

TEWKESBURY BOROUGH COUNCIL

Report to:	Council
Date of Meeting:	19 April 2016
Subject:	Community Infrastructure Levy: Draft Charging Schedule
Report of:	Julie Wood, Development Services Group Manager
Corporate Lead:	Rachel North, Deputy Chief Executive
Lead Member:	Councillor D M M Davies
Number of Appendices:	One

Executive Summary:

On 14 April 2015 Council agreed a Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule (PDCS) for public consultation. This work was progressed in collaboration with Cheltenham Borough and Gloucester City Councils.

The report now before Council draws together all the relevant threads of information informing the revisions to the charging schedule, taking account of consultation responses to the PDCS and further detailed viability assessment work.

This report seeks Council approval to undertake public consultation on the Tewkesbury Borough CIL Draft Charging Schedule (DCS) prior to independent examination. Cheltenham Borough and Gloucester City Councils will also be consulting on their Draft Charging Schedules.

Recommendation:

- 1) That the Community Infrastructure Draft Charging Schedule be APPROVED for public consultation.**
- 2) That authority be delegated to the Deputy Chief Executive, in consultation with the relevant Lead Member, to prepare the final consultation documents as required based on the information contained in Appendix 1.**
- 3) That the Deputy Chief Executive be authorised to agree the date of public consultation on the Draft Charging Schedule with Cheltenham Borough and Gloucester City Councils.**
- 4) That the Deputy Chief Executive, following the conclusion of the public consultation, be authorised to compile and submit responses received, along with the Draft charging Schedule, to the Planning Inspectorate for Examination.**

Reasons for Recommendation:

The development of a CIL Charging Schedule enables the Council to ensure that new development contributes proportionately to infrastructure provision whilst taking into account the need to strike an appropriate balance which does not threaten viability.

Resource Implications:

The cost of taking CIL forward has been estimated at £105,000 between the three Joint Core Strategy (JCS) authorities and covers the following requirements:

Consultation £5,000.

CIL resource support £30,000.

PBA further analysis including presentations £20,000.

Examination £50,000.

Tewkesbury's contribution of £35,000 has been provided in the 2016/17 budget through the increased overall contribution to the JCS of £195,000.

Further costs are anticipated for the implementation stage of CIL which may need specific additional funding from the partner Councils. A further request will be made at a later date should this be necessary. On an ongoing basis there will be costs to administer the scheme. Options for delivery are currently being investigated and costed, giving consideration to the CIL Regulations, which provide for Charging Authorities to recover their administrative costs from CIL income, up to a total of 5%, including set up costs of CIL, fees involved in setting the charge and any training - defrayed against the first 3 years income.

Legal Implications:

The formal procedure for the setting and adoption of CIL charges is set out in the Planning Act 2008 (as amended by the Localism Act 2011) and the Community Infrastructure Regulations 2010 (which are known collectively as "the drafting requirements"). Under the drafting requirements, a Charging Authority (the local planning authority) which proposes to charge CIL must prepare a Draft Charging Schedule (DCS) and then formally publish the DCS together with the appropriate available evidence on infrastructure costs, other funding sources and economic viability for consultation for a minimum period of four weeks. After the close of the consultation process, the Charging Authority must then submit the DCS for public examination before an independent person, who is usually a Planning Inspector. After the consultation period, a DCS may be amended to take account of consultation responses but such amendments should not be substantive. Any such changes must then be set out by the Charging Authority in a "Statement of Modifications" and must take such steps as it considers necessary to inform consultees that such Statement has been made. At the examination in public of the DCS, anyone who has asked to be heard during the consultation period or following any Statement of Modifications, must be heard in public. At the examination, the evidence base for the Charging Schedule is examined in public prior to the adoption of the CIL so it is critical that the Charging Authority's evidence base is robust. The PBA report is the evidence in this case and meets this test. For the examination, a Charging Authority should set out and present in evidence: 1) A draft list of projects or types of infrastructure that are to be funded wholly or in part by the CIL (in order to provide evidence of a funding gap); and 2) Any known site specific matters for which s.106 contributions may continue to be sought. Further matters to note in relation to the examination in public are: - a) Where a Charging Authority has chosen to work collaboratively with other charging authorities they may opt for a joint examination. b) The Charging Authority must meet the costs of the examination. Following the public examination, the Examiner produces a report of their recommendations to the Charging Authority in writing. The following options available to the Examiner are to approve the Charging Schedule; or to reject it or approve it subject to modifications (but it must give reasons for the recommendations). Provided that the Charging Authority has complied with the requirements of the drafting requirements, the Examiner must recommend approval of the DCS. The Charging Schedule must be formally approved by a resolution of the full Council of the Charging Authority and, within it, that resolution should include an appropriate commencement date following or on approval. The approved Charging Schedule must then be published setting out the date of its effect

Risk Management Implications:

Failure to develop a CIL would reduce the Council's ability to ensure that new development contributes proportionately to infrastructure provision in the longer term. The Council will also continue to utilise Section 106 agreements to secure appropriate infrastructure contributions. Failure to adopt a CIL means that the Council could be disadvantaged by changes to Section 106 which took effect on 6 April 2015 which limit the pooling of contributions for the infrastructure needed to support new development.

Performance Management Follow-up:

The JCS Operational Management Team will manage the co-ordination of the consultation exercise and the resultant responses for submission to the inspectorate.

Environmental Implications:

None.

1.0 BACKGROUND

- 1.1** The Council currently collects contributions from developments from Section 106 planning obligations to contribute towards the provision of necessary infrastructure. However, as a result of the Planning Act 2008, and subsequent regulations, the Community Infrastructure Levy (CIL) was introduced in April 2010 which significantly reduces the ability of Councils to collect such monies using this method.
- 1.2** In overall terms, CIL is intended to be used for general infrastructure contributions whereas the current Section 106 (S106) process is for site specific mitigation. The introduction of CIL is a response to concerns about the use of S106 obligations: they are not transparent, are ineffective in providing for major infrastructure and the needs arising from cumulative development, they have a disproportionate impact on larger developments, and many developments make no financial contribution. The set charges, and the legal obligation to pay a CIL where introduced, are intended to bring much greater certainty and to capture a broader range of development to contribute.
- 1.3** CIL charges are levied on new development and are payable when development commences or as staged payments after the commencement of development. The charges are set by the Local Planning authority, which is called the 'Charging Authority'.
- 1.4** The introduction of CIL in April 2010 remains discretionary for the Local Planning Authority. However, the scaling back of the use of S106 obligations (in April 2015) is not discretionary and has significant impacts for those planning authorities deciding not to adopt CIL. Since April 2015, the Council cannot now pool S106 payments where there have already been five or more S106 contributions (since April 2010), toward any named project or named type of infrastructure that could otherwise be funded through CIL. In practice, this means that S106 will continue to apply to site specific mitigation measures and on-site elements (such as open space, affordable housing, play areas, highway access, etc.), but is restricted.

- 1.5 CIL differs fundamentally from S106 in that the funds collected are not tied to a specific development or the provision of specific infrastructure. Unlike infrastructure provided through S106 obligations, which must be necessary to mitigate the impact of a particular development and used only for that specific purpose, CIL funds can be used flexibly by the Local Planning Authority to fund any infrastructure as defined within the Regulations. They can be pooled freely (unlike S106) to fund infrastructure priorities and collectively between authorities in order to make larger strategic investments.
- 1.6 Negotiation for affordable housing falls outside of the CIL Regulations and will continue to be negotiated by S106 agreements. However, decisions made in regard to CIL charges have direct implications on the future negotiation of affordable housing. At the time of writing this report the Government has yet to determine whether the starter home initiative (as an alternative to other affordable housing products) will be formally introduced.
- 1.7 Charging authorities must spend the CIL income on infrastructure. It is, however, unlikely that CIL will, on its own, fully fund the entire necessary infrastructure within an area.
- 1.8 The CIL Regulations (Regulation 14) are quite clear, however, that a charging authority ***'must strike an appropriate balance'*** between the need to capture funds for infrastructure and the potential effects of the CIL rates upon the economic viability and delivery of development, taken as a whole across its area. The CIL Regulations allow for different charges for different types of development, different geographical areas and different scales of development. The viability evidence must justify differential approaches and is therefore key to establishing CIL rates.

2.0 **DEVELOPING THE TEWKESBURY BOROUGH COMMUNITY INFRASTRUCTURE DRAFT CHARGING SCHEDULE**

- 2.1 Since 2014 the Borough Council, in collaboration with Cheltenham Borough Council and Gloucester City Council (JCS Authorities), have been working with Peter Brett Associates (PBA) who have been advising on CIL. The first formal stage in preparing a CIL is the requirement to prepare a Preliminary Draft Charging Schedule for public consultation and, on 14 April 2015, the Council agreed to approve the Community Infrastructure Levy Preliminary Draft Charging Schedule (PDCS) for consultation.
- 2.2 The PDCS was the subject of a six week period of public consultation from 29 May to 10 July 2015. A total of 34 representations were received during the consultation period and a further two responses were received after the consultation closed. Most of the consultation responses raised queries regarding the evidence for the viability assessment.
- 2.3 The JCS Authorities have, therefore, continued to work with PBA to undertake a review of JCS viability and to progress the preparation of the next stage of the CIL process which is the preparation of a Draft Charging Schedule (DCS) for public consultation. As part of this review a workshop was held with developers to more fully understand the queries with regards to the viability issues. The ongoing work with PBA also involved a review of the evidence base and is based on a detailed assessment of the following:-
- a range of typologies of the nature and scale of development; and
 - the Strategic Allocations as set out in the JCS.

2.4 PBA's report of these viability issues was completed at the end of January and the findings of this report have been used to inform the preparation of the attached Tewkesbury Borough CIL DCS (see Appendix 1). The outcomes of this further viability work and the recommendations contained in the PBA report were presented to the CIL Member Working Group on 22 February 2016 and at a Member Seminar on 2 March 2016.

3.0 PROPOSED DRAFT CHARGING SCHEDULE

3.1 The Draft Charging Schedule (DCS) is the document which sets out the proposals for the Tewkesbury Borough CIL publication. The Charging Authority is required to publish the DCS and invite representations and then submit the DCS for public examination and formal adoption.

3.2 The PBA report concludes that, whilst most sites are viable across the JCS area, when taking account of affordable housing delivery, the type and size of sites and their location likely to come forward - a one size fits all approach is not applicable for the JCS in respect of CIL. The proposed CIL rates for Tewkesbury Borough are, therefore, proposed as follows:-

Residential

1-10 dwellings - £104 per sqm.

11+ dwellings - £200 per sqm.

Non- residential

All retail development outside town centres -£100 per sqm.

All other types of development £0 per sqm.

JCS Strategic Sites (residential only)

All sites apart from A8a - £35 per sqm.

A8a - £0 per sqm.

The Strategic Allocations, given the issues raised above, will utilise Section 106 processes for all on site infrastructure needs and as such will only contribute a lower CIL charge for any off site need. Given the viability issues around the MOD Ashchurch site (A8a Brownfield) there is a nil CIL charge for off-site infrastructure at this location.

A full copy of the proposed CIL for Tewkesbury Borough is attached.

4.0 AFFORDABLE HOUSING

4.1 As referred to above, affordable housing is not included in CIL. However, as part of the PBA report the consultants were asked to look at the balance between providing infrastructure and providing affordable housing. As Members will be aware, the JCS is currently undergoing its Examination in Public (EIP) and the JCS officer team is working with the inspector on revisions to the affordable housing policy which, in the submission document, seeks the provision of 40% affordable housing on sites of more than 10 dwellings. Recommendations from consultants PBA in the context of the viability evidence is as follows:

- Cheltenham and Tewkesbury can suitably continue to work within a policy context of 40% on sites of 10+ dwellings with 0% below 10 dwellings.
- Gloucester does not have the viability to support 40% and 20% is recommended on sites of 10+ dwellings.

- 35% recommended on all strategic JCS sites, in recognition of significant onsite infrastructure and recommendation for CIL charge to be levied.
- To continue a blanket approach of 40% across all sites within the JCS is likely to be at the expense of seeking infrastructure contributions.

5.0 RELATIONSHIP OF THE JOINT CORE STRATEGY TO CIL

- 5.1** In delivering a joint development plan, it is hoped that, if the three JCS authorities each adopt a Charging Schedule, these will be aligned to deliver the best contribution toward infrastructure to support new development.
- 5.2** All work to date has been done together including the consultant advice and viability analysis. While each local authority will adopt an individual Charging Schedule it is intended that they are aligned to maximise the opportunity to reduce costs and achieve better value.
- 5.3** Each Council is thus considering its individual DCS in April and if all three JCS Councils agree to move forward at this time with publication on a DCS for their area, it is proposed that the consultation with accompanying documentation would be co-ordinated jointly. The JCS Councils are working together to align the dates of the consultation. The CIL Regulations sets a minimum of four weeks, but a six week period of publication is proposed.

6.0 INFRASTRUCTURE LIST

- 6.1** The infrastructure list is a list of infrastructure projects or types of infrastructure that the charging authority, by publishing on its website, intends will be, or may be, wholly or partly funded by CIL. CIL cannot be used as well as S106 to collect funds for the same piece of infrastructure. The infrastructure list is referred to as the Regulation 123 list and this is included in Appendix 2 alongside the Draft Charging Schedule.

7.0 NEIGHBOURHOOD FUNDS

- 7.1** In accordance with the CIL Regulations a specific proportion of CIL receipts would be passed to 'neighbourhood funds'. Therefore, in locations with an adopted Neighbourhood Plan, 25% of CIL receipts would be passed to Parish Councils to help fund local infrastructure in their areas. In other areas (where no Neighbourhood Plan has been approved), 15% of CIL receipts would be passed to Parish Councils, capped at £100 per dwelling.
- 7.2** Within the context of the CIL Regulations neighbourhoods have a wider definition of what CIL receipts can be spent on, whereas the Charging Authority is restricted to investing CIL receipts on infrastructure to support the development of the area. These wider spending powers allow the local community to decide what they need to help mitigate the impacts of development. The Regulations state that this proportion of funds must be used "*to support the development of the local area by funding;*
- (a) The provision, improvement, replacement, operation or maintenance of infrastructure; or*
 - (b) Anything else that is concerned with addressing the demands that development places on an area".*
- 7.3** If a Parish Council has failed to spend CIL funds passed to it within five years of receipt, or has applied the funds not in accordance with the CIL Regulations, then the Charging Authority can serve a notice on the Parish Council requiring it to repay some or all of the receipts passed. Any recovered funds must be spent by the Charging Authority in the Parish Council's area.

8.0 NEXT STEPS

8.1 Once the Draft Charging Schedule (including the Regulation 123 list) is approved by all three Councils the proposed timetable is as follows:-

- Consultation for 6 weeks commencing - early summer 2016.
- Review responses and submit for examination – summer 2016.
- Examination – anticipated autumn 2016.
- Adoption – anticipated winter 2016.

9.0 OTHER OPTIONS CONSIDERED

9.1 At the early stages of considering CIL, an option not to implement CIL and continue to rely only on negotiations of S106 was investigated. However, the restrictions put in place as set out in Paragraph 1.2, which limit the ability to pool receipts from S106, will result in loss of resource to fund identified infrastructure needs. CIL is a tool that will address the funding gap for infrastructure.

10.0 CONSULTATION

10.1 Public consultation took place on a PDCS from 29 May to 10 July 2015. Comments received have fed into the DCS. A workshop with the development industry has also taken place.

11.0 RELEVANT COUNCIL POLICIES/STRATEGIES

11.1 Submission Joint Core Strategy.

12.0 RELEVANT GOVERNMENT POLICIES

12.1 CIL Regulations.

13.0 RESOURCE IMPLICATIONS (Human/Property)

13.1 Resource is needed to successfully deliver the implementation of CIL, including infrastructure and procedures for billing and governance. As a Charging and a Collecting Authority the Council will need to have a robust system in place for the day to day administration of CIL. Although the liability for CIL is determined through the planning process, there are also legal and financial dimensions and the Council will need to determine how these respective responsibilities are to be integrated and administered. The JCS Operations Board is currently considering options for this. Any further requests for funding will be reported to Members. It should be noted that, within the CIL legislation, provision has been made for 5% of CIL income to be utilised for management fees as well as enabling local authorities to 'claim back' set-up costs.

14.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

14.1 None.

15.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

15.1 None.

16.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

16.1 Community Infrastructure Levy: Preliminary Draft Charging Schedule – report to Council on 14 April 2015.

Background Papers: Community Infrastructure Levy: Preliminary Draft Charging Schedule.

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Appendices: One - Draft Charging Schedule.