

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Corporate Director for Place

to
Cabinet
on
18th June 2013

Report prepared by: Amanda Rogers (Section 106 Officer)

Community Infrastructure Levy

Place Scrutiny Committee – Executive Councillor: Councillor Jonathan Garston

1. Purpose of Report

- 1.1 To provide Members with a briefing on the Community Infrastructure Levy (CIL) that came into force in April 2010, and seek agreement to a way forward in respect of CIL.

2. Recommendation

- 2.1 That Members agree the following:

- 2.1.1 **To proceed with investigations into the viability of taking a Southend Borough CIL forward as a means by which the Council secure payments from new development to contribute to funding infrastructure within the Borough in accordance with Option 1 below, and in consultation with other Essex authorities.**
- 2.1.2 **To authorise the Corporate Director for Place and Head of Planning and Transport to proceed with preparation of the following relevant documentation:- Infrastructure Delivery Plan (IDP), CIL Charging Schedule, Draft Regulation 123 List (list of infrastructure projects to be funded by CIL) and revised Supplementary Planning Document: Planning Obligations (SPD2).**
- 2.1.3 **Agree the provisional timetable included in Appendix 4.**

3. Background

- 3.1 **Appendix 1** sets out the background details relating to “What is CIL?” and “Setting a CIL” including relevant legislation, procedures etc.

3.2 If adopted, the CIL Charging Schedule would form a standalone document that would sit alongside the Development Plan Documents (DPDs) within the Local Plan (LP) and will be supported by the evidence base detailed within the Infrastructure Delivery Plan (IDP). Prior to adoption of any CIL Charging Schedule, Supplementary Planning Document: Planning Obligations (SPD2) will need to be updated to provide further detail on what community infrastructure will continue to be secured through Section 106 and what will be CIL funded (i.e. that which is listed on the local authority's Regulation 123 List).

Reasons for proceeding with CIL

3.3 It is considered that the following are the key reasons the Council should consider implementing CIL charging:

- To ensure that the Council can continue to secure contributions that are currently pooled towards infrastructure such as educational facilities, public transport and the public realm, which are required as a consequence of development in the Borough as the ability to pool s.106 contributions will be severely limited from April 2014;
- To ensure the widest range of developments (small, medium and large scale) make a fair and reasonable contribution to the community infrastructure in the Borough that supports development as currently this is only funded through the Council funds and s.106 contributions received in association with large scale development;
- CIL will provide additional funding for the Council's infrastructure priorities;
- CIL supports a strategic approach to development management, investment and delivery cash flow;
- CIL provides up-front transparency, consistency and speed of negotiations thus reducing developers' risk and will encourage development in difficult economic conditions.

3.4 After 6 April 2014 the use of pooled contributions collected through s.106 planning obligations will be limited for all authorities. Local authorities will only be able to pool contributions from up to five separate planning obligations in total. This could relate to a specific highway scheme or general education or public realm or public transport contribution, which are currently pooled from a number of developments to provide new/enhanced educational, leisure and transport facilities within the Borough. It should be noted that the government is considering extending the period in which contributions can be pooled following a recent consultation on changes to the CIL regime.

3.5 The Council currently collects contributions from developers by way of Section 106 (s.106) agreements. In the last five years the total contributions received was just over £2.8 million.

- 3.6 For the Council the change in legislation outlined in paragraph 3.4 will have a significant impact in terms of contributions that are currently pooled.
- 3.7 After April 2014, the Council will no longer be able to receive and pool contributions such as funds secured for education, general public transport improvements and general public realm improvements. Over the last 5 years, these pooled contributions have represented approximately 70% of the s.106 receipts.
- 3.8 Adopting a CIL Charging Schedule will not prevent s.106 agreements being completed in association with development in the future. Section 106 agreements will continue to be the primary mechanism for securing affordable housing through the planning system but its use will be restricted to the regulation of development and in particular site specific mitigation providing the infrastructure is not already included on the Council's Regulation 123 List. (See paragraph 8.6 of Appendix 1 for an explanation of the Regulation 123 List).
- 3.9 In accordance with current local planning policy, contributions tend only to be required for major developments. It is probable that should a CIL be introduced, it will apply to a wider range of developments in comparison to the current mechanism of Section 106 obligations. Therefore, a broader spectrum of projects will bear the share of funding the Borough's infrastructure needs. CIL provides an ideal opportunity to broaden the scale of development which makes a financial contribution towards the infrastructure that supports all development in the Borough.
- 3.10 Broadening the range of projects liable to CIL is fairer and places less reliance on larger schemes to support infrastructure development.
- 3.11 The proposal to establish a CIL was considered by Members at an all Member Briefing on 16th May 2013 as part of Pre-Cabinet Scrutiny.

Members were broadly supportive of the proposal to establish a Southend Borough CIL but asked to see further explanation of the advantages and disadvantages of either preparing a CIL jointly with neighbouring Local Authorities or of not pursuing a CIL. This information is provided in the following paragraphs.

4. Other Options

- 4.1 Based on the above it is considered that there are three options available in relation to CIL:
- Option 1 – Prepare a Southend Borough Council CIL
 - Option 2 – Prepare a CIL jointly with other Essex Authorities

- Option 3 – Work on CIL is not taken forward at this time

Option 1: Prepare a Southend Borough Council CIL

- 4.2 From 2014 funding available via Section 106 agreements will be scaled back thereby reducing the ability to meet the infrastructure needs of the borough arising from development. Moreover, CIL presents an opportunity provide significantly more funding than Section 106 obligations and across a broader spectrum of development making it fairer. It is, therefore, considered to be in the best interests of the community and the Council to adopt a CIL as soon as practicable to enable a pool of funding to be provided to contribute to the delivery of infrastructure upon which new development can depend.
- 4.3 There is no requirement to use any particular charging models. The Charging Schedule can refer to different uses, geographic areas etc. or be a simple model overarching all development, but all schedules must be based on financial viability evidence (**not** corporate, regeneration or policy objectives) i.e. would a scheme be a financially viable prospect for a developer when all planning policies such as affordable housing have been met and a CIL charge paid?
- 4.4 It should be noted that it is a requirement under the CIL Regulations that local authorities allocate a meaningful proportion of levy revenues raised in each neighbourhood back to that neighbourhood subject to certain criteria – see **Appendix 1** (paragraphs 8.15 and 8.16) below for further details.
- 4.5 Should the Council choose to proceed with CIL, the CIL Charging Schedule and Infrastructure Delivery Plan (IDP) would be programmed for approval by the end of 2014 and implementation by early 2015. If work begins now on producing the most appropriate Charging Schedule for the Council, addressing issues of governance and other matters as outlined in this report, a work programme has been formulated that seeks to have a CIL in place by early 2015 (see **Appendix 4** for provisional timetable).

The major benefit for the Council in pursuing CIL on its own is that it will be able to programme the work and not have to rely on input from other authorities which may protract the process (see paragraph 4.8 below). Additionally, Southend Borough Council is best placed to understand its own particular infrastructure requirements.

Option 2: Prepare a CIL jointly with other Essex Authorities

- 4.6 Southend Borough Council could work with other Essex authorities (possibly utilising the Thames Gateway South East Planning and Transport Board) to prepare for CIL jointly, and this could form the basis for a Southend Borough Council CIL. **Appendix 2** provides further details on what Essex authorities are currently doing in respect of CIL and identifies any potential for collaborative

working (e.g. share a common evidence base, assumptions about public sector funding, approach to viability appraisal etc). Thurrock, Chelmsford and Colchester are most advanced in the process with draft CIL Charging Schedules currently at the public consultation stage.

- 4.7 Any cost savings by sharing workload and fees between authorities is likely to be reduced by the need to undertake a more extensive evidence base and viability testing. It may also be difficult to reach agreement on the remit of such work.
- 4.8 Whilst the key advantage of working on a CIL jointly with neighbouring authorities would be that it would eliminate any competing charge issues, there are significant disadvantages e.g. the two tier dimension in other non-unitary authorities; differing viewpoints, economic situations, and Local Plan development/priorities could lead to alternative approaches and significantly delay the introduction of a common approach to CIL charging and spending. Hence, Option 2 is not recommended at this stage although CIL Charging Schedules can be revised and therefore there may be opportunities in the future to prepare a joint Charging Schedule with neighbouring authorities should this be considered appropriate.

Option 3: Work on CIL is not taken forward at this time

- 4.9 If the Council should choose not to take CIL forward this would have a very significant impact on the potential to support infrastructure provision within the Borough. Not progressing with CIL could mean that when Section 106 obligations are scaled back in 2014, there will be less/inadequate funds available for the provision of essential infrastructure that supports this development, which could lead to a variety of social problems. As viability testing is a fundamental part of the process it would enable development options to be tested in advance rather than on an ad hoc basis. Accordingly, option 3 is not recommended.
- 4.10 It is therefore proposed that Members prepare a Southend Borough Council CIL as detailed in paragraphs 4.2 to 4.5.

5. Reasons for Recommendations

- 5.1 To enable a mechanism to be in place as close as possible to April 2014 to secure funding from developers contribute to financing a wide range of infrastructure projects that support growth and benefit the local community.

6. Corporate Implications

6.1 Contribution to Council's Vision & Corporate Priorities

If the Council secure CIL it will be spent on community infrastructure that supports development in the Borough (as would be defined in the Council's agreed Regulation 123 List). As such, this will support a number of the Council's Corporate Priorities for 2013-14, including creating safer, cleaner, healthier and more prosperous communities. Pursuing CIL is therefore, considered to be a key corporate priority and as such is included in the Service Plan for Planning & Transport.

6.2. Financial Implications

It is difficult to quantify the exact cost of producing and adopting the documents associated with CIL because it is not possible to foresee the outcome of any viability testing or public consultation (i.e. the Council may choose not to proceed beyond the initial viability study), the financial implications at this stage are considered to be the following:

- Approx. **£15,000** – for initial investment for viability study to explore feasibility of imposing CIL charging – although this could be an abortive cost, not a complete waste as will provide useful evidence for preparation of Southend Central Area Action Plan (i.e. to assess the viability of proposal sites within the town centre and seafront – information which will be used to support the Council's position at examination) as well as provide provisional information to inform a site allocations DPD, an initial review of the Core Strategy and decisions on individual planning applications where financial viability is an issue;
- In the order of **£35,000-£45,000** – to cover the production of the evidence base, viability testing, consultation and examination; **plus** costs of officer time over the project period associated with production of the CIL Charging Schedule, IDP, revised SPD2, Regulation 123 List and implementation of CIL;
- There is the potential that the initial investment to adopt a CIL will be recoverable from future receipts, but there is always the risk that abortive costs could be incurred or indeed that insufficient receipts are generated. However, although the Council may not be able to recoup set up costs per se in the longer term the local authority should be able to compensate for the initial expenditure overall by being in a position to supplement existing funding for infrastructure with CIL that should after a few years exceed the initial set up costs;
- The initial costs will therefore in the first instance be charged against in-year budgets, with the revenue expenditure incurred recovered as and when receipts

are generated, subject to the 5% per year limit. That way the upfront cost will be paid for and therefore any financial risk contained within the annual budget. Therefore in order to facilitate both the adoption of a CIL, and the recovery of the associated costs a dedicated budget head will be set up within the Council's financial management system to collate all associated costs. These will be funded by virement of existing budgets associated with the in-house resources used on the project, plus a call down from the Contingency budget as required, subject to the approval of the Head of Finance & Resources. After adoption, 5% of every CIL levy will be transferred back to the General Fund for the first 3 years, up to the totality of the recorded expenditure.

- CIL could raise more financial contributions from new development than the current mechanism of Section 106 primarily because CIL charging would cover a wider range of developments than s.106 and CIL receipts should exceed the initial set up costs in the first few years;
- Not proceeding with CIL would result in a potentially significant reduction in funds in 2014 due to the scaling back of Section 106 thus reducing funding from developers for infrastructure in the area. If CIL was adopted, the more likely it is there would be a continuous level of contribution being received from development in the Borough.

6.3 Legal Implications

In terms of legal implications, governance, administrative and monitoring structures need to be in place to charge, collect and monitor CIL. The constitution and issues with audit, finance and land charges need to be reviewed if a CIL is introduced. Post-adoption, CIL would be a Council function subject to Internal Audit, and the outcome of any audit would then be reported to the Council's Audit Committee. CIL is likely to be included in the 2014/15 audit plan to ensure appropriate set up and control mechanisms in association with the new process/procedure. The appropriate consultation/adoption process will also need to be followed in accordance with the CIL Regulations.

6.4 People Implications

- 6.4.1 In terms of people and staffing it is anticipated that CIL, the IDP and revised SPD2 will be taken forward mainly based on the use of existing staff to minimise Council expenditure but specialist advisers will be required to assist in assessing the viability of the resulting Charging Schedule. Neighbouring authorities are also likely to be involved in the preparation of these documents in instances of cross boundary infrastructure provision.

- 6.4.2 It is suggested that the LDF Working Party and Member briefings be utilised to ensure effective Member involvement.
- 6.4.3 Although there are resource pressures in all services, this is unlikely to change over the next few years, and therefore, there is no 'preferable' time to carry out work required to deliver a CIL. However, the clear aim should be to have a CIL in place as soon as practically possible if found to be financially viable for both the Council and developers.

6.5 Property Implications

Any effect on the Council's existing property assets will need to be taken into consideration e.g. if the Council develop within the Borough the development would be CIL liable. However, initial discussions with The Council's Asset Management Team confirm that if the amount requested through CIL is broadly comparable to that which would currently be sought under a s.106 agreement then CIL should have a negligible impact on Council assets.

6.6 Consultation

Before a CIL can be introduced a Draft Charging Schedule must be produced taking into account stakeholders input, infrastructure requirements and viability issues. The schedule must go through public examination before adoption as set out in DCLG guidance. External advice will be essential in terms of viability.

- 6.6.1 The proposal to establish a CIL was considered by Members at an all Member Briefing on 16th May 2013 as part of Pre-Cabinet Scrutiny.

6.7 Equalities and Diversity Implications

The Draft Charging Schedule, IDP and revised SPD2 will address how CIL and the continuation of s.106 obligations as appropriate will contribute towards infrastructure and other community needs made necessary by development thus taking into consideration issues of equality and diversity.

6.8 Risk Assessment

If CIL is not adopted, the Council will miss the opportunity to utilise this source of infrastructure funding required in the Borough to meet future development needs. There are of course some risks associated with pursuing Option 1; however, it is considered that these can be adequately mitigated as outlined in **Appendix 3**.

6.9 Value for Money

If developers provide for the impact of development through CIL and planning obligations, the Council will not incur the cost for additional community infrastructure needs generated by development. The CIL Charging Schedule and Planning Obligations SPD are an important means of ensuring value for money for the wider community from development.

6.10 Community Safety Implications

The Draft Charging Schedule, IDP and revised SPD2 will address how CIL and the continuation of s.106 obligations (as appropriate) will contribute towards infrastructure and other community needs made necessary by development thus taking into consideration issues relating to community safety.

6.11 Environmental Impact

If measures are put in place to improve communities then this can have a positive environmental impact. The CIL Charging Schedule, IDP and revised SPD2 may be subject to a full sustainability appraisal (*only required if spatial impact – to be confirmed*).

7. Background Papers

None.

8. Appendices

1. Background: “What is CIL?” and “Setting a CIL”
2. What other Essex authorities are doing
3. Mitigating the risks associated with pursuing Option 1
4. Provision timetable

Appendix 1: Background

What is CIL?

- 8.1 The Community Infrastructure Levy (CIL) is a levy that local authorities in England and Wales (known as Charging Authorities after adoption of CIL) can choose to apply to most new developments in their area. CIL charges will be based on simple formulae which relate the size of the charge to the size and character of the development paying it. The levy can apply to every new dwelling and commercial development, and the proceeds of the levy can be spent on providing local and sub-regional infrastructure to support the development within that authority's area.
- 8.2 A Charging Authority can choose the rate at which the levy is set according to local conditions, and can decide to charge differential rates based on either geographical areas or uses as a way of dealing with variations in economic viability within the same charging area. This flexibility should ensure that a Charging Authority can maximise CIL whilst not jeopardising development. It is essential to note that the basis to support different rates is evidence of different levels of economic viability of development. A Charging Authority cannot decide to have differential rates based on planning, regeneration or corporate policies.
- 8.3 CIL is for 'top up' funding for infrastructure to support the development of the area and does not replace mainstream funding sources. It also supports development that does not require planning permission. It can be used to fund a wide range of infrastructure that is needed as a result of development
- 8.4 The definition of infrastructure is outlined in section 216(2) of the Planning Act 2008 (as amended) and the CIL can therefore be spent on the provision, improvement, replacement, operation or maintenance of the following:
- (a) roads and other transport facilities,
 - (b) flood defences,
 - (c) schools and other educational facilities,
 - (d) medical facilities,
 - (e) sporting and recreational facilities, and
 - (f) open spaces.

Any infrastructure projects, which fall within these categories could appear in a list of "relevant infrastructure" for the purposes of Regulation 123 of the Community Infrastructure Levy Regulations 2010.

- 8.5 The provision of affordable housing will continue to be secured by means of a Section 106 Agreement as it is outside the scope of the infrastructure that can be funded by CIL. It is therefore outside of the scope of the restriction on

pooling s.106 contributions both now and from April 2014 so in exceptional circumstances financial contributions can still be secured in lieu of on-site provision of affordable housing. A key consideration in setting CIL is to ensure that, in general, development within the borough will still be viable after it has complied with adopted planning policies (including affordable housing provision, sustainability requirements etc.) and taking into account CIL liability. CIL charging will not be introduced if it is evident in the viability testing of a variety of sites that affordable housing delivery, for example, would be threatened. The revised Planning Obligations SPD will clearly set out the relationship between CIL, existing planning policies and developer contributions that will continue to be sought under Section 106 (i.e. for site specific mitigation measures and affordable housing).

- 8.6 Charging authorities must spend receipts from the levy on infrastructure to support the development of the area but they can decide what infrastructure to spend it on and that can be different to that for which it was originally set. Charging authorities are required to prepare and publish a statement of those items or types of infrastructure it intends to fund through CIL (known as a Regulation 123 List). There must be a clear link between the infrastructure requirements in the development plan, the Infrastructure Delivery Plan (IDP) and the draft Regulation 123 List (CIL spending list). Any changes to the Regulation 123 List would be subject to public consultation and any impact on viability must be taken into consideration.
- 8.7 To avoid any double charging to developers, the planning authority cannot seek contributions towards those items included on the Regulation 123 List through Section 106 obligations, even where they could be justified as site specific remediation.
- 8.8 CIL may be passed to bodies outside the Charging Authority's area to deliver infrastructure that will benefit the development of their area, such as the Environment Agency for flood defence.
- 8.9 Levy rates are set in consultation with local communities and developers.
- 8.10 CIL is payable on commencement of the development.
- 8.11 CIL can support the timely provision of infrastructure, for example by using the levy to backfill early funding provided by another funding body.
- 8.12 The Secretary of State can direct that authorities may 'prudentially' borrow against future CIL receipts should the government conclude that, subject to the overall fiscal position, there is scope for local authorities to use monies from the levy to repay loans used to support infrastructure.

8.13 There are mandatory exemptions to CIL as follows, in addition to an option to consider payment by instalments (should a Charging Authority choose to publish an Instalments Policy allowing for phased payments following commencement):

- charitable relief – a mandatory exemption for a charity if it owns part of the land, and the development will be used wholly or mainly for charitable purposes
- social housing relief – a mandatory exemption for social housing
- exceptional circumstances – charging authorities have the option to offer relief in cases where the levy would have an unacceptable impact upon the economic viability of a development.

Note: In relation to giving relief from the levy in exceptional circumstances where a specific scheme cannot afford to pay the levy there are strict procedures to be followed and criteria to be met. A charging authority wishing to offer exceptional circumstances relief in its area must first give notice publicly of its intention to do so. A charging authority can then consider claims for relief on chargeable developments from landowners on a case by case basis. In each case, an independent person with suitable qualifications and experience must be appointed by the claimant with the agreement of the charging authority to assess whether:

- the cost of complying with the signed section 106 agreement is greater than the levy's charge on the development **and**
- paying the full CIL charge would have an unacceptable impact on the development's economic viability.

If the independent person finds that the scheme cannot bear the s.106 and the CIL charge it can recommend a level of relief that will bring the scheme into viability. It is then up to the Council to decide whether or not to give all or part of that relief. A local authority also needs to consider whether the level of relief you may intend to offer does or does not constitute a notifiable state aid. Local authorities cannot just negotiate away CIL or decide not to charge it. In the case of development where the level of s.106 is not higher than the levy, the owner must pay the entire levy. To ensure that any form of relief from the levy is not used to avoid proper liability for the levy, the regulations require that any relief must be repaid, a process known as 'clawback', if the development no longer qualifies for the relief granted within a period of seven years from commencement of the chargeable development. To avoid disputes on grounds of viability a local authority must ensure that the viability testing of the CIL Charging Schedule is sufficiently robust, looking at a variety of different hypothetical developments, with a view to ensuring that the rates in a Charging Schedule are affordable without rendering schemes financially unviable. The local authority may choose to activate or deactivate CIL charging relief at any time subject to notification.

8.14 Regulations provide for a range of proportionate enforcement measures, such as surcharges on late payments and CIL Stop Notices.

8.15 Using new powers introduced in the Localism Act, the Government will require charging authorities to allocate a meaningful proportion of levy revenues raised in each neighbourhood back to that neighbourhood subject to certain criteria. This is to ensure that where a neighbourhood bears the brunt of a new development, it receives sufficient money to help it manage those impacts. It is intended to complement the introduction of other new incentives for local authorities that will ensure that local areas benefit from development within their vicinity.

8.16 Neighbourhoods must be clearly defined prior to any development of a Neighbourhood Plan. These will usually be based along existing town or parish council (e.g. Leigh Town Council) or ward boundaries however this is by no means set in stone and can be defined differently should the Council deem it necessary. The town or parish council must apply to the Southend Borough Council for an area to become a neighbourhood area for planning purposes. Local authorities will have to work closely with neighbourhoods to decide what infrastructure they require, and balance neighbourhood funding with wider infrastructure funding that supports growth (a key criteria for both Local Plans and Neighbourhood Plans). The criteria for allocation of funding are as follows:

Parish council ✓

Neighbourhood Plan ✓

= 25% uncapped, paid to Parish

Parish council ✓

Neighbourhood Plan ✗

= 15% capped at £100 / dwelling, paid to Parish

Parish council ✗

Neighbourhood Plan ✓

= 25% uncapped, local authority consults with community

Parish council ✗

Neighbourhood Plan ✗

= 15% capped at £100 / dwelling, local authority consults with community

8.17 The Department of Communities and Local Government (CLG) has published the following relating to CIL:

- Part 11 of the Planning Act 2008 – the statutory basis for CIL
- The CIL Regulations 2010 – set out how CIL will work
- The CIL (Amendment) Regulations 2011 – came into force 6 April 2011
- Updated CIL overview May 2011 – a general guide
- CIL Relief May 2011 – a guide for cases where development is exempt from CIL including information on state aid
- CIL: collection and enforcement (information document published 10 October 2011)
- 10 October 2011 to 30 December 2011 – consultation on proposed changes which would require local authorities to pass a meaningful proportion of receipts to the neighbourhoods where the development that gave rise to them took place. The proposed reform also clarifies that receipts may be

spent on the ongoing costs of providing infrastructure to support the development of the area, and provides more local choice over how to implement a change.

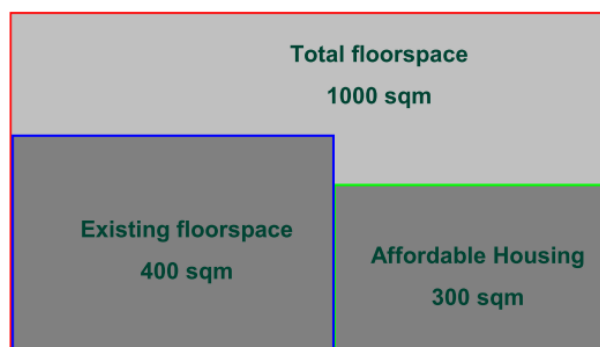
- Local Authorities (Contracting Out of Community Infrastructure Levy Functions) Order 2011 – order allows local authorities to contract out their levy functions to other organisations.
- The CIL (Amendment) Regulations 2012 – came into force 29 November 2012
- CIL Guidance December 2012 – complements the Regulations
- The CIL (Amendment) Regulations 2013 – came into force 24 April 2013
- Consultation on CIL further reforms – closes 28 May 2013

All material can be accessed on DCLG’s website via the following link:
<https://www.gov.uk/government/policies/giving-communities-more-power-in-planning-local-development/supporting-pages/community-infrastructure-levy>

Further useful information regarding the CIL can be found on the Planning Advisory Service’s information pages available via the following link:
<http://www.pas.gov.uk/pas/core/page.do?pagelid=122677>

Setting a CIL

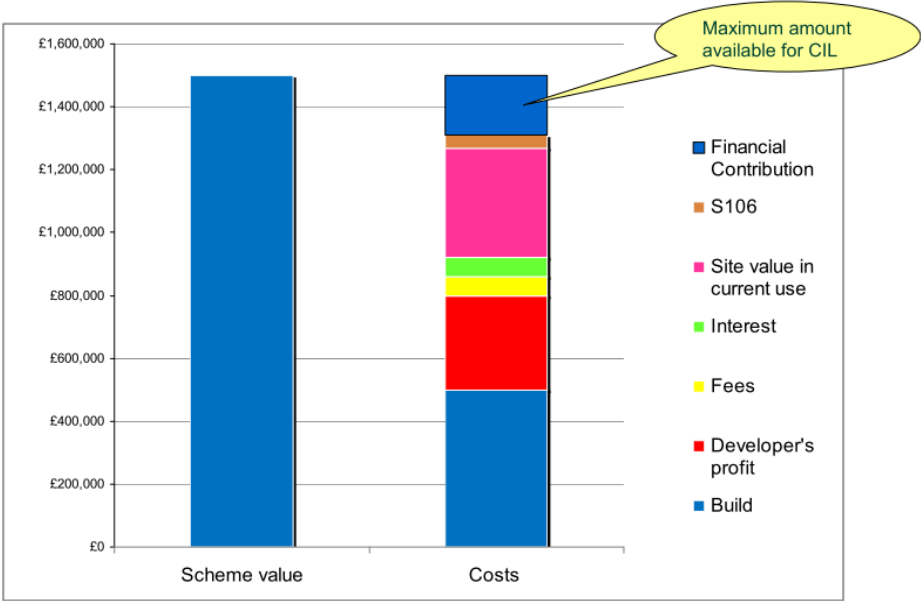
- 8.18 The levy is applied as £x per square metre on net additional gross internal floor space payable by the owner of the land, and is index linked. Any new build (whether a new building or an extension) is only liable for the levy if it has 100 square metres, or more, of gross internal floor space, or involves the creation of additional dwellings, even when that is below 100 square metres. Although a discount will be made for existing floorspace and affordable housing as illustrated below, existing floorspace will only be discounted if it has been in lawful use for a continuous period of at least 6 months in the last 12 months.



Example: CIL on whole floorspace at £100/sqm = £100,000
Net chargeable area: 1000sqm – 300sqm – 400sqm = 300sqm
Actual CIL payable = £30,000

- 8.19 Charging authorities must consult local communities and stakeholders on their proposed rates for the levy in a preliminary draft of the Charging Schedule. Before examination a Draft Charging Schedule must be formally published for representations for a period of at least four weeks. During this period any person may request to be heard by the examiner.

- 8.20 A Charging Authority must submit a declaration that they have complied with the requirements of Part 11 of the Planning Act and the CIL Regulations, and they have used appropriate available evidence to inform the Draft Charging Schedule.
- 8.21 Charging Authorities should broadly identify and cost infrastructure needed to support the development of their area – indicative infrastructure types or projects - and identify the aggregate funding gap. Infrastructure needs and cost evidence should be drawn directly from the infrastructure planning supporting the up to date development plan.
- 8.22 The charge should strike an appropriate balance between the desirability of funding the infrastructure gap and the potential effects (taken as a whole) of the imposition of CIL upon the economic viability of development across the area.
- 8.23 On an individual scheme, in the context of a residual valuation, the costs of the project (including any CIL payment) must not exceed the scheme’s value. Therefore, it is crucial to carry out sufficiently robust viability testing to quantify the amount available for CIL without rendering schemes unviable. A variety of development scheme scenarios will be analysed in the viability testing to ensure any CIL charging introduced in Southend does not hinder development in the borough.



- 8.24 There is no requirement to use any particular charging models. The Charging Schedule can be complex and refer to different uses, geographic areas etc. or be a simple model overarching all development, but all schedules must be based on viability evidence (not corporate, regeneration or other policy objectives).
- 8.25 The Draft Charging Schedule must go through a public examination and the Charging Authority must appoint and pay the costs of an ‘independent person’ who has the ‘appropriate qualifications and experience’, not necessarily the Planning Inspectorate. The key considerations at the examination are :

- Has the Charging Authority complied with the Act and CIL regulations?
 - Is the CIL rate informed by appropriate available evidence?
 - Has the Charging Authority struck an appropriate balance?
- 8.26 The Examiner can recommend approval, approval with modifications (e.g. to ensure that CIL rate does not put development at serious risk), or reject it, if for example the Charging Authority has not complied with the Act or Regulations or has not used appropriate available evidence.
- 8.27 Before a CIL Charging Schedule can be adopted, a Charging Authority must demonstrate at an Examination in Public that they have an up to date local (development) plan, evidence of infrastructure aggregate funding gaps that demonstrate the need to levy a CIL, and appropriate evidence on economic viability. This evidence should demonstrate that the proposed CIL rate(s) would not put implementation of the Local Plan at serious risk but will facilitate development throughout the economic cycle in accordance with paragraph 174 of the NPPF. The Council's Core Strategy was adopted in 2007 and covers a plan period up to 2021. It is considered sufficiently up to date for the purposes of proceeding with CIL.
- 8.28 The collection and expenditure/use of CIL must be reported annually.
- 8.29 CIL can only apply to developments acquiring planning permission or commencing under permitted development rights after CIL has been adopted.
- 8.30 The CIL Guidance (December 2012, para.79) strongly encourages authorities to keep their Charging Schedules under review to ensure that the CIL charges remain appropriate over time. For instance, as market conditions change, and also so that they remain relevant to the gap in the funding for the infrastructure needed. Revisions of the Charging Schedule will need to go through the same process as the initial Charging Schedule and it is therefore recommended that this only be done every few years.

Appendix 2

What other Essex authorities are doing

- 9.1 In accordance with paragraph 178 of the National Planning Policy Framework (NPPF 2012) authorities have a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to the strategic priorities set out in paragraph 156 of the NPPF. This is relevant to the IDP and CIL. The Government expects joint working on areas of common interest to be diligently undertaken for the mutual benefit of neighbouring authorities.
- 9.2 As can be seen from the details below, authorities within the county are at various stages of their Local Plan production and consequently CIL charging.
- 9.3 **Essex County Council** has yet to publish any details in relation to the CIL.
- 9.4 **Thurrock Council**, has opted to proceed with CIL charging and in March/April last year the authority carried out the first public consultation on a Preliminary Draft Charging Schedule. Thurrock Council is now moving towards finalising their Draft Charging Schedule, which will go out to further public consultation prior to submission for an independent examination. The proposed charges are as follows:

USE	ZONE C	ZONE D
A1 retail, A3 restaurants and cafes, A4 drinking establishments, A5 hot food takeaways, casinos, retail warehouse clubs	£150 psm	Nil
A2 financial and professional services, B1b research, B1c and B2 industry, B8 warehouses, hotels, car showrooms	£25 psm	Nil
All other non-residential uses	Nil	Nil

For residential development:

Zone A Nil

Zone B £38

Zones A and B are based on residential land values.

- 9.4 **Rochford District Council** has yet to publish any details in relation to CIL but are currently working on producing a Charging Schedule.
- 9.5 **Castle Point Borough Council** has stated within their LDS that they are aiming to adopt a CIL Charging Schedule by February 2014. However, a Draft Charging Schedule has yet to be published.
- 9.6 **Basildon Borough Council** is currently working on producing an up to date Core Strategy. During this process it is their intention to contact key stakeholders and service providers to ensure that new development in the Borough can be supported by local infrastructure and service upgrades in order to inform an Infrastructure Delivery Plan and a CIL Charging Schedule.
- 9.7 **Chelmsford City Council** published a Preliminary Draft Charging Schedule for consultation in March/April 2012 and it is their intention to publish a further Draft Charging Schedule early this year with the aim of adopting a levy by late 2013. The proposed charges are as follows:

Type of Development (Use Class) ⁽⁶⁾	Zone 1	Zone 2
Residential (Use Class C3 including sheltered or specialist housing)	£0/sqm	£125/sqm
Retail – comparison (Use Classes A1 [non-food] and A2-A5)	£87/sqm	£87/sqm
Retail – convenience (Use Class A1 [food])	£225/sqm	£225/sqm
All other uses (including Use Classes B, C1, C2 and D and sui generis)	£0/sqm	£0/sqm

Zone 1 = Strategic Greenfield location

Zone 2 = Rest of Borough

9.8 **Colchester City Council** consulted on their Preliminary Draft Charging Schedule in autumn 2011. Their Proposed Charging Schedule has recently been out to public consultation and is summarised as follows.

- £100 per square metre for new residential development in the 'rural' parts of the borough which includes Myland and Stanway; £80 per square metre in the remaining 'urban' part of the borough.
- £240 per square metre for convenience retailing (food stores).
- In the Town Centre new comparison retail development will not be liable for CIL; outside the town centre a charge of £90 per square metre will apply.
- All other uses 'nil' rate.

9.9 **Brentwood Borough Council** are aiming to adopt a CIL Charging Schedule by April 2014 although further details have yet to be published.

9.10 **Braintree District Council** have stated on their website that the authority intends to produce a CIL Infrastructure Plan, which will be subject to consultation later in 2013, but has yet to publish any details.

Appendix 3: Mitigating the risks associated with pursuing Option 1

Risk	Description	Action to avoid or mitigate risk
1. Lack of focus	CIL new initiative – no experience within authority. No clear responsibilities or tasks	Project team identified to research and deal with issues
2. Existing Local Plan policies found unviable and subsequently CIL may be found to be unviable	In June 2013 the Local Plan Viability Study due to be published and if existing and emerging policy is found to unviable the likelihood of development sustaining CIL may be limited; other policy requirements such as affordable housing and renewable energy could be at risk and negotiated down by developers	The indicative CIL rates will be factored into this study and if the proposed charges are found to be unviable at any stage (taking into account other policy requirements) then the rates will be revised accordingly
3. Not engaging appropriate stakeholders	Voluntary/community sectors, developers, Members and any other strategic partners must be part of CIL setting and governance process	Produce mechanism/ programme for communicating with and involving all stakeholders (internal and external)
4. Less development in the area	CIL could make some developments unviable thus generally discouraging development; large food retailers may choose to bank land rather than progress and pay CIL if it will have a serious effect on the viability of the scheme	Although a small minority of developments may become unviable, CIL should be appropriate to the area and overall infrastructure funding would increase; this will be the key test through the viability study and examination process
5. Detrimental impact on quality of development	As CIL is payable on gross internal floor space rather than net, the quality of development may deteriorate as developers attempt to reduce spaces such as atria and entrance halls, which contribute to making a development attractive but are not necessarily usable floorspace but are still CIL liable	Further investigative work should be undertaken at the preparation and viability testing stage in an attempt to quantify this risk
6. Budget pressure	The ability to use 5% of CIL receipts to cover CIL preparation costs may not cover actual costs (e.g. for examination) and may not be received in the first 3 years following adoption	Work on CIL needs to be recorded, costed and monitored in order to manage budgets accordingly
7. Limited staff resources	Strategic Planning will be otherwise occupied with the examinations relating to the Development Management DPD and SCAAP August – December 2012	Factor staff resource into project timetable
8. Delay to timetable	Ideally CIL should be in place prior to the April 2014 change in legislation	Maximise opportunities to speed up delivery (e.g. special briefings/committee meetings/officer delegation)
9. Developers opt to build only in neighbouring authorities without CIL	If CIL liability reduces viability of schemes and reduces developer profit then developers may move elsewhere jeopardising future development in Southend	Viability testing of the proposed rates should ensure this risk is mitigated with developers retaining reasonable profit levels

Appendix 4: Provisional Timetable

2013

June:	Cabinet to agree way forward in respect of CIL
July:	Council to agree way forward in respect of CIL
Summer/Autumn:	Scoping work, preliminary investigations, analysis of emerging best practice, governance and administrative arrangements; prepare IDP, Preliminary Draft Charging Schedule and revised SPD2 for consultation; workshops/briefings to be held including developers, Members and infrastructure providers to engage stakeholders in the process
Autumn:	Viability Study, prepare draft Regulation 123 List for consultation
Autumn/Winter:	Report to Council via the Scrutiny and Cabinet cycle to agree draft documents

2014

Winter:	6 week public consultation on Preliminary Draft Charging Schedule and revised SPD2 (plus IDP as evidence base)
Spring:	Consideration and review of consultation responses
Spring/Summer:	Finalise documents ready for submission
Summer/Autumn:	Public Examination
Autumn/Winter:	Report to Council via the Cabinet cycle in preparation for CIL adoption

2015

January:	CIL charging in effect
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