



REGENERATION AND ENVIRONMENT SCRUTINY COMMITTEE – 20TH MAY 2014

SUBJECT: COMMUNITY INFRASTRUCTURE LEVY (CIL) – APPROVAL AND IMPLEMENTATION OF THE CAERPHILLY COUNTY BOROUGH CIL CHARGING SCHEDULE

REPORT BY: ACTING DEPUTY CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 To provide Members with a summary of the outcome, including Examiner modifications, of the Examination into the Caerphilly County Borough Community Infrastructure Levy Draft Charging Schedule.
- 1.2 To seek the Scrutiny Committee's observations and recommendations for the consideration of Cabinet and, thereafter, to recommend to Council to approve the following:
 - (a) The adoption of the Community Infrastructure Levy Charging Schedule as amended by the Examiner in his Report of Examination, with the Charging Schedule taking effect from 1st July 2014; and
 - (b) The setting up and implementation of appropriate processes and procedures to enable the implementation of the CIL Charging Schedule on 1st July 2014;
 - (c) The adoption of the 4 CIL Guidance Notes as supporting guidance for the implementation of CIL.

Glossary Of Acronyms, Abbreviations And Terms

CIL..... Community Infrastructure Levy

LDP Caerphilly County Borough Local Development Plan

S106..... Section 106 of the Town and Country Planning Act 1990

CIL Documents CIL Charging Schedule, CIL Viability Report, Draft Regulation 123 List Of Infrastructure

IAR Infrastructure Assessment Report

Charging Schedule..... Caerphilly Community Infrastructure Levy Charging Schedule

R123 List Regulation 123 List of Infrastructure, which sets out the infrastructure that CIL can be used to fund.

Consultation Period 20th March 2013 to 1st May 2013

2. SUMMARY

- 2.1 On 26th July 2011 the Council resolved to prepare CIL for the County Borough. Following two public consultations and an Examination in Public in respect of the Charging Schedule, the Examiner has concluded that, subject to the rate for D1 Primary Health Care being modified to £0, the Council is able to demonstrate that it has sufficient evidence to support the schedule and can show that the levy rates would be set at levels that will not put the overall development of the area, as set out in its Local Development Plan, at risk. This report seeks approval for the Council's Community Infrastructure Levy Charging Schedule and further it recommends that CIL be implemented on 1st July 2014.
- 2.2 In order for CIL to be implemented, it is necessary to set up appropriate procedures and process for collecting, administering and monitoring CIL. The collection of CIL is prescribed in detail in the CIL regulations and significant work has been undertaken by the Planning Administration Team to build the Modules in the Development Management Back Office System to enable CIL to be implemented on approval.
- 2.3 In administering and prioritising CIL spend, it is intended to utilise a robust assessment process that will require service areas to submit bids for CIL funding. The CIL Assessment Panel will assess each bid against a set of standard criteria in order to prioritise schemes for funding. The results of the assessments will be reported to Cabinet for decision-making and then be reported through the council's annual budget report.
- 2.4 In Wales, where all or part of a chargeable development is within the area of a community council then the charging authority i.e. the County Borough Council must pass 15% of the relevant CIL receipts to that community council. Whilst the CIL Regulations make provision for the community councils to spend their CIL funds according to their own priorities, the report recommends that the council provide guidance notes and assessment forms to assist in ensuring that the CIL is used to fund infrastructure in accordance with the CIL Regulations. The report also recommends that officers negotiate with Community Councils to agree annual payments of the CIL receipts, to make the administration of CIL less complex and to ensure the funding is considered as an integral part of the Council's own budgetary procedures. CIL Regulation 62A requires that all Community Councils must prepare a report for any financial year in which it receives CIL receipts. The Council will work in conjunction with Community Councils in preparing their monitoring reports.
- 2.5 The county borough does not have 100% coverage by Community Councils. Whilst not a requirement, the CIL Regulations allow the council to make an appropriate proportion of CIL receipts, available to fund appropriate infrastructure in those areas that do not have a community council. The report recommends that the council administer a ring-fenced pot of finance for the provision of infrastructure in those areas.
- 2.6 The CIL Steering Group has considered the issues relating to the administration of CIL and the prioritisation of CIL spend and have made 11 recommendations for consideration and approval by Members.

3. LINKS TO STRATEGY

- 3.1 The CIL will directly assist in the delivery of the council's land use objectives as set out in the Caerphilly County Borough Local Development Plan (LDP). CIL will expand upon LDP policy SP7 Planning Obligations, which sets out the strategic policy basis for securing Planning Obligations (S106 Agreements) where they are necessary to remove obstacles to planned development.
- 3.2 CIL will be one of the mechanisms for making direct contributions toward the provision of many of the allocations set out in LDP policies. Overall CIL will be a significant tool for the delivery of the Council's aspirations in terms of infrastructure that cannot be funded through other means and for which no alternative funding mechanisms are available.

- 3.3 As such, CIL will also support the council in achieving the aims of Caerphilly Delivers, the LSB single integrated plan, particularly the Prosperous, Greener and Safer themes.

4. THE REPORT

Introduction to CIL

- 4.1 On 26th July 2011, the Council resolved to prepare CIL for the county borough. CIL is a levy or charge that, on being approved by the Council, becomes a statutory requirement for relevant developments (developments for which a charge is sought) to pay. In essence it is a statutory tax on development. CIL is not intended to replace the current system of S106 agreements. However when CIL is formally implemented, statutory restrictions will be applied to S106 agreements which will severely restrict their use to addressing issues that are necessary to make developments acceptable in planning terms and for the provision of affordable housing. CIL will then be the vehicle for funding infrastructure to support development in accordance with the development plan that is not necessary to make development acceptable in planning terms.
- 4.2 Once implemented, CIL is a statutory levy on development and the CIL regulations set out prescriptive procedures for its collection and enforcement if the levy is not paid. To ensure payment, the regulations provide for a range of proportionate enforcement measures, such as surcharges on late payments. However ultimately in the event of continued non-compliance and where recovery measures have been unsuccessful, the liable party can be committed to a short prison sentence.

The Charging Schedule and the Examination

- 4.3 On 8th October 2013, following two formal consultation periods on the CIL Charging Schedule, the Council resolved to submit the Charging Schedule to the Planning Inspectorate for Examination.
- 4.4 The Examination was a joint examination with Merthyr Tydfil County Borough Council, which consisted of 7 Hearing Sessions held on one day, i.e. 14th January 2014. The Examiner issued the 'Report on the Examination of the Draft Caerphilly County Borough Council Community Infrastructure Levy Charging Schedule' (Examiner's Report) on the 20th February 2014.
- 4.5 The Examiner's Report set out a number of findings in respect of the Draft Charging Schedule. In summary the findings are:
- i) There is a sufficient infrastructure funding gap to support the implementation of CIL.
 - ii) The background economic viability evidence for both residential and commercial development is reasonable, robust, proportionate and appropriate and the Council has used appropriate available evidence.
 - iii) The evidence provides a convincing basis for the 3 residential charging zones, which are, in principle, sensible and robust.
 - iv) The evidence clearly identifies that, for the Lower Viability Area, housing development cannot support a CIL charge and a zero rate is appropriate.
 - v) In the Mid Range Viability Area the rate of £25 per square metre is justified. However, the variance in affordable housing requirements across the area results in a wide spectrum of viability levels and this issue should be monitored through the monitoring process.
 - vi) In the Higher Viability Area the £40 per square metre rate is supported by the evidence and is reasonable.

- vii) The evidence does not support taking a different approach toward agricultural workers dwellings from other dwellings.
- viii) The evidence clearly identifies that certain commercial development types (including all employment type developments (Use Classes B1, B2 and B8), care and nursing homes, hotels and cinemas), were not currently viable and could not sustain CIL charges. For all of these uses the £0 per square metre psm charge listed in the Draft Charging Schedule is justified.
- ix) For A1 retail development the £100 per square metre CIL rate is reasonable and would leave significant headroom for the retail development that is most likely to take place.
- x) For Class A3 developments the rate of £25 per square metre leaves sufficient scope for A3 developments to remain viable.
- xi) For Class D1 Primary Health Care development the CIL charge would not serve a positive purpose in terms of supporting the LDP, as set out in paragraph 30 of the 2013 CIL Guidance and the charge be reduced to £0 per square metre psm.
- xii) The Charging Schedule is approved subject to the modification to the D1 Primary Health care rate.

4.6 The examiner only recommended one modification to the Draft Charging Schedule submitted for Examination [xi.) above], i.e. that the £25 per square metre psm rate for D1 Primary Health Care development be reduced to a rate of £0 per square metre. The Examiner's reasons for this modification are:

- i) The evidence, overall is confusing and inconsistent.
- ii) No evidence relating to the county borough was put forward.
- iii) There are a number of different funding models used for such development and the rate seeks to address only some of them. As a result the Council has not defined the development type with sufficient precision to support a charge.
- iv) There is significant risk that such development would simply look to take place elsewhere, outside the county borough, with obvious implications for health care provision in the county borough.

4.7 In conclusion, the Examiner approved the Charging Schedule subject to the rate for primary Health care being reduced to £0 per square metre. The CIL regulations require that the CIL Charging Schedule be subject to full council approval, prior to its implementation. A copy of the revised Charging Schedule for Adoption is included as Appendix 1. For completeness the Council's Regulation 123 List is included as Appendix 2.

4.8 Whilst not forming part of the CIL Charging Schedule Examination, the Council prepared a draft Regulation 123 List Infrastructure, which sets out the infrastructure that would be eligible for CIL funding, and 4 Guidance Notes to assist the understanding and practical implementation of CIL. The four Guidance Notes are:

- i) Guidance Note 1: Example Calculations of CIL Liability.
- ii) Guidance Note 2: Instalment Policy.
- iii) Guidance Note 3: Social Housing Relief Policy.
- iv) Guidance Note 4: Charitable Relief Policy.

4.9 The Guidance Notes have now been updated to reflect changes brought in by the publication of the CIL Regulations amendments in 2014. It is intended that these Guidance Notes be used to provide guidance and information on CIL for developers and as such approval is now sought for the Guidance Notes for publication in accordance with the implementation of CIL. Copies of the 4 Guidance Notes are included as Appendices 3 to 6 of this report.

4.10 Further to due consideration by Members, it is recommended that (subject to Full Council approval) the CIL be introduced in the county borough as from 1, July 2014.

Practicalities of Implementing CIL

4.11 Whilst the Charging Schedule has been progressing through its process towards approval, consideration has also been given to how CIL will be implemented. The CIL Regulations set out specific and identified procedures for collecting CIL and these will be undertaken as part of the general planning application process. Ensuring that CIL revenue is spent appropriately and fairly is not set out in the CIL Regulations. Consequently it is this area that the CIL Working Group and the CIL Steering Group have focussed their attention, seeking to formulate a fair and equitable process to determine where CIL revenue will be used.

4.12 The first key consideration for this process relates to when decisions on spending are made. The CIL Regulations make no reference to this matter and therefore a council decision is needed. Both Groups concluded that establishing procedures that can use existing council procedures and decision mechanisms would be the most appropriate. Basically, given that the CIL revenue is an additional fund that the council has to make decisions on, both Groups concluded that it would be best if decision on CIL funding were taken as part of the council budget process on an annual basis. This recommendation is set out as Recommendation 6 of Recommendations from the Steering Group. The recommendations are included in the Notes of the Second Steering Group Meeting, which is set out in Appendix 7 to this report.

4.13 The second key consideration for the process is how to prioritise funding across a multitude of vastly differing infrastructure schemes. Both the CIL Working Group and the CIL Steering Group concluded that the fairest and most equitable process for prioritising CIL spend would be through a robust assessment process, namely:

- i) A Service Area that has an infrastructure requirement submits a scheme to an Assessment Panel for consideration for CIL funding;
- ii) All schemes submitted be assessed and scored against a series of criteria to provide a numerical ranking;
- iii) The ranked schemes be the subject of a Report to Cabinet for due consideration; and
- iv) The financial implication is outlined in the annual budget report.

4.14 To facilitate the process, a set of assessment criteria against which the schemes would be scored needed to be identified. The CIL Groups have considered draft criteria and a weighting scheme for them, as well as a guide on how the schemes should be scored. The agreed proforma, which sets out the criteria and scoring, and the guidelines for scoring schemes are included in Appendix 8 to this report.

4.15 The final key consideration in prioritising schemes for CIL funding is the question of who assesses the schemes. It is likely that a wide range of service areas within the council will bring forward schemes for consideration for CIL funding. The system of assessment needs to be transparent and free from any potential issues relating to partiality. Whilst it is intended that the ultimate decisions would be taken by Cabinet and be reported through the council's annual budget report, the assessment would need to be done independently of that process, with only the assessment findings being fed through to the Cabinet meeting. Given this, the CIL Groups considered that an assessment panel should be set up, comprised of representatives from a number of service areas that would be unlikely to submit schemes for assessment. The CIL Groups agreed a set of six service areas that appropriate officers

should be drawn from to form the panel, namely:

- Finance
- Corporate Policy
- Sustainable Development
- Housing
- Strategic Planning
- Legal

One officer will need to be identified from each service area and the six officers will form the CIL Assessment Panel. The role of the Assessment Panel will be to score each of the submitted schemes according to the Assessment Proforma and in accordance with the Guidelines on the scoring. Once assessed the findings of the assessment process will be set out in a report to Cabinet.

- 4.16 The CIL Working Group and the CIL Steering Group have considered the issues relating to administering CIL and prioritising the CIL spend to deliver necessary infrastructure. As a result the CIL Groups have produced a series of 11 recommendations addressing the key elements of the proposed system to be used for CIL implementation. These Recommendations can be split into two areas, namely:

General CIL Recommendations

Recommendation 1: That CIL revenue raised in year 1 be accumulated and targeted at projects in year 2., and

Recommendation 2: That the Assessment Panel recommend a number of smaller projects in year 2 that would result in quick wins in terms of delivery.

- 4.17 These two recommendations are linked, as they are both aimed at accruing sufficient funds to implement smaller infrastructure schemes to realise infrastructure on the ground as quick wins, to help demonstrate that CIL is delivering infrastructure. The first recommendation seeks to accumulate all CIL receipts from the first year of CIL Implementation, to build a fund of CIL revenue that can immediately fund some infrastructure projects. The second recommendation seeks approval for the Assessment Panel to dedicate a proportion of the accumulated CIL revenue to fund small-scale infrastructure projects to realise quick wins. The schemes would be subject to Cabinet approval.
- 4.18 The CIL Assessment Panel is a group of officers from service areas that would not submit bids for CIL funding, meaning that they can be impartial in their assessment of the submitted schemes. A recommended composition of service areas is set out as Appendix 7 to this report.

Recommendation 3: That a sufficient percentage of revenue raised be accumulated each year (50%) in order to ensure the delivery of major infrastructure projects.

- 4.19 The Infrastructure Assessment Report, published in conjunction with the Preliminary Draft CIL Charging Schedule in June 2012, set out infrastructure requirements to meet the development proposed in the Adopted LDP. This Report identified a wide range of infrastructure types with costs ranging from in excess of £25 million to schemes of less than £100,000. The need to deliver infrastructure through CIL could lead to the position that infrastructure schemes with lower costs would be prioritised before schemes with higher costs, purely because they could be afforded with CIL revenue that had been collected to that point. The higher cost schemes could not be funded through a single year's CIL revenue and would be dependant upon revenue being accumulated over a longer period of time encompassing many years. This recommendation seeks to set aside 50% of the total CIL receipts (after administration costs and neighbourhood fund payments have been taken out) to accumulate over a number of years to deliver more costly infrastructure schemes. The remaining 50% would be used to fund other schemes.

Recommendation 4: *That the priorities for CIL spend be reported to Cabinet for decision, and be included in the council's annual budget report for information.*

- 4.20 The implementation of CIL introduces a new source of infrastructure funding for the council, but it requires procedures to be put in place to administer its collection, its allocation for spend and its monitoring. A key aim in the thinking of the Working and Steering Groups was to ensure that as much of the administration for CIL is based upon and utilises existing council processes and procedures. In terms of CIL spend it was considered appropriate that decisions in respect of CIL spend be reported to Cabinet, as the appropriate body for such decisions, and the decisions be included in the council's annual budget report to Full Council. This recommendation seeks agreement to this procedure.

Recommendation 5: *That an annual monitoring report in respect of CIL be prepared, and agreed by Council in line with regulatory requirements and be placed on the Council website by 31 December each year.*

- 4.21 The CIL regulations require that a report is produced each year outlining the CIL receipts, how much of the CIL revenue was spent, and on what, and how much has been retained for future spend. This recommendation seeks to agree a deadline for the preparation of the annual monitoring report, which ties in with the council budget planning process.

Recommendations relating to CIL Regulation 59A-F – Duty To Pass CIL to Local Councils

- 4.22 In April 2013 amendments to the Community Infrastructure Regulations were published that set out a requirement for the council to pass a proportion of CIL receipts collected in their area to the respective Community Councils. The following recommendations consider how this process should be administered and monitored and what should happen in areas where there are no Community Councils. It should be noted that, for the purposes of these Regulations, the term "Community Council" encompasses both Community Councils and Town Councils.

Recommendation 6: *That in line with the requirements of the CIL Regulations, 15% of CIL receipts should be passed to the Community and Town Councils within the county borough to support local infrastructure projects.*

- 4.23 This recommendation ratifies the requirements of the CIL Regulations that charging authorities in Wales make provision to pass 15% of CIL receipts to the Community Councils. It should be noted that each Community Council only receives 15% of CIL receipts generated through development in their community council area, it is not a broad brush 15% of total CIL receipts dispersed to all community councils equally. If no CIL receipts were generated in a community council area, that community council would not receive anything from CIL revenue.

Recommendation 7: *Local infrastructure projects that are in accordance with the Regulation 123 List should be identified to guide projects to be implemented by the Community Councils and*

Recommendation 8: *Community Councils to be provided with: a Local List, an Assessment Proforma and a CIL Guidance Pack to help prioritise CIL spend.*

- 4.24 Both of these recommendations address the issue that community council are not included under the same requirements in terms of the types of infrastructure that they can fund, as the Council's R123 List doesn't apply to them. Community Councils are, however, bound by the CIL Regulation requirements that CIL be used to fund infrastructure to support development in accordance with the LDP.

Recommendation 9: *That the payment of CIL Funds to Community Councils be made annually*

Recommendation 10: *That written agreement is sought with all Community Councils to distribute CIL funds on an annual basis.*

- 4.25 The CIL Regulations make provision for the council to agree with the Community Councils a schedule of when CIL payments should be made. Given that the council's CIL decisions will be made annually, it makes sense for the community council payments to also be on an

annual basis. However this would need to be done via agreement with each and every community council. If agreement cannot be reached the CIL regulations sets the default position of 6 monthly payments. The recommendations seek agreement for officers to seek agreement with the community councils on payment periods.

Recommendation 11: In areas that are not covered by Community Councils, the council administer a CIL pot, equivalent to 15% of total CIL receipts generated in the area each year, to provide infrastructure in those areas according to the CIL regulations.

- 4.26 The CIL Regulations make provision for the council to make available a proportion of CIL receipts to areas that have no Community Council Coverage, in the same way as payments are made to Community Councils. The CIL regulations do not require that such payments be made, allowing the council to retain the full receipts in such areas for the general CIL budget. In the interests of fairness and consistency the Steering Group recommended that the principle of making a proportion of CIL available to those areas without a Community Council was appropriate. However, given that a locally constituted and democratic body was not in place in these areas, the Steering Group recommended that the Council ring-fence and administer the proportion of CIL receipts for spend in those areas.
- 4.27 Finally the processes of collecting, administering and enforcing the CIL charge are likely to evolve over time and are likely to require formal resolutions in respect of some of the procedures and practices. Given that it is undoubtedly going to be a changing scenario, it is likely that further reports, addressing issues relating to the implementation of CIL, will be reported through the council reporting mechanisms.

5. EQUALITIES IMPLICATIONS

- 5.1 The Draft Charging Schedule takes residential differences into account by including a banding of 3 Viability Areas, and it should also be remembered that any new developments, whether residential or commercial, are subject to equality considerations via building regulations, therefore no impact assessment has been undertaken on this report, as the issues covered do not address changes to council service provision or its policies and strategies.

6. FINANCIAL IMPLICATIONS

- 6.1 The preparation of a CIL charging schedule is an invest to save scheme which the Council has previously resolved to fund from balances. The Implementation of CIL will require setting up new processes and procedures in respect of the collection, administration and monitoring of CIL funding.

7. PERSONNEL IMPLICATIONS

- 7.1 The implementation of CIL is not, currently, considered to require any additional personnel. It is anticipated that CIL can be implemented using existing council processes and procedures. As such there are no direct personnel implications from this report.

8. CONSULTATIONS

- 8.1 All comments have been incorporated into the report.

9. RECOMMENDATIONS

- 9.1 That the Scrutiny Committee recommends that the Council agree the Charging Schedule, as modified by the Examiner, be approved for implementation on 1st July 2014.

- 9.2 That the Scrutiny Committee recommends that the Council approve the Regulation 123 List and the 4 Guidance Notes for publication in accordance with the implementation of CIL.
- 9.3 That the Scrutiny Committee recommends that the Council agree the 11 Recommendations from the CIL Steering Group.
- 9.4 That the Scrutiny Committee recommend that the Council agree the setting up and implementation of appropriate processes and procedures to enable the implementation of the CIL Charging Schedule on 1st July 2014.
- 9.5 That the Scrutiny Committee recommend that the Council agree that officers commence discussions with the Community Council to agree payment periods for paying the Community Councils their 15% of CIL receipts.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 To satisfy the legislative requirements for implementing the CIL charge.
- 10.2 In order to assist in the implementation and understanding of the CIL charge.
- 10.3 To ensure that the appropriate provision have been made for the implementation of CIL.
- 10.4 To ensure that the appropriate provision have been made for the implementation of CIL.
- 10.5 To satisfy the requirement of the CIL regulations in making payments to Community Councils.

11. STATUTORY POWER

- 11.1 The council, as local planning authority, is empowered under the provisions of Part 11 of the Planning Act 2008 to undertake preparation and implementation of CIL.

Author: Dave Lucas, Principal Planner, Strategic and Development Plan Team
Consultees: Cllr H Andrews, Leader of Council
Cllr C Mann, Leader of the Majority Opposition
Cllr G Jones, Deputy Leader and Cabinet Member for Housing
Cllr K Reynolds, Deputy Leader and Cabinet Member for Corporate Services
Cllr D Hardacre, Cabinet Member for Performance and Asset Management
Cllr R Passmore, Cabinet Member for Education and Lifelong Learning
Cllr D Poole, Cabinet Member for Community and Leisure Services
Cllr T Williams, Cabinet Member for Highways, Transportation and Engineering
Cllr R Woodyatt, Cabinet Member for Social Services
Cllr K James, Cabinet Member for Regeneration, Planning and Sustainable Development
Cllr C Forehead, Cabinet Member for HR and Governance/Business Manager
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Pauline Elliott, Head of Regeneration and Planning
Gail Williams, For Head of Legal Services
Gareth Hardacre, Head of People Management and Development
David Thomas, Senior Policy Officer (Equalities and Welsh Language)
Mike Eedy, Finance Manager

Appendices

- Appendix 1 - Caerphilly County Borough Council Community Infrastructure Levy Charging Schedule
- Appendix 2 - Caerphilly County Borough Council Community Infrastructure Levy Regulation 123 List of Infrastructure
- Appendix 3 - Caerphilly County Borough Council Community Infrastructure Levy Guidance Note 1 - Examples of how CIL liabilities are calculated
- Appendix 4 - Caerphilly County Borough Council Community Infrastructure Levy Guidance Note 2 – Instalment Policy
- Appendix 5 - Caerphilly County Borough Council Community Infrastructure Levy Guidance Note 3 – Social Housing Relief Policy
- Appendix 6 - Caerphilly County Borough Council Community Infrastructure Levy Guidance Note 4 – Charitable Development Relief Policy
- Appendix 7 - Notes of the Second Meeting of the Community Infrastructure Levy Steering Group
- Appendix 8 - CIL Infrastructure Assessment Criteria and Scoring Sheet

Background Papers:

- Draft CIL Charging Schedule
- Report on the Examination of the Draft Caerphilly County Borough Council Community Infrastructure Levy Charging Schedule