

Taunton Deane Borough Council

Executive – 20 June 2012

Introduction of the Community Infrastructure Levy (CIL) in Taunton Deane

Report of the Policy Lead Officer

(This matter is the responsibility of Executive Councillor Edwards)

1.0 Executive Summary

This report proposes that the Council introduces the Community Infrastructure Levy (CIL) from 1 April 2013 as a key mechanism for funding the infrastructure identified in the Council's Infrastructure Delivery Plan (IDP), which supports the Core Strategy, and the Taunton Town Centre Area Action Plan (TCAAP). The report explains why the Council needs to introduce CIL and sets out the key steps that it will need to take to introduce the levy, including the financial, staffing and administrative implications. It also sets out the Council's proposed Preliminary Draft Charging Schedule which will be subject to consultation.

2.0 Purpose of Report

- 2.1 The Borough Council has prepared its Core Strategy which sets out the long-term vision for the Borough up to 2028. Linked to this is the Infrastructure Delivery Plan (IDP) (q.v.) which identifies the infrastructure that will be required to deliver the Core Strategy proposals, and the scale of expenditure that is anticipated to be needed.
- 2.2 In 2008 the Council published the Taunton Town Centre Area Action Plan (TCAAP), which contains detailed priorities for infrastructure investment linked to the regeneration of the town centre by Project Taunton. The IDP includes infrastructure identified through the TCAAP.
- 2.3 This report sets out the process by which the Council can introduce the Community Infrastructure Levy by April 2013 as a key means of delivering the proposals in the Core Strategy and TCAAP, and how the Council needs to manage the collection and spending of receipts. It seeks Members' endorsement of the suggested way forward.

3.0 Background

- 3.1 The Planning Act 2008 made provision for local authorities to raise a levy from development to fund essential infrastructure. The Community Infrastructure Levy Regulations came into force on 6th April 2010 and were revised in April

2011. The Coalition government elected in 2010 decided to continue with CIL with relatively few changes.

- 3.2 Traditionally, local authorities have negotiated contributions from developers via S106 agreements (S278 for highways). However, many developments (particularly smaller schemes) do not currently make any contribution to infrastructure costs. By contrast, CIL is applicable to all development meeting certain criteria. It will therefore be a more comprehensive and more effective means of raising money for the provision of infrastructure.
- 3.3 Estimates of likely income from CIL will depend on the level (in £ per square metre of floorspace) at which the charge is eventually set, and the number and area of dwellings and other developments that are liable to pay it, but are likely to be several million pounds per annum. In the early years, the income from CIL will be lower owing to the fact that many developments will already have planning permission and CIL cannot be charged retrospectively. However, the amounts received will steadily 'ramp up' as more developments become liable over time.
- 3.4 In two-tier areas, district councils are the charging authorities for CIL on account of their role as the local planning authority. Taunton Deane will therefore be the charging authority within its area.
- 3.5 Local authorities comparable to Taunton Deane are already well advanced in introducing CIL. For example, CIL is already in operation in Shropshire and Newark & Sherwood. More locally, proposals are also well advanced in Mid-Devon and South Somerset.
- 3.6 A practical reason for introducing CIL is that, from April 2014, the ability to 'pool' contributions from developers via S106, to deliver infrastructure, will be substantially curtailed. The Government's intention is that CIL will be used to deliver larger strategic items with S106 retained only for direct mitigation of site-specific impacts. This clearly has implications for major items such as schools, swimming pools and transport schemes which are unlikely to be able to be funded in future via S106. When added to the fact that use of CIL will also be financially advantageous – probably raising several million pounds per annum in Taunton Deane – it is therefore essential that the Council takes steps to introduce CIL.
- 3.7 A more immediate reason for moving CIL forward as quickly as possible, in simple terms, is to minimise the number of developers who are able to avoid paying CIL by securing outline planning permission linked to S106 agreements. Under the Regulations, such developments cannot be made liable for CIL at the subsequent stage of securing detailed planning permission. The longer that the introduction of CIL is delayed, the more money that Taunton Deane and its communities stand to lose.
- 3.8 The Council's Preliminary Draft Charging Schedule is underpinned by detailed viability testing. This testing has been carried out by the Council's consultants, Three Dragons and Roger Tym and Partners, and is based upon different assumptions about development values and costs. The residential

modelling is on the basis of 25% affordable housing (consistent with the Core Strategy) of which 45% would be social rent, 15% affordable rent and 40% intermediate housing. This detailed viability testing for both residential and non residential uses will be available on the Council's website alongside the Preliminary Draft Charging Schedule.

- 3.9 Regulation 14 of the CIL Regulations (as revised) states that a charging authority '...must aim to strike what appears... to be an appropriate balance...' between the desirability of raising money from development to fund infrastructure, and the impact of the levy on the viability of development across the authority's area as a whole. In other words, the levy should not be set so high as to render a large proportion of development unviable; but equally, it should not be set so low that every development would remain viable (while raising insufficient money for infrastructure). The consultants have carried out their viability studies across a range of developments to identify the level of charge at which this 'balance' can reasonably be struck.
- 3.10 It is important to note that the Council will be able in future to amend the CIL rates if there is consistent evidence to show that development viability has changed. Amendments to the CIL Charging Schedule would need to be the subject of consultation and an independent examination.

4.0 Timescale for introducing CIL

- 4.1 It is considered reasonable to aim to introduce CIL by April 1st 2013. In practice, this means completing the majority of work needed to put CIL in place by the end of 2012. To achieve this, a number of key steps have to be undertaken:

(i) *Production of Preliminary Draft Charging Schedule*

Consultants Three Dragons and Roger Tym & Partners have prepared an initial schedule setting out what levels of CIL are likely to be justified in Taunton Deane. This will need to be agreed by the Council as a basis for consultation, on the following suggested timescale:

- Community Scrutiny 12th June
- Executive 20th June

There will need to be public consultation on the Preliminary Draft Charging Schedule. It is proposed that this will start on Thursday 28th June and to comply with the CIL Regulations, it will need to run for a minimum of 4 weeks.

The Preliminary Draft Charging Schedule is included with this report as Appendix 2.

(ii) *Production of Draft Charging Schedule*

In the light of comments received, the Preliminary Draft Charging Schedule will be reviewed and, if necessary, any proposed changes brought back to

Scrutiny and the Executive, before the Schedule is published as a draft for submission to the person appointed as the examiner. The timescale for this is suggested as:

- Community Scrutiny 4th September
- Executive 12th September
- Special Full Council mid-September

Formal representations on the Draft Charging Schedule can then be made, prior to it being submitted for examination

(iii) *Submission to examiner*

- End of October – following Portfolio Holder / LDF Steering Group sign-off

(iv) *Examination*

It is assumed that the examination will be in early 2013, although the precise date will need to be confirmed by the examiner.

(v) *Adoption*

Taking account of any changes recommended by the examiner in his/her report following the examination, the Charging Schedule will need to be considered by the Council and adopted on the following suggested timescale:

- Executive March 2013
- Full Council March 2013

4.2 Further information on the process of introducing CIL and its implications is included in Appendix 1.

5.0 Political Agreement

5.1 The Council needs to decide how the process of recommending the level of CIL, deciding on the content of the Regulation 123 list (see Appendix 1), and establishing priorities for use of CIL receipts, will be managed politically. It is suggested that this is handled through the existing LDF Steering Group, which is cross-party and contains the Portfolio and Shadow Portfolio Holders for planning policy, as well as the Chair of the Planning Committee. At each stage – preliminary, draft and submission – the LDF Steering Group will need to be involved. Final decisions would be subject to Scrutiny and approval of the Executive/Full Council in the normal way.

6.0 New Homes Bonus

6.1 It is already clear that the level of CIL received will not by itself be sufficient to fund all the infrastructure that is required. The level of CIL needs to be set with regard to the funding gap that will exist between what it collects and the expenditure on infrastructure that is required (as identified in the IDP). To provide the infrastructure needed for our planned levels of growth, a policy decision will be required on where other funding can be found to fill this gap and undoubtedly NHB would be a logical choice as the resultant growth would generate further NHB for the Council.

7.0 Links to Corporate Aims

7.1 The funding that will be obtained through the introduction of CIL is fundamental to delivering the Council's objectives for tackling deprivation and sustainability community development, regeneration and climate change. At present, under the Regulations CIL cannot be used to deliver affordable housing.

8.0 Environmental Implications

8.1 There are no direct environmental implications; however, failure to deliver the infrastructure identified in the IDP would have significant implications for flood alleviation, accessibility and reduction of carbon emissions. Development funded through CIL is likely to include infrastructure that will enhance the environment, such as country parks and green spaces.

9.0 Community Safety Implications

9.1 There are no identified community safety implications.

10.0 Equalities Impact

10.1 No separate Equalities Impact Assessment has been carried out as CIL is essentially a mechanism, rather than a proposal in its own right. A separate Equalities Impact Assessment has however been prepared to accompany the Core Strategy, whose proposals CIL is intended to help implement.

11.0 Risk Management

11.1 The principal risks associated with failure to introduce CIL are that the infrastructure needed to deliver the growth in the Core Strategy cannot be provided. This would undermine the long-term strategy for Taunton Deane and the achievement of the Council's corporate objectives.

12.0 Partnership Implications

12.1 The Council will need to work in partnership with a range of other organisations to deliver the proposals using CIL receipts.

13.0 Recommendations

- 13.1 The Executive is requested to approve the introduction of the Community Infrastructure Levy in Taunton Deane and endorse the Preliminary Draft Charging Schedule for public consultation.

14.0 Persons to Contact

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Appendix 1

Work to be undertaken to introduce CIL and following its introduction, and its implications

1.0 Production of Regulation 123 list

- 1.1 A key task for the Council during the remainder of 2012 will be the production of a list setting out the types of infrastructure that it intends to fund through CIL, prior to the adoption of the Charging Schedule. This infrastructure list needs to be drawn from the IDP, although it is not essential that all items in the IDP are funded in this way. The Council has to prepare the list because, if it does not, its ability to use S106 agreements to fund other items will be effectively curtailed: a key aim of the Regulations is to make sure that developers do not end up 'paying twice' for something (via CIL and via S106). Items not on the Regulation 123 list are not allowed to be funded through CIL, so considerable thought will be needed when the list is being drawn up.
- 1.2 Another key issue will be the delivery of infrastructure where responsibility for the service rests with the County Council. This applies in particular to education and transport, which account for a major proportion of the infrastructure investment that will be needed over the next 10-15 years. Whilst CIL is likely to be an important means of delivering such schemes, the County Council also receives 20% of the New Homes Bonus (q.v.) in respect of development that takes place in Taunton Deane, as well as direct funding from central Government in respect of its statutory functions. There will need to be discussions with the County Council as to which items are to be included on the Regulation 123 list.
- 1.3 There is also likely to be some infrastructure funded by CIL where delivery will rest with other partners (for example, certain types of health care facility).
- 1.4 The Council will need to make its decisions on the Regulation 123 list taking account of the availability of funds in the Capital Programme and the use of other funding sources, such as New Homes Bonus.

2.0 Setting up a CIL management IT system

- 2.1 A computerised management system will need to be acquired to handle CIL. There is already clear evidence that the CIL process is complicated and it will have to be administered using software linked to the processing of planning applications.
- 2.2 With CIL, the Council will need to identify the liable party; issue Liability Notices at the time planning permission is granted, issue Demand Notices on commencement; take action to surcharge for non-payment and issue Warning and Stop Notices where development has commenced but payment of CIL has not been made. (This list of actions is by no means exhaustive). It will also have to manage the collection and distribution of CIL monies. The chargeable amount payable is a local land charge.

- 2.3 The Council presently uses a computerised development management system provided by Acolaid. Acolaid is supplied by IDOX who are known to be supplying modules to other systems free of charge. It is assumed that the same will apply to Acolaid. It would also be preferable to use something that is part of a system which is already supported.
- 2.4 Another IT system on the market is supplied by Exacom, which is already being used in Shropshire and by other authorities in the South West, such as South Somerset (who are using Exacom linked to Microsoft Access for managing S106 agreements).
- 2.5 It is clear that the identification and acquisition of CIL management software is vitally important, and needs to be progressed so that a system can be 'up and running' by April 2013. Initially an approach needs to be made to IDOX to see what capability they can offer to manage CIL via Acolaid,

3.0 Work following adoption

- 3.1 CIL is payable per unit (sq m) of interior floorspace of development. The Council's case officer in Development Management will need to approve the final floorspace figure against which CIL will be charged. There will also be a need to ensure that the floorspace of the development that is actually constructed accords with the planning permission; this appears to raise the issue that the Council is no longer a sole provider of Building Control services within its area.
- 3.2 Once CIL is adopted, the charging rates proposed will be indexed to account for inflation using a nationally accepted index (e.g. BCIS) so that changes are on a uniform basis across authorities. The charges will need to be regularly reviewed to take account of changes in viability and any proposed changes to the Schedule will need to be submitted for further examination.

Payment by Instalments

- 3.3 CIL is payable on commencement of development. The Council are able to consider introducing payment by instalments, but this will need to be agreed before any development commences and will also need to be in accordance with a published policy. Thought needs to be given to such a policy during 2012, as there are a number of large-scale developments in Taunton Deane where phased payments will make a difference to the economics of development.

Charitable Relief

- 3.4 Under Regulation 43, development for a charitable use is exempt from CIL. The Council could also decide under Regulation 44 to allow relief for development by charities where the whole or greater part of the development is held by the charity as an investment for charitable purposes. It should be noted, however, that other councils appear not to be doing so. There is, in any event, specific provision exempting social housing from liability for CIL and developments used directly for charitable purposes.

Local Communities

- 3.5 The Council will be required to pass a 'meaningful' proportion of CIL receipts to parish councils for use on infrastructure identified as important by the local community. Further guidance on what constitutes a meaningful proportion is awaited from central Government.

Reporting

- 3.6 For each financial year, the Council will be required to prepare a report identifying the total CIL receipts for that year and how the receipts have been expended. This report will need to be published on the Council's website.

4.0 Staffing implications

- 4.1 The Council is facing a significant issue of staffing in respect of CIL. At present, it has no full time officer dedicated to handling the S106 process. CIL is considerably more complex. The advice received to date makes it clear that the Council will need to employ at least one full time member of staff to administer CIL, together with a second person to provide 'back up' and absence cover.
- 4.2 This staffing requirement can, in the longer term, be funded by top slicing CIL receipts. Under the CIL Regulations, the Council is allowed to use 5% of receipts for the purposes of administering the process.
- 4.3 There is also a need for other staff to be trained to understand and administer the CIL process.
- 4.4 A separate report will be brought back to Members which will identify how the staffing requirement can be met.
- 4.5 Thought also needs to be given to the role of SWOne in procurement (issuing tenders, reviewing bids etc.) and potentially in the recovery of debt.

5.0 Ongoing role of the IDP

- 5.1 The level of CIL that is charged and the use of CIL receipts will be substantially influenced by the Council's IDP, which was prepared in 2010 and is linked to the LDF Core Strategy. The IDP sets out what infrastructure will be required over the life of the Core Strategy (2012-2028), though with an emphasis on the initial five years. CIL receipts will need to be combined with funding from other sources (such as New Homes Bonus – q.v.) to deliver the projects identified as priorities. In the short term, the main priorities are flood alleviation for Taunton, Taunton town centre improvements, and the swimming pools.
- 5.2 The IDP requires periodic (although not frequent) review, which in turn could require a review of the Regulation 123 list.

6.0 Delivery of schemes using CIL

- 6.1 Under the CIL Regulations, there is normally no provision for developers to make payments in kind (i.e. by directly providing infrastructure or community facilities in lieu of paying CIL). However, developers will still be able under Regulation 73 to provide land to the Council to accommodate infrastructure, as long as that land is independently valued and that the land is made available on the day of payment. The Council will need to consider (in consultation with partners) how it proposes to ensure delivery of schemes for which funding is received through CIL or for which it receives land. In some cases this may involve direct delivery by the Council (e.g. certain types of open space provision).
- 6.2 In preparation for this, it is proposed to establish an officer Infrastructure Planning Group which would include representatives from Strategy, Development Management, Project Taunton, Housing, Legal Services, the DLO and Finance. This group would report to the LDF Steering Group.

Appendix 2

Taunton Deane Borough Council

Community Infrastructure Levy

Preliminary Draft Charging Schedule

June 2012

Community Infrastructure Levy (CIL) – Preliminary Draft Charging Schedule

Introduction

The Community Infrastructure Levy (CIL) was introduced under the Planning Act 2008 and is defined in the CIL Regulations 2010 (as amended 2011). Local authorities in England and Wales can elect to charge CIL on new developments. Essentially it is a tariff-based approach to assist in funding infrastructure associated with planned growth.

CIL takes the form of a charge per square metre of additional floorspace (new build or extensions) and can be charged on most new development. There are exemptions for charitable organisations and affordable housing, together with some size thresholds for non-residential uses. Developments under 100 sq m of net additional floorspace are not liable for CIL. The money raised will be used to deliver prioritised infrastructure that is needed to support the growth proposals set out in the Council's Core Strategy.

The introduction of CIL is seen as necessary in part because, from April 2014, the ability to pool planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), will be restricted. It will therefore become difficult to deliver larger scale items of infrastructure such as schools, swimming pools and transport schemes, where pooling of numerous individual planning contributions is often necessary. Section 106 will continue to be used to deliver some infrastructure, but this will largely be restricted to site-specific mitigation and for providing affordable housing.

Evidence to support CIL

The evidence to support this Preliminary Draft Charging Schedule is available on the Council's website as part of the Council's evidence base. The links are given at the end of this document. The viability evidence to support the proposed charges has been prepared on behalf of the Council by Three Dragons and Roger Tym and Partners.

The Community Infrastructure Levy Evidence Base looks at market analysis and viability testing of different development types and recommends rates of CIL that can be charged without putting the majority of development proposed at risk. This indicates that for residential development, CIL would not render the majority of development unviable. For non-residential uses the only types of development which could support CIL and remain viable, at present, are retail warehousing, superstores, supermarkets and convenience stores.

The Proposed Levy

The Preliminary Draft Charging Schedule attached has been prepared in accordance with Part 11 of the Town and Country Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended). The Council has sought to strike a balance between ensuring appropriate development comes forward and the impact of CIL on development viability. It has also sought to balance costs between aspects of site-specific infrastructure which will continue to be secured through Section 106 planning obligations and those that will be funded through CIL.

The CIL rates proposed are set out in the Preliminary Draft Charging Schedule. They have been arrived at taking account of the list of infrastructure needs from the Borough Council's IDP and identifying what infrastructure could be paid for through CIL, and what could be funded from other sources (such as Section 106 agreements). An assessment of viability of development in different parts of the Borough has been carried out by the Council's consultants to determine what level of CIL could be charged without affecting the viability of most development. The Regulations recognise that the CIL charge may make some development unviable and that CIL should not be set at such a low rate as to ensure that every development remains viable.

Viability evidence suggests that there is no scope to charge CIL on residential development within Wellington urban area, nor on non-food retail development within defined town, district/local or rural centres in Taunton Deane. Employment development in the Borough is also not able to support CIL.

Once CIL is adopted, the charging rates proposed will be indexed to account for inflation using a nationally recognised index so that changes are on a uniform basis across authorities. The charges will be regularly reviewed to take account of changes in viability, and any proposed changes to the Charging Schedule will be submitted for further examination.

CIL Relief

The CIL Regulations provide for full relief from the CIL charge for any part of a development which is affordable housing (and includes social and affordable rent and shared ownership). Charity landowners will also benefit from relief provided that the development is to be used for charitable purposes. If a development is initially granted CIL relief and then circumstances change, there is a claw-back period of 7 years within which the development will become liable for CIL. Relief can also be given in exceptional circumstances, subject to the Council publishing a policy to this effect. Such exceptional circumstances will only apply where there is a Section 106 planning obligation in place that has costs greater than the chargeable amount and where the addition of CIL would make the development unviable; additionally the amount of relief granted must not be sufficient to qualify as notifiable state aid under EU law.¹ The fact that an application may be unviable is unlikely, in itself, to constitute an exceptional circumstance in terms of the CIL Regulations, and given the restrictions imposed regarding state aid, the Council does not intend to apply such a policy at this time.

Payment of CIL

CIL is payable on commencement of development. The Council are able to consider introducing a policy for payment by instalments, but this will need to be agreed before any development commences and will also need to be in accordance with a published policy. Such a policy does not form part of the proposed CIL Charging Schedule, and as yet the Council has not taken a view as to whether there should be such a policy or how it should operate.

¹ The current de minimis threshold is €200,000 (€100,000 for undertakings in the road transport sector) over a rolling three year fiscal period. Community Infrastructure Levy Relief Information document published by CLG.

Relationship between CIL and Section 106 agreements

Provision for Section 106 agreements will remain, but from April 2014, under Regulation 123, the ability to pool contributions from developers via S106 to deliver larger items of infrastructure will be substantially curtailed. The Council's intention is that CIL will be used to deliver larger strategic items with S106 retained only for direct mitigation of site-specific impacts.

Under Regulation 123, the Council will also need to prepare a list setting out the types of infrastructure that it intends to fund through CIL, prior to the adoption of its Charging Schedule. CIL cannot be used as well as Section 106 to deliver the same piece of infrastructure.

CIL for local communities

The Council will be required to pass a 'meaningful' proportion of CIL receipts to parish councils for use on infrastructure identified as important by the local community. Further guidance on what constitutes a meaningful proportion is awaited from central Government.

Next Steps

The CIL Regulations require the Council to carry out two stages of consultation on the proposed CIL Charging Schedule, but there are no specific guidelines as to what this should comprise other than a minimum of 4 weeks prior to submission. This Preliminary Draft Charging Schedule will be the subject of consultation for 4 weeks starting on Thursday 28th June and ending on Friday 27th July at 17.00. Consultation is aimed particularly at local community representatives and representatives of the development industry.

Following consultation on the Preliminary Draft Charging Schedule, the Council will review the comments received with a view to publishing a Draft Charging Schedule for examination in early 2013.

Your Views

We would like to receive any comments you may have on:

1. The Preliminary Draft Charging Schedule.
2. The introduction of a policy for payment of CIL by instalments, and the form this could take.

Taunton Deane Community Infrastructure Levy Preliminary Draft Charging Schedule

This charging schedule has been prepared in accordance with Part 11 of the Town and Country Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended by the 2011 Regulations). It is supported by local evidence regarding infrastructure requirements and the impact of the levy on the viability of development, as set out in the consultants' reports. These can be found on the Council's website as part of the Core Strategy and CIL Evidence Base (see links on previous page).

Levy Rates

The rates below will be charged against the gross internal floor area of:

- All new dwellings
- All other development exceeding 100 sq m in size

Development Uses	Levy (per sq m)
Residential Development in Taunton, including urban extensions	£80
Residential Development in Wellington urban area	£0
Residential Development in Wellington urban extensions	£25
Residential Development outside Taunton and Wellington	£125
Retail Warehousing of any size throughout Taunton Deane	£300
Retail superstores – over 2,500 sq m food and convenience shopping stores but with a significant proportion of comparison goods throughout Taunton Deane	£300
Supermarkets and convenience stores – under 2,500 sq m and predominantly food and convenience shopping throughout Taunton Deane	£150
All other development	£0

How the CIL charge will be calculated

In accordance with the Regulations, where applicable the Council will issue a Liability Notice that states the chargeable amount on grant of planning permission or as soon as possible after the grant of planning permission. The Council will calculate the amount of CIL chargeable using the formulae set out in the Regulations.

Full details of the way in which CIL will be calculated, together with an overview of CIL and the full Regulations, can be found on the CLG website:

<https://www.gov.uk/government/organisations/ministry-of-housing-communities-and-local-government>.