the proposed rates of CIL to be charged on different forms of new development and not on how CIL is to be spent. The Localism Act specifies that a 'meaningful proportion' of CIL is to be allocated to communities to spend on infrastructure in their area. Further guidance from Government is anticipated in the autumn
15. It is proposed to publish the Preliminary Draft Charging Schedule and supporting documents for a period of six weeks in accordance with the Council's Statement of Community Involvement and statutory requirements. Supporting documents will include an 'Easy Guide to CIL' (two page leaflet to explain CIL in clear and simple terms) and technical information outlining the evidence underpinning the proposed rates.
16. Consultation is proposed to take place between 1 October and 12 November 2012 and involves:
- (i) Letter or email providing notification of the consultation and a copy of the Preliminary Draft Charging Schedule to the consultation bodies specified in the CIL Regulations 2010 (i.e. town and parish councils, neighbouring authorities and responsible regional authority).
 - (ii) Electronic notification to consultees registered on the Council's online consultation portal and emails/ letters to targeted consultees, such as developers, property agents and landowners.
 - (iii) Publication of an advertisement in local newspapers throughout Wiltshire, the Parish Newsletter and the Wiltshire Magazine.
 - (iv) Notification distributed via the Area Board networks.
 - (v) Consultation documents being made available for viewing at the main Council offices in Chippenham, Devizes, Salisbury and Trowbridge and libraries.
 - (vi) Online publication on the Council's website and consultation portal.
 - (vii) A workshop with commercial and residential developers, property agents and landowners to discuss the implications of the proposed rates of CIL.

Next steps

17. Following the consultation, responses will be considered in order to determine whether any changes are required to the Preliminary Draft Charging Schedule. A Charging Schedule and a consultation report detailing how responses have been taken into account will be submitted to Cabinet in December for approval. Consultation on a final draft Charging Schedule is programmed to take place early 2013 before it is submitted for examination.

Environmental and Climate Change Considerations

18. The emerging Wiltshire Core Strategy sets out the growth and distribution of new development to be built in Wiltshire up to 2026. Growth has implications for the social, economic and physical environment. CIL will help fund the infrastructure required to support sustainable development.

Equalities Impact of the Proposal

19. The Wiltshire CIL Charging Schedule will enable the Council to collect contributions from new development to support a wide range of infrastructure needs across the county. The consultation process aims to ensure that everyone has the opportunity to comment on the Preliminary Draft Charging Schedule.

Risk Assessment

20. It is considered that starting to prepare for CIL implementation at this stage is essential to reducing the risks of not being ready to collect CIL by April 2014 when Section 106 agreements will be restricted to site-specific charging and limited to five pooled contributions. See *Financial Implications* for further details.
21. A delay in the adoption of the Wiltshire Core Strategy could delay the adoption of CIL for Wiltshire.
22. If the right balance is not struck between funding infrastructure and the impact on development either development could be made unviable by high CIL rates or insufficient funds raised to deliver the infrastructure necessary to support growth if the rates are too low; although it should be noted that CIL only provides part of the funding mechanisms for development.

Financial Implications

23. The cost of preparing the CIL Charging Schedule was planned for in the 2012/13 budget. The timeline and associated costs for the independent examination and adoption will fall in financial year 2013/14 and will be subject to consideration during the budget setting process for 2013/14.
24. Under the charging proposals going to consultation the projected income generated from CIL receipts over the plan period of the Core Strategy, up to 2026, is estimated to be circa £57 million. This initial calculation is based only on residential development likely to come forward during the plan period and excludes retail and other uses. It is difficult to predict a more accurate figure for CIL receipt. Many local authorities intend to review their CIL rates after three to

five years to allow them to respond to changing market conditions. Any changes to the CIL rates would have to undergo consultation and examination.

25. Adoption of a Charging Schedule will present the Council with the opportunity to secure CIL funding for infrastructure to support the delivery of new housing and other forms of development across Wiltshire.
26. There may be the expectation within local communities that CIL will deliver significantly more funding than actually can be collected if development is to remain viable. CIL and Section 106 combined should bring more than Section 106 alone; however, in the current economic climate there is only so much additional funding that can be secured.

Legal Implications

27. In accordance with the Planning and Compulsory Purchase Act 2004, the Council has a statutory duty to plan for infrastructure delivery, which has been reinforced through the National Planning Policy Framework and Localism Act. The CIL Regulations 2010 (as amended 2011) introduced legal restrictions on the use of Section 106 agreements to secure developer contributions towards the funding of infrastructure. From April 2014 (or upon local adoption of CIL), Section 106 agreements will be largely restricted to site-specific infrastructure and affordable housing. While there is no legal obligation to introduce a CIL Charging Schedule, CIL will largely be the only means of pooling contributions from new development towards infrastructure after April 2014.
28. The Council has a duty to engage with the public at this stage of preparing a CIL Charging Schedule, as required by Regulation 15 of the CIL Regulations 2010 (as amended 2011). The consultation has been designed in accordance with the Council's Statement of Community Involvement and these legal requirements.
29. The Council also has a duty to co-operate with other local authorities and relevant organisations in the production of planning policy documents. Regulation 15 of the CIL Regulations 2010 specifies that the Council, as charging authority, must send a copy of the preliminary draft Charging Schedule to, and invite representations from, each of the consultation bodies, as defined by Regulation 15(3), which includes neighbouring authorities.

Options Considered

30. The options considered are set out in the Viability Study. Of particular importance to Wiltshire is the consideration around residential developments. For residential developments, the Council has the option of setting different rates in different parts of Wiltshire. However, the areas to which the rates apply are based on an examination of house values within settlements, which are not necessarily adjacent to one another and do not relate to easy recognisable boundaries (e.g. Community Areas, Housing Market Areas) requiring arbitrary ones to be established.
31. Differential rates would optimise the income for infrastructure and are progressive in the sense that the most profitable developments would pay. However, such a system would be more complex to operate potentially off-

putting to developers. The greater the complexity, the more likely it is to require greater justification through the evidence.

32. The option of differential rates also has to be considered alongside the potential income that would be secured. The evidence developed to date shows that the limited additional income gained from introducing differential rates is outweighed by the complexity of its implementation. Therefore, the best option would be to go for a single, flat rate of CIL.
33. While the Viability Study shows that a CIL rate of £70 per sq m could be charged on new retail development in a number of town centres, the same considerations apply in terms of differential rates as for residential development. As such, for the purposes of simplicity a flat rate of £0 per sq m is proposed for new retail development other than 'retail warehouse, supermarkets and similar developments', where £175 per sq m can be justified.

Conclusions

34. Publication of the Preliminary Draft Charging Schedule for an initial stage of consultation for six weeks starting in October will help to ensure that Wiltshire can adopt a CIL Charging Schedule within the current LDS timetable by summer 2013. This will ensure that the Council, within viability constraints, can maximise developer contributions for infrastructure.

Alistair Cunningham
Service Director for Economy and Regeneration

Report Authors:

Georgina Clampitt-Dix

Head of Place Shaping

Tel: (01225) 713472

Geoff Winslow

Spatial Planning Manager

Tel: (01225) 713213

Date of report: 30 August 2012

The following unpublished documents have been relied on in the preparation of this report:

None

Appendices:

Appendix 1 - Preliminary Draft Charging Schedule

Appendix 2 - Executive Summary, Community Infrastructure Levy: Viability Study

Anyone wishing to obtain further information in relation to the preparation of Wiltshire's CIL should direct their enquiries to CIL@wiltshire.gov.uk