

**Wiltshire Council**

**Environment Select Committee**

**04 April 2013**

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**Report of the Community Infrastructure Levy (CIL) Task Group**

**Purpose of report**

1. To present the recommendations of the CIL Task Group and seek endorsement for them.

**Background**

2. The CIL is a proposed new charge that local authorities can choose to impose on development in their area. It will contribute towards bridging the funding gap between the total cost of infrastructure necessary to deliver new development and the amount of funding available from other sources. From April 2014, Section 106 obligations will be restricted to site specific infrastructure and the Council will be restricted in its ability to pool infrastructure contributions from the new development through the existing mechanism of Section 106 agreements.
3. Cabinet and the Corporate Leadership Team identified the introduction of CIL as one of its corporate priorities and were supported by the O & S Management Committee, who included it in the overall O & S work programme under the Environment Select Committee (ESC). The CIL Task Group was established by the ESC, endorsed by the O & S Management Committee and held its inaugural meeting on 24 September 2012.

**Terms of Reference**

4. The CIL Task Group was asked to test out the charging proposals for CIL and report on recommendations on the future implementation of CIL.

**Membership**

5. The Task Group comprised the following members:  
Cllr Tony Trotman (chairman)  
Cllr Jon Hubbard  
Cllr Chris Humphries  
Cllr George Jeans  
Cllr Ian McLennan

**Witnesses**

6. The Task Group sought the views of a number of building developers, working across a range of size of development sites, and a housing association.

Briefings were provided on matters of policy and statutory responsibilities by officers of Wiltshire Council.

## Documentation

7. The Task Group considered:
- Eight documents submitted as part of the Council's consultation exercise (Sept 2012),
  - CIL Preliminary Draft Charging Schedule Consultation Interim Highlight Report (Nov 2012),
  - Written report from a local developer,
  - CIL guidance, DCLG (Dec 2012),
  - Briefing paper on the new CIL guidance (Jan 2013),
  - Cabinet Paper: Wiltshire CIL – update submitted on 12 Feb 2013.

## Proposed CIL rate

8. The preliminary draft charging schedule was approved by Cabinet on 10 September 2012, see below.

<b>Development type</b>	<b>CIL charge £/m<sup>2</sup></b>
Residential	£70
Retail (except retail warehouse, supermarkets and similar development)	£0
Retail warehouse, supermarkets and similar development	£175
Student housing and hotels	£70
All other uses	£0

9. CIL is charged in £/m<sup>2</sup> on the net additional increase in floor space of any given development. Development, whether a new building or an extension must pay CIL if it has 100m<sup>2</sup>, or more, of gross internal floor space. CIL is also liable if the development involves the creation of an additional dwelling, or dwellings, even if the development is less than 100m<sup>2</sup>.
10. CIL can be charged on most buildings that people normally use, however there some exceptions. These include social housing and development that will be used wholly, or mainly, for charitable purposes.
11. CIL is charged on new builds permitted through some form of planning permission and on the following types of planning consent:
- Permitted development rights
  - Local planning orders
  - Acts of Parliament.

## **Section 106 and CIL**

12. Once CIL is adopted, Section 106 will still be used to secure site-specific infrastructure and affordable housing. To ensure that there is no double charging through both CIL and Section 106 agreements, the Council must publish a list of items, or types, of infrastructure that it intends to fund through CIL on its website.

## **Administration of CIL**

13. The CIL regulations allow the Council to use a maximum of 5% of its total CIL receipts for administrative expenses in connection with CIL. These include set-up costs and ongoing functions such as establishing and running billing and payment systems, and enforcement. The Council has built the 5% allowance into its proposed CIL charge. The Council can decide how it wishes to administer CIL.
14. The regulations allow the implementation of an instalment policy for the collection of CIL monies. If an instalment policy is not adopted, the full CIL payment is due within 60 days of the development commencing.

## **Evidence base for CIL**

15. The required evidence base for the charging schedule for CIL comprises:
  - An up-to-date development plan (Wiltshire Core Strategy)
  - An economic viability assessment
  - An infrastructure delivery plan.
16. The Council employed consultants BNP Paribas to develop the economic viability evidence base. This tested the impact of a range of CIL rates against residential developments and schemes, including affordable housing, and commercial schemes.

## **Government guidance on CIL**

17. Government guidance on CIL (charge setting and charging schedule procedures) was published in March 2010. It advised charging authorities, ie Wiltshire Council, to use an area-based approach, which involved a broad test of viability across their area as the evidence base to underpin their charge. They were required to take a strategic view across their area and not focus on the potential implications of setting a CIL for individual development sites within their area. The Council prepared its draft CIL charging schedule according to this guidance.
18. The latest Government guidance, published in December 2012, requires additional evidence to inform the charging authority's draft charging schedule. The Council should show that the proposed CIL rate would not threaten delivery of its Core Strategy as a whole. It is also required to sample directly an appropriate range of types of site across its area to supplement existing data. The focus should be, in particular, on strategic sites on which the Core

Strategy relies and those sites (such as brownfield sites) where the impact of the levy on economic viability is likely to be most significant.

19. BNP Paribas have been commissioned to prepare the further detailed evidence as required by the new CIL guidance. It is anticipated that this will be completed by June 2013.
20. Allied to the latest guidance, a Ministerial Statement on 10 January 2013 described how CIL would benefit communities. Although this is only a statement of intent it is expected that further formal guidance will be issued. Communities with a neighbourhood development plan could receive 25% of the revenues from the development that they choose to accept. Communities without a plan, but where CIL is still charged, could receive a capped 15% share of the CIL arising from development in their area.

### **Developers' views**

21. It only became apparent in late 2012 that there were likely to be additional requirements in the December 2012 guidance, compared to the March 2010 guidance. It should be noted that the evidence from developers was taken before the December 2012 guidance was published.
22. Developers were critical of the Viability Study undertaken by BNP Paribas, the main criticism being that the report was based on generic sites which were not based on reality nor did it reflect the complexity of 'real life'. It was not as simple as 'one size fits all'.
23. The proposed zero rate for retail development was welcomed, if the Council wished to support the development of town centres. A key factor in the viability of town centre properties was occupation; if there was no occupier, the development was not viable.
24. It was generally agreed that the proposed rate for retail warehouses and supermarkets (£175/m<sup>2</sup>) was reasonable and would not deter large companies eg Tesco, coming to Wiltshire. It was suggested that some areas of Wiltshire could bear a higher rate.
25. Different sectors have different profitability. It was suggested that 'out of town' and the food sector generated similar values, whereas retail and counter trade were less profitable. Therefore it might be possible to look at different rates based on products.
26. It was noted that employment land, industrial and distribution centres (B1, B2 and B8) were included in 'all other uses' in the charging schedule, at a proposed zero rate. It was agreed that these should be zero rated but that they should be listed separately as a category in their own right.
27. Developers were clear that they could not charge more for houses as the market could not support it. In addition, the requirement for them to build to

higher codes of energy efficiency in the future would add to their costs and would impact negatively on development.

28. One witness explained that on a development of six houses he paid £11,750 as an R2 payment. He believes that under the CIL system the payment would have been £40,020. His view was that the land owner would not have accepted the lower land price required under the new system and the houses would not have been built, which in turn would have impacted on local construction workers and businesses.
29. There was a view that, following the implementation of CIL, developers would build in areas of both high and low profitability, on the basis that these would balance out. It was stated that this would not happen and developers would only build in areas of high profitability.
30. The option for phased payments of CIL was welcomed, particularly on large developments, where it could be 5 years into the scheme before the developer broke even. It was suggested that the final payment might be linked to occupation as this would reduce anxiety if properties were empty and a developer close to 'going under'. It was thought that the higher the CIL, the more instalments there should be.
31. Developers disagreed over the discretion available to the Council to exempt sites from payment under 'exceptional circumstances'. One view was that this would be a common occurrence and that, as the Royal Institute of Chartered Surveyors (RICS) had produced guidelines for surveyors to negotiate with local authorities, they must believe it was likely. An alternative view was that exemptions would be in the order of 1% of cases. It was acknowledged that it was possible to 'pay in kind' eg donate land, but not negotiate. This view was that once CIL had been set, it had to be paid. It was also noted that if the Council did exempt a site, it would need to be sure that the relief did not constitute notifiable state aid.
32. It was considered that the legislation was poor and there were a number of areas, such as the discretion to exempt, where it was open to interpretation.
33. It was noted that where a site was viable, a housing association could have an advantage when bidding for land. As it is proposed that affordable housing should be exempt from CIL, the housing association could turn over some of its planned private housing to affordable housing, thereby giving it a £70/m<sup>2</sup> advantage over a commercial developer.
34. It is believed that the Government's view is that, if CIL has an impact, it will be on land prices and will not affect development, if set correctly. The developers did not agree with this. The consensus was that owners would not sell unless the price was right. They believed that, with many costs set, the only area for negotiation would be the level of affordable housing on a development, and that this could seriously impact on the ability of the Council to meet its own target of 40% affordable housing. It was suggested that the actual level could be 0% – 20%.

35. One developer did not support the CIL but did favour a tariff system, where larger plots pay more, rather than Section 106. Others thought the proposed rate of CIL would be acceptable in some areas and not in others, so they favoured a two-tier system. One considered that the viability of the £70/m<sup>2</sup> rate was not proved and suggested £30/m<sup>2</sup>.

### **Additional information**

36. It was emphasised that CIL could not be used to deliver policy.
37. It was confirmed that neighbourhood plans could contain more development than laid out in the Core Strategy, but not less. Neighbourhood plans could be a mechanism for expanding settlements and allowing a small amount of considered development eg 10 – 20 dwellings.
38. As the Council is required to provide additional evidence to support its preliminary draft charging schedule, it has been necessary to amend its timetable in relation to CIL. The CIL proposals cannot be adopted until such time as the Core Strategy is in a position to be adopted. In this respect, the new proposed timeline for preparing CIL is broadly compatible with that estimated for the Wiltshire Core Strategy, and it is anticipated that CIL will be adopted and formally implemented by February 2014.
39. The Task Group raised a number of queries and was particularly keen to see the impact CIL might have on a 'real' development. The response from officers is included in Appendix A.

### **Task Group views**

40. It was agreed that the developers' response had been generally negative. They were not necessarily against CIL, per se, but did have concerns about the proposed charging schedule.
41. The Task Group was concerned that there were very different views on the subject of discretionary exemption and agreed that the guidance was not clear on this point.
42. Concerns were raised about the 'Assumption of Liability' referred to in relation to the administration of CIL on a planning application. The background document states,

The council will expect to receive an assumption of liability from the developer, landowner or another interested party. This may be submitted any time prior to the commencement of development. Liability defaults to the land owners if this notice is not received before the Demand Notice is issued.

When the Council produces its guidance, the Task Group would like the situation in relation to this liability made clear.

43. In relation to the allocation of CIL monies to communities (15% or 25%), there was some uncertainty about how this might be allocated, who would receive it where plans had been developed between more than one area and where/how it might be spent. It was suggested that smaller communities may be reluctant to join with larger areas to formulate plans if it reduced the money they might receive.
44. The Task Group had concerns about the impact of CIL on the rental market. It was suggested that if affordable, rental housing was built on private land, that it could be exempt from CIL, but if any properties were subsequently sold, then CIL would become due on those properties. It was acknowledged that a definitive legal view may not be possible on this scenario as the guidance was still evolving.
45. It was noted that the Council was required to maintain a comprehensive database in relation to CIL and had a statutory duty to report on this. The Task Group was keen to see a robust recording system, such as the Section 106 database already in place, which would allow the monitoring of CIL collection to ensure that none was lost. It should also allow reporting to communities to demonstrate how and where CIL monies had been spent.
46. Concerns were raised over the payment of CIL in respect of Permitted Development Rights. It raised issues such as what would the position be in respect of claiming CIL retrospectively, how would such development be identified and what would trigger collection? It was thought that this could be a very complex area, requiring a great deal of officer time and yet would yield a very small amount of CIL, bearing in mind that administration costs are limited to a maximum of 5% of CIL receipts.
47. The Task Group was concerned that whatever rates were decided upon, they should be fair. From what it had heard, the Task Group considered that differential rates for residential development may be appropriate. It was acknowledged that it would be a difficult exercise to define areas with different rates and that, if different rates were adopted, difficulties could arise in the subsequent 'border areas', but it did not believe those should preclude investigations into possible differential rates.

## **Recommendations**

### **Task Group recommends that:**

- 1. In the light of evolving guidance and the requirement for further statutory consultation, the Environment Select Committee, within the newly-elected Wiltshire Council, should establish a CIL Task Group to undertake further work considering possible new guidance coming forward, consultation results and other relevant evidence.**

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## **Appendices**

### **Appendix A**

Additional information provided by officers at the request of the Task Group



## Appendix A

### Additional information provided by officers at the request of the Task Group

#### 1. Rough comparison of current and proposed CIL system on a notional but real development

- To the best of our knowledge, planning permission has now been granted for the development, subject to agreement over s106 terms.
- Based on the development bringing forward 1,250 houses, CIL would be chargeable on 750 (assuming 40% affordable housing delivery). Based upon the open market mix agreed between the developers and the Council (as set out in the Committee Report for Planning Application S/2012/0814); and the typical floor space per unit size indicated in the Initial CIL Viability Study (Page 16, Table 4.8.1), we could assume there might be an estimated 71,781sqm of CIL liable floor space. This would give a potential CIL receipt of £5,024,670 (based on a £70 per sqm). However, the application involves the demolition of some existing floor space (existing farm buildings, a residential bungalow from which commercial dog kennels operate, and a residential property) and, if these have been in 'lawful use' for at least six months in the last 12 months then the amount of floor space demolished may be discounted from the total CIL liable floor space. This element of the CIL calculation would require input from other departments – development management, enforcement, building control etc.
- S106 terms are still to be agreed with the developers. However, a contribution of £3,300 per dwelling is being sought for off-site highways improvements and public transport in accordance with the Salisbury Transport Plan (to be applied to all strategic sites until the commencement of the Wiltshire CIL, or April 2014 (whichever arises first)). This would amount to £4,125,000. As outlined in previous Task Group meetings, the government intends for these types of s106 contributions (i.e. wider than directly related, or commuted sums arrangements) to come through CIL in future. However, other s106 contributions directly relating to the development include education (involving a new primary school and site within the development) will still fall into the arrangements for and ambit of s106.
- For 1,250 dwellings, education requirements would be 278 secondary pupil places at a total cost of £5,647,848 (draft Infrastructure Delivery Plan 2 - 2013). Various other s106 off-site contributions are likely to include provisions towards a phosphate management plan and the local stone curlew project; plus potentially public open space and leisure facilities, public art, health care and a new fire station (the latter are either contentious or sufficient provision may have already be provided).
- So, in this scenario, the main message is that the council will secure more through the current s106 arrangements for the highways and education alone than **if CIL were in force today**. However, **after April 2014**, the Council's ability

to secure contributions through s106 will be greatly reduced whether CIL is in place or not. CIL will then recapture some of the 'lost s106 contributions'.

**Scenario Summary (as at March 2013):**

- Potential CIL income = c.£5m (minus deductible floor space); Potential s106 income (transport/ education only) = £9.8m (based on all housing); c.£5.9m (market dwellings only – i.e. after delivery of affordable housing).

**2. Additional evidence required by the new guidance**

- The council's consultants - BNP Paribas are currently preparing the further detailed evidence as required by the new CIL guidance (published December 2012). In any event all required information will be available to support the proposed Draft Charging Schedule and Cabinet Report (scheduled for June 2013).

**3. If outline planning permission is given but the land is not built on until 2014, can the Council get CIL on it or does the s106 apply?**

- Having revisited the regulations, it is clear that the council will not be able to collect CIL on 'reserved matters' planning permissions if you have granted outline planning permission prior to CIL coming into force locally.

**4. An indication of whether CIL will be available on any potential army developments, in the light of the Defence Secretary's announcement.**

- Military accommodation is included within Use Class C2A - Secure Residential Institution (for reference, C1 refers to hotels; C2 refers to residential institutions, including care homes; C3 refers to dwelling houses, and C4 refers to houses in multiple occupation). As it stands, the Preliminary Draft Charging Schedule is applying a flat £70 charge to all 'Residential Uses', including all of the above. Neither military accommodation or care homes have been specifically tested in the viability study, so we would have to have evidence to show that neither use is viable when the proposed CIL rate is applied. Some councils - e.g. Oxford City have charged a higher rate for dwelling houses (including sheltered housing, HMOs and student housing); and a lower rate for C2 uses (including care homes) and C2A (military accommodation). Bearing in mind the projected uplift in military housing requirements associated with the latest government announcements, the officer team will request that the council's consultants consider this in the further viability work that is being undertaken now. The Cabinet will then have the best available information upon which to base its decision on the forthcoming proposed Draft Charging Schedule.