

Meeting of the Council – 14th July, 2014

Report of the Cabinet

Consultation on the Community Infrastructure Levy (CIL) revised Draft Charging Schedule and recommendation to Council for subsequent submission

Purpose of Report

1. To inform of the progress regarding the development of a Community Infrastructure Levy (CIL); to note the publication of the revised Draft Charging Schedule (DCS) and revised Draft Regulation 123 List for a six week period of consultation and consider a recommendation that the Draft CIL Charging Schedule subsequently be submitted to the Secretary of State for independent examination.

Background

2. Following government regulation in 2010, Local Authorities were provided with the option of developing a Community Infrastructure Levy (CIL). The purpose was to have a mechanism to part fund infrastructure within a locality to support physical regeneration. Monies can be used to fund provision, improvement, replacement, operation or maintenance of infrastructure to support the development of the area.
3. In parallel the regulations reduced the ability of a Local Authority to fund infrastructure through planning obligations (section 106) and from April 2015 the use of Section 106 Agreements as we know them will be limited to affordable housing and other specific on-site requirements for example on-site public art.
4. CIL is more for generalised contributions to support infrastructure across the Borough. In the future, instead of a development attracting a section 106 contribution for libraries, for example, allocation of CIL monies will be made on a regular basis to support nominated projects that have been identified to support infrastructure and would depend on the CIL monies received.
5. Although CIL remains optional, the significant reduction of planning obligations from April 2015 means that without a Community Infrastructure Levy this could lead to severe pressure on existing infrastructure in areas and be a deterrent to growth. Overall it is therefore considered that the implications for not preparing a Community Infrastructure Levy from a financial context significantly outweigh the cost and resource implications for the Council preparing it.

6. Cabinet approved the commencement of the preparation and viability testing of the Community Infrastructure Levy for the Borough on 8th February 2012, and subsequently approved the draft preliminary charging schedule on 6th December 2012. Cabinet agreed to consult on the draft charging schedule at the meeting on 12th March 2014.
7. As a result of the public consultation on that Draft Charging Schedule in March and April 2014, a total of nineteen representations were received from a range of individuals and public and private sector organisations; where appropriate these representations have been incorporated into the revised Draft Charging Schedule and associated documents. A summary of the key issues raised and the Council's responses are contained in Appendix 1. A number of changes are proposed to the Draft Charging Schedule and Draft Regulation 123 List as a result of the consultation and these are set out within Appendix 1.
8. The revised Draft Charging Schedule identifies zones within the Borough where different types of development could be implemented with a Community infrastructure Levy (CIL) applied. The different zones represent varying levels of affordability to pay CIL across the Borough. Extensive work to check the viability of development across the Borough has been carried out by property and land experts.
9. In conjunction with the preparation of a Community Infrastructure Levy, the Council is required to prepare what is called a 'Regulation 123 List'; this is a list of specific projects and types of infrastructure that has been identified by various infrastructure providers across the Borough (Appendix 1 of the Schedule to the CIL Draft Charging Schedule) as candidates to be funded by CIL monies. This List needs to be approved by the Cabinet and publicised. Once approved, it is anticipated that the Regulation 123 List will be regularly reviewed with any proposed changes reported to Cabinet for approval. Appendix 2 of the revised Draft Charging Schedule sets out a prioritisation matrix for allocating monies for projects that are on the Regulation 123 List. Ultimately any spend of CIL receipts would be approved by Members before being committed and added to the capital programme.
10. The period of consultation on the revised Draft CIL Charging Schedule and revised Draft Regulation 123 List is recommended to begin on Friday 11th July and run for a period of 6 weeks until Friday 22nd August 2014. During that time, both documents will be able to be viewed at the reception area at 4 Ednam Road, Dudley and Dudley Council Plus, as well as at all main libraries and on the Council's website. The document is also available, alongside the list of all comments received on the Draft Charging Schedule, on the Internet via the Committee Management Information System and a paper copy is in the Members' Room.
11. Following this consultation, it is anticipated that the Draft CIL Charging Schedule will be submitted to the Planning Inspectorate. The submitted Charging Schedule is then likely to be subject to a formal Examination in Public in late 2014 with adoption intended early 2015.

12. At its meeting on 3rd July, 2014, the Cabinet was recommended to approve the publication of the revised Draft CIL Charging Schedule for a six week period of public consultation between 11th July to 22nd August 2014. The Council is invited to consider the recommendations set out below. Any amendments to the recommendations will be reported at the Council meeting.

Finance

13. The preparation of the document will be funded from existing budgets and resources dedicated to the production of Development Plan Documents and other such statutory planning documents.
14. Adopting the CIL approach will involve altering the method of achieving infrastructure contributions through development. The Local Authority's use of the Section 106 process will be much reduced with CIL replacing it in many areas. Dudley Council will be able to use the funds from the levy to recover the costs of administering the levy, the regulations permit up to 5% of the total receipts to be spent on administration of the levy. If receipts are not adequate to fully cover administration costs as the scheme is introduced, options will be considered to meet such costs as they arise.

Law

15. The CIL came into force on 6th April 2010 through the Community Infrastructure Levy Regulations (now amended in 2014). The Planning Act 2008 provides a wide definition of the infrastructure that can be funded by the levy, including flood defences, health, transport and social care facilities (list is not exhaustive). On the adoption of the levy the regulations restrict the local planning authority use of planning obligations for pooled contributions that are capable of being funded through CIL.
16. The regulations do not permit Affordable Housing to be funded through CIL and will continue to be collected through traditional planning obligations. The three mandatory tests which must, as a matter of law, be satisfied when seeking planning obligations are set out in Regulation 122 of the CIL Regulations 2010 namely: they must 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.

Equality Impact

17. The proposals take into account the Council's Policy on Equality and Diversity. The adoption by the local planning authority of a CIL regime will ensure that the mitigation and benefits of development are addressed across the Borough. This will include meeting the needs of children and young people by seeking to provide sufficient facilities for them as well as having a positive effect for future generations.

Recommendations

18. That following public consultation, the Community Infrastructure Levy (CIL) Draft Charging Schedule be submitted to the Secretary of State for Independent Examination in accordance with Regulation 19 of the CIL Regulations 2010.
19. That authority be delegated to the Director of the Urban Environment, in consultation with the Leader of the Council and the Cabinet Member for Regeneration, to agree any minor changes to the document prior to submission to the Secretary of State.



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Leader of the Council