

Cherwell District Council

Executive

7 April 2015

<h3>Community Infrastructure Levy (CIL) and Developer Contributions SPD</h3>
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Report of Head of Strategic Planning and the Economy

This report is public

Purpose of report

To advise Members on the process and on-going work for the setting of a Community Infrastructure Levy (CIL) and on the preparation of a new Developer Contributions SPD.

1.0 Recommendations

The meeting is recommended:

- 1.1 To note the report.

2.0 Introduction

- 2.1 Planning obligations, secured under Section 106 of the Town and Country Planning Act 1990 (as amended), are known as Section 106 agreements. They are a legal mechanism for helping to ensure that development proposals, that would not otherwise be acceptable, are acceptable in planning terms. They are used to mitigate against the impact of development. Section 106 agreements, together with other highway contributions, are often referred to as 'developer contributions'.
- 2.2 Section 106 agreements have commonly been used to secure affordable housing, open space and other infrastructure, and to secure financial contributions. They are also used to restrict development and the use of land and to make specific requirements in the implementation of planning permissions. Obligations can be unilateral undertakings or multi-party agreements.
- 2.3 Legal tests for the use of Section 106 agreements are set out in regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended). Regulation 122(2) requires planning obligations to be:
 - a) necessary to make the development acceptable in planning terms;
 - b) directly related to the development; and
 - c) fairly and reasonably related in scale and kind to the development.

- 2.4 The obligation is a formal document, a deed which becomes a land charge. If the Section 106 agreement is not complied with, it is enforceable against the person that entered into the obligation and any subsequent owner.
- 2.5 The requiring of developer contributions is presently guided by a draft Planning Obligations Draft Supplementary Planning Document (July 2011) which was approved by the Executive in May 2011 as informal guidance for development management purposes. The document does not have a statutory basis and has not been consulted upon. New legislation and national policy and guidance has been introduced since it was prepared and the Council now has a modified Submission Local Plan (February 2015) that has been the subject of Examination Hearings. The draft SPD therefore carries little weight in decision making but remains the Council's most recent statement of guidance.
- 2.6 The Government introduced the Community Infrastructure Levy (CIL) in response to concerns about the use of Section 106 agreements in the determination of applications for planning permission. The Government considered that CIL would provide greater transparency and certainty for the development industry on the level of contributions expected for infrastructure provision, that it could reduce delays in the granting of planning permission by reducing the need for negotiations over the contributions sought, and that Councils would have an additional, more flexible, source of revenue for delivering infrastructure.
- 2.7 CIL remains discretionary for Local Planning Authorities but the Government has scaled back the potential use of Section 106 agreements. Planning Practice Guidance (PPG) makes clear that CIL *"...is intended to provide infrastructure to support the development of an area, rather than making individual planning applications acceptable in planning terms. As a result, some site specific impact mitigation may still be necessary in order for a development to be granted planning permission. Some of these needs may be provided for through the levy but others may not, particularly if they are very local in their impact. Therefore, the Government considers there is still a legitimate role for development specific planning obligations to enable a local planning authority to be confident that the specific consequences of a particular development can be mitigated"* (Paragraph: 094Reference ID: 25-094-20140612).
- 2.8 The use of CIL and planning obligations cannot overlap and there is now (from 6 April 2015), a limit on pooled contributions from planning obligations towards infrastructure that may be funded by the levy i.e. no more than five planning obligations can be entered into for an infrastructure project or type of infrastructure. A separate report is to be presented to Planning Committee on the approach to developer contributions from 6 April 2015.
- 2.9 This report to the Executive explains the work that is now underway to prepare the Community Infrastructure Levy for Cherwell and to prepare a new Supplementary Planning Document (SPD) for Developer Contributions. Due to the inter-relationship between the projects, the SPD is being produced alongside the preparation of the Community Infrastructure Levy.

3.0 Report Details

- 3.1 CIL and the Developer Contributions SPD are listed as projects in the Council's Local Development Scheme (LDS, November 2014), the programme for production of the Council's Local Development Documents (LDDs).
- 3.2 Advice on CIL is provided in national Planning Policy Guidance (PPG) (Paragraph: 001 Reference ID: 25-001-20140612 onwards). Key points are set out below to explain the process of producing a CIL (it should be noted that there are detailed exceptions and criteria that must be considered in preparing and implementing a CIL):
- i) in England, levy charging authorities are district and metropolitan district councils and other authorities that prepare 'relevant', Local Plans which include assessments of the infrastructure needs for which the levy may be collected;
 - ii) the charging authority sets out its levy rates in a charging schedule. Charging schedules are not formally part of the Local Plan, but schedules and plans should inform, and be generally consistent with, each other;
 - iii) the process for preparing a charging schedule is similar to that which applies to Local Plans but charging schedules do not require a Sustainability Appraisal. The process includes the following steps:
 - the charging authority prepares an evidence base in order to prepare its draft levy rates. It collaborates with neighbouring/overlapping authorities (and other stakeholders);
 - the charging authority prepares a preliminary draft charging schedule and publishes this for consultation (it is good practice for charging authorities to also publish their draft infrastructure lists and proposed policy for the associated scaling back of section 106 agreements at this stage);
 - consultation process takes place;
 - the charging authority prepares and publishes a draft charging schedule;
 - there is a period of further representations based on the published draft;
 - an independent person examines the charging schedule in public
 - the examiner's recommendations are published;
 - the charging authority considers the examiner's recommendations;
 - the charging authority approves the charging schedule;
 - the date the charging schedule comes into effect is chosen by the charging authority and specified in the charging schedule;
 - iv) charging authorities must consult and should collaborate with County Councils in setting the levy, and should work closely with them in setting priorities for how the levy will be spent in two-tier areas;
 - v) charging authorities should seek early engagement with local developers, others in the property industry and infrastructure providers when preparing their charging schedules;

- vi) charging authorities must identify the total cost of infrastructure they wish to fund wholly or partly through the levy. They must consider what additional infrastructure is needed in their area to support development, and what other sources of funding are available, based on appropriate evidence;
- vii) information on the charging authority area's infrastructure needs should be drawn from the infrastructure assessment that was undertaken as part of preparing the Local Plan;
- viii) in determining the size of its infrastructure funding gap, the charging authority should consider known and expected infrastructure costs and the other possible sources of funding to meet those costs. This will help the charging authority to identify a levy funding target;
- ix) charging authorities should focus on providing evidence of an aggregate funding gap that demonstrates the need to put in place the levy;
- x) infrastructure planning issues that have already been considered in putting in place a sound Local Plan should not re-opened;
- xi) a charging authority may undertake additional infrastructure planning to identify its infrastructure funding gap, if it considers that the infrastructure planning underpinning its Local Plan is weak or does not reflect its latest priorities;
- xii) where infrastructure planning work which was undertaken specifically for the levy setting process has not been tested as part of another examination, it will need to be tested at the levy examination. The examiner will need to confirm the aggregate infrastructure funding gap and the total target amount that the charging authority proposes to raise through the levy;
- xiii) at the examination the charging authority should set out a draft list of the projects or types of infrastructure that are to be funded in whole or in part by the levy. The role of the list is to help provide evidence on the potential funding gap. It is not the purpose of the examination to challenge the list;
- xiv) the charging authority should set out any known site-specific matters for which section 106 contributions may continue to be sought;
- xv) development liable for CIL is the type of development specified in the charging schedule as incurring a particular levy charge;
- xvi) levy rates are expressed as pounds per square metre and are applied to the gross internal floorspace of the net additional development liable for the levy;
- xvii) charging authorities should set a rate which does not threaten the ability to develop viably the sites and scale of development identified in the Local Plan;
- xviii) charging authorities should use infrastructure planning evidence to strike an appropriate balance between the desirability of funding infrastructure

from the levy and the potential impact upon the economic viability of development across their area;

- xix) the levy is expected to have a positive economic effect on development across a local plan area. When deciding the levy rates, an appropriate balance must be struck between additional investment to support development and the potential effect on the viability of developments using viability evidence;
- xx) charging authorities should be able to show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant plan and support development across their area;
- xxi) charging authorities should think strategically in their use of the levy to ensure that key infrastructure priorities are delivered to facilitate growth and the economic benefit of the wider area. For example, working with neighbouring authorities, Local Enterprise Partnerships and other interested parties and consideration of other funding available could be combined with the levy to enable the delivery of strategic infrastructure and facilitate the delivery of planned development;
- xxii) differential levy rates may be appropriate in relation to:
 - geographical zones within the charging authority's boundary;
 - types of development; and/or
 - scales of development;
- xxiii) the levy is collected by the 'collecting authority'. In most cases this is the charging authority. County Councils collect the levy charged by district councils on developments for which the county gives consent. The Homes and Communities Agency, urban development corporations and enterprise zone authorities can also be collecting authorities for development, with the agreement of the relevant charging authority, where they grant permission;
- xxiv) landowners are ultimately liable for the levy, but anyone involved in a development may take on the liability to pay;
- xxv) payment becomes due as soon as development commences;
- xxvi) the levy is charged on new development and applied to all types of planning consent including planning permissions and local development orders. It may also be payable on permitted development;
- xxvii) the levy may generally be payable on development which creates net additional floor space, where the gross internal area of new build exceeds 100 square metres but that limit does not apply to new houses or flats;
- xxviii) houses, flats, residential annexes and residential extensions which are built by 'self-builders' do not pay the levy;
- xxix) other exempted development includes social housing and charitable development that meets prescribed 'relief criteria' and specified types of

development which local authorities have decided as such in their charging schedules and vacant buildings brought back into the same use.

- 3.3 For non-site specific infrastructure CIL would be one of the means of securing funding. Once in place, accruing funds will take some time and it is unlikely that it will cover all funding needed.
- 3.4 Although likely to be a small contribution in comparison to infrastructure need, CIL offers some advantages to the charging and collecting authorities. Once set, CIL is non-negotiable and its implementation could be linked to capital programmes. CIL can be levied on a wider range of developments than through Section 106 agreements (depending on viability evidence outcomes) and the funds collected are not tied to a specific development or infrastructure project. The funds could be used by the collecting authorities on any infrastructure as defined in the regulations and could contribute as infrastructure priorities change overtime.
- 3.5 CIL is one means to secure funding and close liaison with infrastructure providers will be required to ensure funding from their own capital programmes as well as timely bids for Government funding to deliver infrastructure needed to support planned growth.
- 3.6 As CIL is not mandatory, decisions on whether to formally adopt CIL will need to be taken by the Council once there is a clear understanding of the infrastructure gap and viability considerations. These decisions will also need to take account of how the scaling back of Section 106 obligations from April 2015 onwards has affected the funding of infrastructure, other potential sources of funding for identified infrastructure (set out in the 'Infrastructure Delivery Plan' which accompanies the Local Plan), the need to deliver planned growth in the Local Plan, and the preparation of the Developer Contributions SPD within the context of the CIL regulations.
- 3.7 Having an up-to-date, evidenced Developer Contributions SPD which complies with CIL regulations and relates to the Local Plan, supported by up-to-date infrastructure schemes, will help to minimise challenges and help secure funding for the infrastructure needed.
- 3.8 Although the key tests for developer contributions under the CIL regulations (para. 2.3 above) are similar to the previous tests, officers are of the view that the Planning Inspectorate is following a firmer line to ensure that Section 106 agreements meet these tests. The SPD will need to demonstrate compliance with the regulations and advise infrastructure providers and developers on:
 - i. the relationship between planning obligations and CIL within Cherwell (i.e what the Council intends to fund via planning obligations and what via CIL)
 - ii. the approach to planned infrastructure projects that have clear information on costs, funding, delivery mechanisms and timescales.

Timeframes and Project Scope

- 3.9 The timetables for and projects details for the production of the Community Infrastructure Levy and the Developer Contributions SPD, as should in the Local Development Scheme are set out below:

Schedule 6.3 From LDS (Nov 14)	Community Infrastructure Levy Charging Schedule	
Subject Matter	The purpose of CIL is to raise funds to deliver off-site infrastructure that will support the development proposed within Cherwell. This could include open space, leisure centres, cultural and sports facilities, transport schemes, schools among other requirements. The charging schedule providing the basis of the Levy and must be informed by an assessment of an infrastructure funding gap and the viability of different levels of Levy. There will be consultation and a public Examination.	
Geographical Area	Cherwell District	
Status	Local Development Document (LDD)	
Timetable	Preparation and Viability Testing	January 2015 – May 2015
	Drafting of Preliminary Charging Schedule	June 2015
	Consultation on Preliminary Charging Schedule (Regulation 15)	July – August 2015
	Review of Charging Schedule	August – October 2015
	Consultation on Draft Charging Schedule (Regulation 16)	November 2015 – January 2016
	Submission of Charging Schedule (Regulation 19)	February 2016
	Examination (TBC)	February 2016 – June 2016
	Examination Hearings (TBC)	April 2016
	Receipt and Publication of the Inspector's Report (Regulation 23)	June 2016
	Adoption	August 2016
	Legal Challenge Period (6 weeks)	August – September 2016
	Final Publication	September 2016
		Notes: Programme subject to change if Local Plan (Part 1) or Examination is delayed. Examination and Hearing dates yet to be confirmed.
Management Arrangements	Overseen by Head of Service for Strategic Planning and the Economy. Regular reports to CDC Executive.	
Resources Required	Planning Policy team; input from other Council services, neighbouring authorities and consultees; Programme Officer and Planning Inspectorate.	
Monitoring and review mechanisms	Annual Monitoring Report	

Schedule 6.4 From LDS Nov 2014	Developer Contributions SPD	
Subject Matter	Reviews and Updates the current draft Planning Obligations SPD in the light of the policies set out in the Local Plan (Part 1) and alongside the preparation of the CIL Charging Schedule	
Geographical Area	Cherwell District	
Status	SPD & Local Development Document (LDD)	
Timetable	Preparation of 1st Draft	January – June 2015
	Initial Consultation	June – July 2015
	Review	July – September 2015
	Preparation of 2nd Draft	September - November 2015
	Consultation (Regulation 12)	November – December 2015
	Preparation of Final SPD	January 2016 – March 2016
	Adoption (Regulation 14)	May 2016
	Notes: Programme subject to change if Local Plan (Part 1) is delayed	
Management Arrangements	Overseen by Head of Service for Strategic Planning and the Economy. Regular reports to CDC Executive.	
Resources Required	Planning Policy team; input from other Council services, neighbouring authorities and consultees.	
Monitoring and review mechanisms	Annual Monitoring Report	

- 3.10 Both projects are being developed in tandem and require the involvement of a number of Council Services at operational and managerial level. Officers at Oxfordshire County Council are also to be involved.
- 3.11 A flow chart illustrating the structure for both projects is attached at appendix 1 and shows the parallel workstreams and the following four main strands of work:
- a) infrastructure planning;
 - b) viability testing;
 - c) planning and regulatory compliance;
 - d) implementation.
- 3.12 The key outputs for each strand of work are:
- a) CIL infrastructure project list and identification of the aggregate infrastructure funding gap;
 - b) list of infrastructure projects the subject of Section 106 agreements since 2010 (pooled contributions) and CIL viability study;
 - c) adoption of CIL charging schedule and Developer Contributions / Planning Obligations SPD;
 - d) corporate prioritisation, implementation, collection, spend and monitoring of CIL and Section 106 developer contributions
- 3.13 Given the wide-ranging nature of the two parallel projects a working group was set up in early February 2015 building on an initial cross-service briefing session on 28 January 2015 organised by the Development Management service.
- 3.14 A core internal project group has been formed to take forward the development of the necessary systems, with other services being engaged to ensure that the

commencement and implications of the CIL are understood. The group includes representatives from Planning Policy, Development Management, Legal, Delivery and Finance.

- 3.15 The group has met every two weeks since Thursday 5th of February and a brief presentation has been made to the Joint Management Team. The early work is focusing on evidence gathering, a substantial task.
- 3.16 The next steps are as follows:
- i) a separate report to be presented to Planning Committee on the interim approach to developer contributions from 6 April 2015;
 - ii) continue to gather information on the type of development which has come forward in the past five years and that expected in the following five years;
 - iii) use the information gathered to inform which infrastructure projects are likely to be funded by developer contributions secured through Section 106 agreements and which via CIL or other funding sources.
- 3.17 Once these steps are complete, officers will be in a position to provide hypothetical scenarios of what infrastructure funding might be raised by CIL and what might reasonably be achieved through the use of Section 106 agreements. This will help inform the best approach for the Council in terms of optimising the use of planning obligations and CIL.
- 3.18 Implementation of CIL and a new Developer Contributions SPD will affect a number of services across the Council as shown in the appended project flow chart. Heads of Service will need to be kept informed. Should it be decided in due course that the Council should adopt a CIL, prioritisation and implementation will require corporate, legal and financial coordination. A further report will be presented to the Executive once the initial stages are complete.

4.0 Conclusion and Reasons for Recommendations

- 4.1 The Council needs to consider the potential adoption of CIL, and an up-to-date Developer Contributions SPD needs to be prepared, in the interest of securing the delivery of infrastructure to support planned growth. This report is presented to ensure that the Executive is kept fully informed of the process and timetable for the two parallel projects in the interest of ensuring that the plan is produced efficiently and in accordance with Council priorities.

5.0 Consultation

Internal briefing: Councillor Michael Gibbard, Lead Member for Planning

6.0 Alternative Options and Reasons for Rejection

- 6.1 Not applicable. This report is for noting only.

7.0 Implications

Financial and Resource Implications

- 7.1 The work on preparing the CIL and the Developer Contributions SPD is to be met within existing budgets. Both projects will require resources from a number of Council services including, but not exclusively, Law and Governance, Finance and Procurement and Development Management. The output of both projects will affect financial contributions sought and collected to fund infrastructure which will also affect the funding required from other sources. At this stage the contributions and funding cannot be defined.

Comments checked by:

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Legal Implications

- 7.2 The CIL and the Developer Contributions SPD must be prepared having regard to statutory requirements. Legal support will be required throughout the preparation process. This may require the advice of external Counsel for the CIL Examination. Legal advice will be needed in the implementation of CIL.

Comments checked by:

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8.0 Decision Information

Key Decision - No

Financial Threshold Met: No

Community Impact Threshold Met: No

Wards Affected

All

Links to Corporate Plan and Policy Framework

Accessible, Value for Money Council
District of Opportunity
Safe and Healthy
Cleaner Greener

Lead Councillor

Councillor Michael Gibbard, Lead Member for Planning

Document Information

Appendix No	Title
Appendix 1	CIL & Developer Contributions SPD – Project Structure Flow Chart
Background Papers	
None	
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Appendix 1

CIL & Developer Contributions SPD – Project Structure Flow Chart

