

# Gloucester City Council

<b>Meeting:</b>	<b>Cabinet</b>	<b>Date:</b>	<b>9 March 2016</b>
	<b>Planning Policy Sub-Committee</b>		<b>17 March 2016</b>
<b>Subject:</b>	<b>Community Infrastructure Levy – Draft Charging Schedule</b>		
<b>Report Of:</b>	<b>Cabinet Member for Housing and Planning</b>		
<b>Wards Affected:</b>	<b>All</b>		
<b>Key Decision:</b>	<b>No</b>	<b>Budget/Policy Framework:</b>	<b>No</b>
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<b>Appendices:</b>	<b>1. Draft Charging Schedule and Regulation 123 List</b>		
	<b>2. Schedule of Representations to PDCS Consultation</b>		

## FOR GENERAL RELEASE

### 1.0 Purpose of Report

- 1.1 To seek approval of the Community Infrastructure Levy –Draft Charging Schedule for public consultation purposes.

### 2.0 Recommendations

- 2.1 **Cabinet** is asked to **RESOLVE** that:

- (1) It approves the publication of the Draft Charging Schedule for public consultation purposes subject to any further amendments recommended by Planning Policy Sub-Committee.
- (2) It grants delegated powers to the Head of Planning in consultation with the Cabinet Member for Housing and Planning to prepare the final consultation document.
- (3) Following the conclusion of the public consultation period, the responses received are compiled and submitted with the Draft Charging Schedule to the Planning Inspectorate for Examination.

- 2.2 **Planning Policy Sub-Committee** is asked to **ENDORSE** the publication of the Draft Charging Schedule for public consultation purposes which incorporates the proposed CIL rates outlined in section 11 of this report.

### 3.0 Background

- 3.1 The Community Infrastructure Levy (CIL) was introduced by the Planning Act 2008 with further information set out in subsequent Regulations. In overall terms, CIL is intended to be used for general infrastructure contributions whereas the current

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.

- 3.2 The introduction of CIL remains discretionary for the Local Planning Authority. However, the scaling back the use of S106 obligations (in April 2015) is not discretionary and will have significant impacts for those LPAs deciding not to adopt CIL.
- 3.3 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 LPA 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.
- 3.4 The Community Infrastructure Levy (CIL) was introduced in April 2010. It allows local authorities in England and Wales to raise funds from development. 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 LPA, which is called the 'Charging Authority'. The money can be used to contribute to, or to help lever in investment for, a wide range of infrastructure that is needed to support new development.
- 3.5 Councils must spend the income on infrastructure. It cannot be used to remedy existing deficiencies unless a new scheme will make this worse. CIL can fully fund or provide a contribution to the infrastructure needed to facilitate growth and to deliver the development strategy. It is unlikely that CIL will, on its own, fully fund all of the necessary infrastructure within an area.
- 3.6 Charging authorities need to 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 economic evidence on the potential to capture potential land value forms the basis for deriving CIL charges. Viability is tested at a district wide level in setting CIL rates, compared to site by site negotiation under S106. It is expected that CIL will capture more of the land value uplift that results from development than S106 contributions are able to capture. There is a defined process for preparing a CIL which includes an Independent Examination to test the rates and robustness of the evidence. The process for preparation and approval of the Charging Schedule is set out in legislation (Planning Act 2008 part 11, the Community Infrastructure Levy Regulations 2010 and the Community Infrastructure Levy (Amendment) Regulations 2011). This involves evidence gathering, consultation and testing at a public examination. Once approved, the Charging Schedule does not form part of the development plan but does support it.

- 3.7 The Council has a choice whether to introduce CIL or not. However, 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 the use of pooled S106 contributions for major infrastructure (such as major transport or leisure facilities) will be severely restricted.
- 3.8 The CIL Regulations 2010 also introduced into law three tests for planning obligations that are capable of being charged CIL. S106 obligations must be:
- Necessary to make the development acceptable in planning terms.
  - Directly related to the development.
  - Fairly and reasonable related in scale and kind to the development.
- 3.9 Whilst these tests are a consolidation of the advice originally contained in Circular 05/05, they are now a legal requirement giving them much greater force. The statutory status of these tests now brings a much greater need to demonstrate that the terms of any S106 are lawful and such agreements are now subject to greater scrutiny in terms of their lawfulness.
- 3.10 The Preliminary Draft Charging Schedule (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. A summary of the representations received and the JCS authorities' response to these is included at Appendix 2.
- 3.11 Following the conclusion of the PDCS consultation exercise, the JCS authorities continued to work with their consultants, Peter Brett Associates (PBA) to progress the preparation of the Draft Charging Schedule (DCS) and to undertake a review of JCS site viability and the relationship between CIL delivery and affordable housing provision. The consultant'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 CIL DCS.

#### **4.0 Defining Infrastructure**

- 4.1 Before considering the detail of CIL, it is worth defining what is meant by the term infrastructure. This is broadly defined in the Planning Act 2008. To establish parameters infrastructure can be split into 3 broad categories.
- Physical infrastructure, e.g., highways, transport links, cycleways, energy supply, water, flood alleviation and waste management.
  - Social infrastructure, e.g., education, health, social care, emergency services, art and culture, sport halls, community and faith halls, crematoria.
  - Green infrastructure, e.g., parks, woodlands, play areas and public open space.
- 4.2 Under the legislation, affordable housing is not classed as infrastructure and therefore CIL monies generally cannot be spent by the charging authority to fund

affordable housing. This puts the onus on local planning authorities to fully understand the realities of costs related to both CIL related infrastructure and affordable housing. Discussion about what is an appropriate balance between the provision of affordable housing and the provision of infrastructure is an important one which has been the subject of the review undertaken by the consultant, PBA.

## **5.0 Requirements in order to set a CIL**

5.1 In order to set a CIL, the Council will require appropriate evidence on the infrastructure funding gap and evidence in relation to the viability of development.

### Infrastructure Evidence

5.2 An Infrastructure Delivery Plan was prepared in 2014 as part of the evidence base for the Joint Core Strategy. It clearly shows that a funding gap exists between what is needed and the currently identified funding. As such this procedural requirement is satisfied.

### Viability evidence

5.3 The JCS authorities have engaged specialist consultants (Peter Brett Associates) to carry out further viability assessment for the Joint Core Strategy and an initial assessment of viability for CIL. The two stages of this work cover viability assessments of:

- A range of typologies of the nature and scale of development.
- The Strategic Allocations as set out in the Joint Core Strategy.

The viability assessments identify the potential development value that can be generated from development within the City and demonstrate that there is scope to introduce a CIL.

## **6.0 The Proposed Draft Charging Schedule**

6.1 The Draft Charging Schedule is the document which sets out the initial proposals for the Levy, for public consultation. It outlines possible charging rates for CIL; the Draft Charging Schedule will be subject to independent examination.

6.2 The JCS authorities have continued to work with their consultant, PBA as specialist consultants on development plans and CIL to assess the viability evidence and to prepare the Draft Charging Schedule (DCS) for the Council taking into account a number of factors, including the requirement that any proposed CIL rate does not undermine the viability of proposed development. The Council is required to consult on the DCS prior to submission for examination.

6.3 The purpose of this report is to gain agreement to undertake public consultation on the DCS prior to subsequent examination. A CIL rate is proposed for development within the City and separate CIL rates are also proposed for the JCS strategic allocations and for development within the CBC and TBC areas.

#### Setting a CIL for residential development

- 6.4 As the characteristics of residential sites are many and varied, the consultant has analysed a number of 'site typologies' which provide a representative sample of the sites available within each authority's area. It is accepted that the characteristics of the Strategic Allocations within the JCS area differ considerably from those of sites within and on the periphery of Gloucester, but that the character of sites within the City also presents a number of varied characteristics.
- 6.5 Within Policy SD13, the JCS sets out a target of 40% affordable housing for sites accommodating in excess of 10 dwellings. However, it is recognised that the level of affordable housing to be secured from any eligible site will be affected by the characteristics of that site. In some circumstances, the requirement for other forms of infrastructure may mean that lower levels of affordable housing would be provided due to the challenges presented by such sites. In such cases, applicants will be required to submit appropriate viability information that will allow the Council to make an informed decision on these matters.
- 6.6 Residential development would normally attract higher levels of CIL charge, due to the infrastructure needs arising from such development. The level of charge is dependent upon the characteristics of each site and many LPAs have adopted 'differential' CIL rates that reflect these characteristics.
- 6.7 An analysis of affordable housing delivery during the last three years within Gloucester has revealed an overall provision in excess of 20% affordable housing across all eligible sites. It is important to note that rates of affordable delivery have varied considerably across these sites; some sites have been developed entirely for affordable housing, on others, zero or limited proportions have been provided. In all of these instances, the Council has sought to deliver an appropriate housing mix that reflects the viability of each site.
- 6.8 In Gloucester, analysis of representations received during the PDCS consultation and the subsequent reappraisal of JCS site viability indicates that a CIL rate of £45/sqm is levied on residential sites of more than 10 dwellings, but that a zero rate (£0) is applied to sites of up to 10 dwellings. The DCS is provided at Appendix 1.

#### Setting a CIL for other forms of development

- 6.9 In addition to residential uses a number of other land uses were tested. With the exception of retail uses, all other uses were found to have insufficient financial 'headroom' to levy a charge. The DCS proposes a zero rate (£0) for development within the defined City Centre and local centre boundaries, with a charge of £100/sqm in relation to retail development in 'out of centre' locations.
- 6.10 All other forms of development would be zero rated for CIL purposes.

#### Future review of the Charging Schedule

- 6.11 The CIL process incorporates the ability to review the level of charging rates to reflect changes in local circumstances over time. Any such changes must be subject to public consultation and subsequent examination so such changes would be periodic, perhaps occurring after a two to three year period.

## **7.0 Relationship of the Joint Core Strategy to CIL**

7.1 In delivering a joint development plan, it is hoped that, if the three Councils each adopt a Charging Schedule, these will be aligned to deliver the best contribution toward infrastructure to support new development throughout the JCS area. Due to the diverse nature of the development sites within the JCS, there will be differential CIL rates that reflect the characteristics of these sites.

## **8.0 Public Consultation**

8.1 If all three JCS Councils agree to move forward with public consultation on a DCS for their area, it is proposed that the public consultations on each of the three separate Charging Schedules with accompanying documentation would be coordinated. The JCS Councils are working together to align the dates of a six week period of public consultation which will be confirmed shortly.

## **9.0 Infrastructure List**

9.1 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. Once a charging authority's first Charging Schedule has taken effect a planning obligation may not constitute a reason for granting planning permission for development to the extent that the obligation provides for the funding or provision of infrastructure within its infrastructure list.

9.2 Therefore, in order to preserve an ability to provide for specific infrastructure to continue to be dealt with by planning obligation after the adoption of a Charging Schedule, the Council will also need to prepare a list prior to the adoption of a Charging Schedule, setting out the types of infrastructure that it intends will be, or may be, funded wholly or partly by CIL. A draft infrastructure list has been prepared to indicate how CIL monies could be used to cater for the anticipated level of growth in the area. This is intended to ensure that developers are not asked to fund the same infrastructure via both S106 and CIL.

9.3 The inclusion on the list of an infrastructure project or type of infrastructure does not represent a commitment by the Council to provide that project or type of infrastructure either with or without funding from CIL. The only function of the list is in relation to the future use of S106 agreements and to avoid any perception of double charging to developers. The list can be reviewed on a regular basis, for example annually, to ensure that it remains up to date. A draft Regulation 123 List forms part of the Draft Charging Schedule in Appendix 1.

## **10.0 Neighbourhood Funds**

10.1 In accordance with the Community Infrastructure Levy (Amendment) Regulations 2013 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 such communities/forums to help fund local infrastructure in their areas. In all other locations (where no Neighbourhood Plan has been approved), 15% of CIL receipts would be passed to local communities, subject to annual total limits as defined within the CIL Regulations. In parished areas, the relevant proportion of CIL will be passed to Parish/Town Councils. In

non-parished areas, the City Council will engage with the relevant communities to determine how CIL is spent.

## **11.0 Conclusions**

- 11.1 In Gloucester, analysis of representations received during the PDCS consultation and the subsequent reappraisal of JCS site viability indicates that a CIL rate of £45/sq m is levied on residential sites of more than 10 dwellings, but that a zero rate (£0) is applied to sites of up to 10 dwellings. As has been noted within section 6 of this report, the level of affordable housing will be assessed in relation to the overall viability of the site.
- 11.2 For retail development, the DCS proposes a zero rate (£0) for development within the defined City Centre and local centre boundaries, with a charge of £100/sqm in relation to retail development in 'out of centre' locations.
- 11.3 All other forms of development would be zero rated for CIL purposes.

## **12.0 Financial Implications**

- 12.1 Work to develop a Community Infrastructure Levy for Gloucester, including background consultancy evidence and additional project officer capacity, is financed from existing budgetary provision.
- 12.2 The Regulations allow Charging Authorities to use up to 5% of the CIL receipts received to recover costs associated with the development, set up and administration of the system.

(Financial Services have been consulted in the preparation of this report).

## **13.0 Legal Implications**

- 13.1 The power to charge CIL is contained within Part 11 (Section 205-225) of the Planning Act 2008 ("the Act") and the Community Infrastructure Levy Regulations 2010 (as amended) ("the CIL Regulations"). CIL is defined as an imposition of a charge, with the aim that CIL is to ensure costs incurred supporting the development of an area can be funded (wholly or partly) by owners or developers of land in a way that does not make development of the area economically unviable (Section 205(1) and (2) of the Act).
- 13.2 Subject to certain exceptions CIL must be applied to supporting development of its area by funding the provision, improvement, replacement, operation or maintenance of infrastructure (which may include infrastructure outside its area).

(Legal Services have been consulted in the preparation of this report).

## **14.0 Risk Management Implications**

- 14.1 Failure to develop a CIL Charging Schedule 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.

14.2 Failure to adopt a CIL in the longer term means that the Council could be disadvantaged by changes to Section 106 which took effect on 6 April 2015, which will limit the pooling of contributions for the infrastructure needed to support new development, and could result in a loss of contributions until such time as a CIL Policy is adopted.

### **15.0 People Impact Assessment (PIA)**

15.1 The preparation of a new planning document can have both positive and negative social impacts on local communities. The CIL DCS seeks to provide appropriate and necessary infrastructure for the needs of the City's communities. PIA will also be ongoing through the preparation of the Development Plan.

### **16.0 Asset Based Community Development (ABCD) Considerations**

16.1 The production of a CIL Charging Schedule will allow the Council to identify specific infrastructure requirements to support the development of communities.

### **17.0 Other Corporate Implications**

#### Community Safety

17.1 None.

#### Sustainability

17.2 The development of the CIL would take into account the three dimensions of sustainable development set out in the National Planning Policy Framework (NPPF):

- An economic role – contributing to building a strong, responsive and competitive economy.
- A social role – supporting strong, vibrant and healthy communities.
- An environmental role – contributing to protecting and enhancing our natural, built and historic environment.

#### Staffing and Trade Union

17.3 The CIL regime will require new monitoring and management systems to ensure effective operation. The CIL management fee of up to 5% of receipts could be utilised to provide additional staff resource.

**Background Papers:** None