

Wiltshire Council

Cabinet

17 December 2013

Subject: Wiltshire Community Infrastructure Levy -
Draft Charging Schedule

Cabinet Member: Councillor Toby Sturgis, Strategic Planning, Development
Management, Strategic Housing, Property and Waste

Key Decision: Yes

Executive Summary

The Wiltshire Community Infrastructure Levy (CIL) 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.

Cabinet approved the CIL Preliminary Draft Charging Schedule (PDCS) for consultation, at its meeting on 10 September 2012. The Council subsequently consulted upon the Preliminary Draft between October and November 2012. The viability evidence has been reviewed and developed to take into account concerns raised during the consultation and new requirements arising from Government guidance on CIL. In the light of this, revised rates of CIL should be included within the Draft Charging Schedule.

At this stage in the process, the Council is undertaking a second period of consultation on the rates of CIL to be charged on new development. This consultation is again focused on the proposed tariffs for different types of new development but an early draft of the Regulation 123 List (CIL spending list) is also available for comment.

Comments received through this second consultation will test Wiltshire's proposed CIL Charging Schedule. Following the consultation, consideration will need to be given to the outcome before submitting the Draft Charging Schedule, the underlying evidence base and all representations to an independent examiner who will conduct a public examination into the CIL Charging Schedule.

Proposals

That Cabinet:

- (i) Approves the CIL Draft Charging Schedule at **Appendix 1** and draft Regulation 123 List at **Appendix 3** 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 Associate Director for Economic Development and Planning, in consultation with the Cabinet Member for Strategic Planning, Development Management, Strategic Housing, Property and Waste and the Associate Director of Finance, to produce the consultation documentation to accompany the CIL Draft Charging Schedule and make arrangements for consultation.
- (iii) Authorises the Associate Director for Economic Development and Planning, in consultation with the Cabinet Member for Strategic Planning, Development Management, Strategic Housing, Property and Waste and the Associate Director for Finance, to submit the Draft Charging Schedule for independent examination following the consultation and consideration of the outcome and, if necessary, to consult on modifications to the Draft Charging Schedule after submission.

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 published timetable. The Council should be in a position to adopt the CIL Charging Schedule as soon as possible after April 2014, after which, according to current legislation, the Council will be severely restricted in its ability to pool infrastructure contributions from new development through the existing mechanism of Section 106 agreements. However, the Government has recently proposed extending this deadline to April 2015.

Alistair Cunningham
Associate Director for Economic Development and Planning

Wiltshire Council

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Key Decision: Yes

Purpose of Report

1. To:
 - (i) Update Councillors on recent changes to the CIL Regulations and work undertaken to date in terms of preparing the Community Infrastructure Levy (CIL).
 - (ii) Seek Cabinet approval that the Draft Charging Schedule and draft Regulation 123 List be published for a six week period of consultation starting in January 2014 and, subsequently, submitted for independent examination.
 - (iii) Set out the arrangements for consultation and next steps.

Relevance to the Council's Business Plan

2. Once adopted, the Community Infrastructure Levy (CIL) will support the delivery of the Council's vision to create stronger and more resilient communities by raising revenue from new development to help pay for the provision of infrastructure to support growth.

Background

3. 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 2014¹ (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.

¹ However, proposed reforms to the CIL Regulations look to extend this deadline to April 2015. See paragraph 3.2, Department for Communities and Local Government, Community Infrastructure Levy Consultation on further Regulatory Reforms - Government Response (October 2013).
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4. The timetable for delivering the CIL was updated in September 2013 and is published on the Council's website as follows:
 - *Oct-Nov 2012* - Preliminary Draft Charging Schedule consultation
 - *Jan-Feb 2014* - Draft Charging Schedule consultation
 - *Mar 2014* - Submit draft Charging Schedule for examination
 - *Apr-Jun 2014* - Independent examination
 - *July 2014* - Adoption
5. 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 in line with Core Policy 3.
 - (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 required and the funding available from other alternative 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.
6. 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). Affordable housing will continue to be paid for through Section 106 agreements.
7. As the designated 'Charging Authority', the Council must publish on its website a list of infrastructure that it intends to fund, wholly or in part, through CIL (see paragraph 9). 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 fund the delivery of infrastructure that is itemised on the Regulation 123 List.
8. In terms of progress towards the delivery of CIL, Cabinet approved a Preliminary Draft Charging Schedule at its meeting on 10 September 2012.

Main Considerations for the Council

9. The Council consulted on the Preliminary Draft Charging Schedule (PDCS) over a six week period ending 12 November 2012. The outcome of the consultation and PDCS are set out in **Appendix 4**. There was a relatively high response to the consultation with 89 respondents. In summary, the main issues that were raised during the consultation related to the following:

- Concerns over the proportion of CIL revenue to be allocated to local communities;
 - The effect of CIL on small developments (i.e. sites delivering between one and four dwellings);
 - The need to charge differential rates to potentially maximise CIL revenue;
 - Clarity over definitions of retail development;
 - Concerns over the methodology employed by the consultants through the economic viability study;
 - Effect of CIL on affordable housing delivery; and
 - How CIL will be spent.
10. In December 2012, the Government published new statutory guidance on the requirements for establishing a CIL, which was further updated in April 2013. The effect of the changes substantially increased the amount of evidence needed to support a CIL charging schedule.
11. The Council has continued to work with consultants - BNP Paribas to develop the economic viability evidence originally prepared to inform the PDCS and thereby ensure consistency with legislation and national guidance. In addition, in working with the consultants, account has been taken of the viability concerns raised during the PDCS consultation responses including those raised at a Developers Forum. This work has included:
- Preparing evidence showing historic Section 106 receipts and affordable housing targets;
 - Updating the Infrastructure Delivery Plan and funding gap analysis;
 - Reviewing how the strategic sites informed the viability study in terms of infrastructure requirements;
 - Reconsidering the differences (in viability terms) of different sizes of retail unit (large and small) in setting a proposed CIL rate;
 - Assessing whether MOD accommodation could be exempt from CIL.
12. The updated consultants report - 'Community Infrastructure Levy: Viability Study' (November 2013) sets out evidence to support options for setting levels of CIL for Wiltshire. A copy of the report can be found with the agenda papers for the meeting on the Council's website. Hard copies of the report have been provided to Cabinet Members and will be available to all councillors on request. The Executive Summary of the report is provided at **Appendix 2**, which sets out key findings from the Viability Study and includes four options (paragraph 1.6) for CIL rates. The merits of the options are summarised in paragraph 1.8 and discussed further below in the options section of this report. The proposed approach is set out in the Draft Charging Schedule at **Appendix 1** to this report and rationale for the rates summarised in paragraph 38 below. The Draft Charging Schedule includes an indicative 'charging zone map' that has been developed based upon the evidence contained within the viability study and approximated to parish boundaries to illustrate the zones where different rates are proposed to be charged.

13. The proposed Draft Charging Schedule is considered to be compliant with the CIL Regulations, government guidance and best practice. The Draft Charging Schedule will be subject to consultation and an independent examination. At that stage, the examiner will need to establish the following:
- (i) Has the Council, as the 'charging authority', complied with the requirements as set out in Part 11 of the Planning Act (as amended by the Localism Act) and the CIL Regulations?
 - (ii) Is the charging authority's draft charging schedule supported by background documents containing appropriate available evidence?
 - (iii) Is the proposed rate, or rates, informed by, and consistent with, the evidence on economic viability across the charging authority's area?
 - (iv) Has the charging authority provided evidence that shows and explains that the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole?
 - (v) Has the charging authority provided evidence that it has aimed to strike an appropriate balance between desirability of funding infrastructure through CIL and the potential effects of imposing a CIL on their area?
 - (vi) Does the charging authority have an up-to-date relevant plan and is the CIL consistent with it and the supporting infrastructure evidence?
 - (vii) Has the charging authority complied with the consultation and administration requirements set out in the CIL Regulations?
 - (viii) Has the charging authority provided a draft Regulation 123 list and evidence to show how much they have raised through Section 106 agreements in recent years?
14. Other considerations for the Council in developing a CIL charging schedule are set out below:
- (ix) CIL Regulations state that CIL should not be overly complex. CIL is charged on new dwellings and 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 challenging and potentially open to challenge.
 - (x) 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.
 - (xi) 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 margins of what is considered viable for the majority of their development sites.

Consultation

15. The focus of this consultation is on the proposed rates of CIL to be charged on different forms of new development, as with the previous consultation on the PDCS. In addition, as a result of the recent consultation on further reforms to the CIL Regulations, the Government proposes that a Draft CIL Spending List

(Regulation 123 List) forms part of the evidence for CIL. As these proposals may be formalised by the time of the examination, it is proposed that a draft Regulation 123 List, based upon best practice, as set out in **Appendix 3** forms part of the consultation. This would also help address concerns raised through the PDCS consultation. The final Regulation 123 List will be a matter for the Council to determine at the point the CIL Charging Schedule is adopted and prior to full implementation.

16. The consultation will run for a period of six weeks in accordance with the Council's Statement of Community Involvement and statutory requirements. The Council will also consult upon a draft Regulation 123 list. Supporting documents will include an updated 'Easy Guide to CIL' (two page leaflet to explain CIL in clear and simple terms) and evidence underpinning the proposed rates.
17. Consultation is proposed to start in January and involves:
 - (i) A letter or email will be sent to consultation bodies specified in the CIL Regulations 2010 (i.e. town and parish councils, neighbouring authorities and responsible regional authority providing notification of the consultation. The letter or email will provide: a 'statement of the representations procedure' (i.e. a guide on how to respond to the consultation), a copy of the Draft Charging Schedule and the draft Regulation 123 List.
 - (ii) Electronic notification of the consultation will be sent to consultees registered on the Council's online consultation portal. Emails / letters will be sent to targeted consultees, such as developers, property agents and landowners, including individuals / organisations who responded to the PDCS consultation.
 - (iii) The 'statement of representations procedure' will be advertised in local newspapers to cover Wiltshire and the Parish Newsletter.
 - (iv) The 'statement of representations procedure' will be distributed via the Area Board networks.
 - (v) The 'statement of representations procedure', and all consultation documents, will be made available for viewing at the main Council offices in Chippenham, Salisbury and Trowbridge and all libraries.
 - (vi) The 'statement of representations procedure' and all consultation documents will be made available on the Council's website and consultation portal.

Next steps

18. Following the consultation, responses will be considered before the Draft Charging Schedule and associated documents and evidence base, along with all representations, are submitted to an independent examiner who will conduct a public examination into the Draft Charging Schedule. If necessary, a further consultation on a 'Statement of Modifications' to the Draft Charging Schedule will be held following submission.

Safeguarding Implications

19. There are no safeguarding implications as a direct result of this proposal.

Public Health Implications

20. CIL will help fund the infrastructure required to support growth. Well planned development, including appropriate infrastructure, supports health and well being of local communities, for example through the provision of green infrastructure, sports facilities and infrastructure to encourage walking and cycling as means of travel.

Environmental and Climate Change Considerations

21. The draft 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

22. 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 Draft Charging Schedule.

Risk Assessment

23. It is considered that making further progress towards CIL implementation at this stage is essential to ensure that the Council is ready to collect CIL as close to April 2014² as possible when the current CIL Regulations will restrict Section 106 agreements to site-specific charging and limit them to five pooled contributions. See *Financial Implications* for further details. Implementation of the Government's proposed reforms to amend the date to April 2015 will enable the Council to put CIL in place prior to these restrictions coming in.
24. The CIL examination should not reopen issues relating to infrastructure planning that supports a sound development plan (i.e. the Core Strategy). As such, it is important for the CIL timetable to be aligned with the Core Strategy, which is currently undergoing examination by a Planning Inspector. The CIL timetable has been revised in order to take into consideration the timescale for the adoption of the Wiltshire Core Strategy.
25. If the right balance is not struck between the cost of funding infrastructure and the impact on development, either development could be made unviable by high CIL rates, or insufficient funds will be raised to deliver the infrastructure necessary to support growth if the rates are too low. However, it should be noted that CIL only provides part of the funding mechanisms available for supporting the delivery of development.

² However, proposed reforms to the CIL Regulations look to extend this deadline to April 2015. See paragraph 3.2, Department for Communities and Local Government, Community Infrastructure Levy Consultation on further Regulatory Reforms - Government Response (October 2013).
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Financial Implications

26. The cost of preparing the CIL Charging Schedule was planned for in the 2013/14 budget. The timeline and associated costs for the independent examination and adoption will now fall in financial year 2014/15 and will be subject to consideration during the budget setting process for 2014/15.
27. Under the charging proposals set out in the PDCS, the projected income from CIL receipts over the plan period of the Core Strategy, up to 2026, was estimated to be circa £57 million. This figure will change depending upon the CIL rates adopted by the Council, but the evidence suggests that the effect of levying different rates as proposed may not lead to a noticeable increase in revenue. This indicative 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. Given the current economic circumstances, the viability evidence will be kept under review to support the justification for any subsequent amendments to the adopted CIL rates. At this stage it is proposed that CIL rates will be reviewed within two years of the date of adoption to reflect prevailing market conditions, viability evidence and the Council's Business Plan monitoring process. Any changes to the CIL rates would have to undergo consultation and examination.
28. 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.
29. 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. In addition, the CIL Regulations 2013 provide for town and parish councils to receive 15% of CIL raised in their area or 25% if they have an adopted neighbourhood plan in place.

Legal Implications

30. 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 2014³ (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 or April 2015 if the Government implements its proposed reforms.

³ However, proposed reforms to the CIL Regulations look to extend this deadline to April 2015. See paragraph 3.2, Department for Communities and Local Government, Community Infrastructure Levy Consultation on further Regulatory Reforms - Government Response (October 2013).
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31. The Council has a duty to engage with the public at this stage of preparing a CIL Charging Schedule, as required by Regulation 16 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.
32. The Council also has a duty to co-operate with other local authorities and relevant organisations in the production of planning policy documents. Regulation 16 of the CIL Regulations 2010 specifies that the Council, as charging authority, must send a copy of the Draft Charging Schedule and statement of the representations procedure to, and invite representations from, each of the consultation bodies, as defined by Regulation 15(3), which includes neighbouring authorities.

Options Considered

33. The four options considered are set out in the Viability Study and included in **Appendix 2**. As set out in paragraph 1.7 of Appendix 2, the options "*are indicative only and the Council will need to arrive at its own judgement as to the balance between the desirability of raising funding for infrastructure and the potential impact upon viability, when also taking into account other Core Strategy requirements.*"
34. The PDCS took a simple approach to CIL and set a single, flat rate for certain use classes across Wiltshire similar to Options 1 and 2. It did not differentiate between residential development and residential strategic sites whereas all options now show a different level of CIL for strategic sites as compared to other residential sites. Strategic sites have less ability to absorb CIL due to the level of on-site infrastructure that they are required to deliver, and so a lower level of CIL to other residential development would be appropriate. The PDCS also proposed a nil rate for high street retail, whereas all options include a rate of £70 for Chippenham, Salisbury, Trowbridge, Marlborough and Bradford on Avon.
35. Option 3 proposes differential rates for residential development by dividing settlements into four categories to optimise levels of CIL on residential development for each area. It also proposes a single, flat rate for strategic sites, whereas Options 1 and 2 provide a range of £0 to £70 to allow the Council to set a rate it considers appropriate, but is otherwise similar to Option 2. This option would be complex to operate and potentially off putting to developers.
36. Option 4 is a hybrid option, which proposes a more limited set of differential rates for both general residential development and strategic sites, but is otherwise similar to Option 2. It identifies an appropriate rate for strategic sites in both areas to help maximise ability of sites to provide affordable housing.
37. A full discussion on the merits of the options and considerations is set out in **Appendix 2**.
38. The Preliminary Draft Charging Schedule avoided the potential for unnecessary complexity when setting rates of CIL. However, feedback from the consultation indicated support for differential rates across the county to maximise CIL revenue. It is considered that a balance is provided by Option 4, which presents a simplified approach to setting differential rates of CIL. It combines the three most viable areas into a single rate with a reduced rate for the least viable area. The reduced rates for the strategic sites recognise their on-site Section 106 burden and the split rate will help to maximise the ability of these sites to provide affordable housing.

Conclusions

39. Publication of the Draft Charging Schedule for an initial stage of consultation for six weeks starting in January will help to ensure that Wiltshire can adopt a CIL Charging Schedule within the current timetable by summer 2014. This will ensure that the Council, within viability constraints, can maximise developer contributions for infrastructure.

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

None

Appendices:

- Appendix 1 - Draft Charging Schedule
- Appendix 2 - Executive Summary, Community Infrastructure Levy: Viability Study
- Appendix 3 - Draft Regulation 123 List
- Appendix 4 - Report on the Preliminary Draft Charging Schedule Consultation