

<b>Bath &amp; North East Somerset Council</b>		
MEETING/ DECISION MAKER:	<b>Cabinet</b>	
MEETING/ DECISION DATE:	<b>16<sup>th</sup> July 2014</b>	EXECUTIVE FORWARD PLAN REFERENCE:
		<b>E 2638</b>
TITLE:	<b>Bath and North East Somerset Community Infrastructure Levy (CIL) and Planning Obligations Supplementary Planning Document (SPD)</b>	
WARD:	All	
<b>AN OPEN PUBLIC ITEM</b>		
<p><b>List of attachments to this report:</b></p> <p>Attachment 1: B&amp;NES CIL Consultation Paper (including the Draft Charging Schedule &amp; Draft Regulation 123 List)</p> <p>Attachment 2: Draft Planning Obligations SPD</p> <p>Attachment 3: Bath Western Riverside SPD Appendix C update</p>		

## **1 THE ISSUE**

1.1 The Community Infrastructure Levy (CIL) Draft Charging Schedule, the Draft Regulation 123 List and the revised Draft Planning Obligations SPD have been prepared for public consultation. The CIL is a new tariff system that allows local authorities to raise funds from developers to contribute to the costs of providing some of the infrastructure needed for new development. The Planning Obligations SPD is revised in response to the changes brought by the CIL regulations. The Regulation 123 List sets out the types of Infrastructure on which CIL income may be spent.

## **2 RECOMMENDATION**

2.1 Cabinet approves:

- 1) the draft charging schedule and the draft Regulation 123 List (as set out in the B&NES CIL Consultation Paper in **Attachment 1**), for public consultation;

- 2) the revised draft Planning Obligations SPD in **Attachment 2** for public consultation;
- 3) the timeline for the public consultation period on the above documents from 24/7/14 to 18/9/14;
- 4) the update to Appendix C to the Bath Western Riverside SPD in **Attachment 3** for Development Management purposes; and
- 5) that responsibility is delegated to the Divisional Director for Development in consultation with the Cabinet Member for Homes & Planning to:
  - a) make minor textual amendments to the consultation documents prior to publication; and
  - b) make minor amendments to the CIL draft Charging Schedule, revised Planning Obligations SPD and the Regulation 123 list following public consultation and submit to the Secretary of State for examination.

### **3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

- 3.1 CIL has the potential to make an important contribution to the funding of infrastructure needed to support the District's long term growth aspirations as set out in the Core Strategy. CIL could secure between £12.5 and 17 million funding for infrastructure; this essentially replaces that part of s106 funding that the council could no longer secure after April 2015 when the S.106 approach is scaled back. CIL can only be levied if there is a funding gap in infrastructure provision.
- 3.2 The Infrastructure Delivery Programme (*IDP July 2014*) identifies the infrastructure required across a broad range of Service Providers and statutory undertakers to deliver the District's plans for growth in the Core Strategy. The IDP includes an estimate of the costs although this is regularly updated and refined. The costs and requirements in the longer term are unavoidably more difficult to identify. The IDP is therefore a 'live' document subject to on-going updating and refinement. It is not a formal investment programme and does not entail financial commitment by the Council or other statutory providers. Under CIL regulations the Council, as the charging authority, will need to prioritise and agree allocations of available CIL funding towards these infrastructure needs. These decisions will need to be taken as part of future budget decisions once the Council has completed the regulatory process to enable it to charge CIL.
- 3.3 The IDP confirms that there is a funding gap to which CIL will need to make a contribution. However CIL will not be the sole funding source. It will supplement other potential funding streams such as Business Rate Growth, New Homes Bonus, the Revolving Infrastructure Fund, HCA funding and site specific s.106 developer

contributions. Each of these will need to be considered by the Council as part of its medium term service and resource planning process. . The IDP lists all infrastructure requirements to support new growth, including provision to be provided by developers and other organisations such as utility companies and other public bodies.

- 3.4 The preparation of CIL has been funded by the Local Development Framework budget.
- 3.5 Alongside setting the CIL charging schedule, work is underway to establish the Local Authority as a CIL Charging Authority. This includes the appointment of a CIL Coordinator to arrange and oversee charging arrangements and s.106/CIL monitoring officer to implement CIL.
- 3.6 Charging Authorities will be able to use funds from the levy to recover the cost for setting up and administering the levy using up to 5% of their total receipts on administrative expenses.
- 3.7 The Council has secured nearly £20 million through s.106 agreements in the last 10 years. However, the current Planning Obligation SPD will need to be reviewed to align it with CIL.

## **4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL**

- 4.1 The CIL Charging Schedule must comply with relevant legislation, and the National Planning Policy Framework (2012). The Planning Act 2008 (Part 11) made provision for the introduction of the Community Infrastructure Levy (CIL). Regulations governing the preparation and operation of CIL Charging Schedule were first introduced in April 2010, and have subsequently been amended a number of times - the CIL (Amendment) Regulations 2011, the CIL (Amendment) Regulations 2012, the CIL (Amendment) Regulations 2013, and the CIL (Amendment) Regulations 2014. In addition, Part 6, Chapter 2 of the Localism Act 2011 has the effect of amending parts of the Planning Act 2008 as it relates to CIL.
- 4.2 CIL Regulations 2010 (Part 11) (as amended) also incorporate a corresponding scaling back of tariff based approaches to planning obligations under Section 106 of the Town and Country Planning Act 1990.

## **5 THE REPORT**

### **Background**

- 5.1 The introduction of the Community Infrastructure Levy (CIL) changes the role that new development plays in funding infrastructure. The current approach has been to require new development to make a

contribution, in kind or financially, to address the infrastructure needs caused by that development. This contribution is made under s.106 of the Town and Country Planning Act 1990. To ensure a systematic and transparent approach the Council adopted the Supplementary Planning Document on Developer Contributions in 2009.

5.2 If introduced, the levy is payable on development which creates net additional floor space, where the gross internal area of new build exceeds 100 m<sup>2</sup> and on a single house or flat of any size, unless it is self-build. A Council must have an up-to-date adopted Plan on which to base CIL. Key points to note are that;

- The rate is only charged on net increase in floorspace – therefore the yield is lower on brownfield sites/and nil for change of use
- Vacant buildings, development for a charitable use, self-build, affordable housing are exempt
- The test of soundness at examination is whether an appropriate balance has been struck between maximising income vs. undermining the viability of development

5.3 The Council can only charge a tariff on new development if a funding gap exists in the financing of necessary new development, taking account of all sources of development. The Core Strategy sets out the Council's growth plans for the district and the infrastructure needed to support this is identified in the Infrastructure Delivery Plan (IDP). See background paper.

5.4 The key decisions before Cabinet to make are whether to agree the;

- Draft Charging Schedule;
- Draft Regulation 123 List (the types of infrastructure that CIL may be spent on); and
- the revised draft Planning Obligations Supplementary Planning Document (SPD)

## **The Draft Charging Schedule (DCS)**

### ***Principles***

5.5 CIL is effectively a tax on new development and therefore cannot be used as a policy tool. The key issue in setting the rate is that local authorities must strike "*an appropriate balance*" between revenue maximisation on one hand and the potentially adverse impact upon the viability of development on the other.

5.6 It must be informed by evidence of **viability** of development although there is some room for pragmatism. The Council has been advised by BNP Paribas who has undertaken the Viability Study. BNP Paribas has extensive experience of undertaking viability assessments and

successfully assisting LAs with developing DCS and defending them at examinations.

5.7 The results of the BNP Paribas analysis indicate a variation in viability of development between different types of uses and different locations within the District. In light of these variations, two broad approaches are available to the Council under the CIL regulations.

- The Council could set a single CIL rate across the District for all types of development, having regard to the least viable uses and the least viable locations. This option would suggest the adoption of the 'lowest common denominator', with sites that could have provided a greater contribution towards infrastructure requirements not doing so. In other words, the Council could be securing the benefit of simplicity at the expense of potential income foregone that could otherwise have funded infrastructure.
- Alternatively, the Council has the option of setting different rates for different use classes and different areas. The results of the BNP Paribas study point firmly towards the second option as the recommended route.

5.8 Given CIL's nature as a fixed tariff, it is important that the Council selects rates that are reasonable and not at the margins of viability. It is necessary to ensure that a 'buffer' or margin is included, so that the levy rate is able to support development when economic circumstances adjust and also to absorb some abnormal development costs. The Council must also be careful not to frustrate its other key objectives such as delivering affordable housing. Consequently, sensitive CIL rate setting for residential schemes is also vital.

### ***Proposed rates***

5.9 The key conclusions emerging from the viability evidence are set out below.

- For **residential** development, viability varies across the district with highest rates in the environs of Bath and lower viability in the south and west. However these differences are not significant because whilst house prices are higher in the Bath area, so are build costs and the Core Strategy sets a higher affordable housing requirement for the higher value area. Also, the rural environs of Bath fall almost entirely within the Green Belt where very limited housing is likely to come forward. In the interests of simplicity, a flat rate of £100/m<sup>2</sup> across the district is considered reasonable.
- The BNP Paribas' viability recognises the different viability consideration for '**Specialised, Extra Care and Retirement**

**Accommodation'** due to the lower gross to net ratio of developments (due to the need for communal facilities), and the additional time that it takes to sell the accommodation due to the restricted market for that type of unit. However, these developments typically command premium sales values that outperform local markets. Furthermore, the sites tend to be more efficiently used, due to lower car parking requirements and higher densities in comparison to standard residential developments. These factors help to offset the lower internal efficiency and longer sales period. Then the appraisal concludes that such developments are unlikely to generate significantly different results from those generated by other residential development. Therefore £100/m<sup>2</sup> is recommended.

- The only variation to the flat residential rate is in relation to the **urban extension** sites. The most effective approach to provision of site specific infrastructure, primarily for primary school provision should be via s.106 agreements. This means that a lower rate of around £50/m<sup>2</sup> should be charged for residential development in the urban extension sites identified in the Core Strategy.
- The viability of **Retail** development is higher in central Bath which would support a rate of £150/m<sup>2</sup>. In other parts of the District, the viability evidence indicates that a £nil charge is appropriate. An exception to this is large supermarket, superstores and retail warehouses which would support a charge of £150 across the district.
- **Hotel** development in Bath could support a rate of around £100 which allows an adequate buffer for site-specific factors. Outside Bath, hotel values are lower, which adversely impacts on the viability of new hotel development. A nil rate on hotel development outside the city boundary of Bath is therefore recommended.
- For **Student housing** the degree to which developments can absorb CIL contributions is dependent on the rent levels set. There is a significant differential between rents in the private sector and the University Sector (with sub market rent). For student housing let at commercial rents (off campus) a rate of £200 m<sup>2</sup> is recommended. For the University sector at sub market rents (primarily on campus), a nil rate is recommended.
- Although there is a demand for **Office** space, this is not generating rents that would be high enough to support new development, particularly in Bath where build costs are significantly higher. The BNP Paribas viability assessment identifies that office development is unlikely to come forward in the short to medium term. BNP Paribas conclude that a £nil for

office is appropriate.

- BNP Paribas appraisal of **industrial and warehousing development** primarily in employment uses (not retail warehousing) indicate that these uses are unlikely to generate positive residual land values and therefore a zero rate is recommended.
- BNP Paribas has also tested **other uses**. Use classes D1 (community facilities eg schools, health centres, museums and places of worship) and D2 (leisure). These typically do not include revenue generating operations. Other uses that do generate an income stream (such as swimming pools) have operating costs that are far higher than the income and require public subsidy. Many D1 uses will be infrastructure themselves, which CIL will help to provide. It is therefore unlikely that D1 and D2 uses will be capable of generating any contribution towards CIL. These will sometimes include developments that are operated commercially (such as gyms) but with many new operations opening in existing floorspace, very little, if any CIL income could be secured. On this basis BNP Paribas has recommended a nil rate on such uses.

5.10 Reflecting the above considerations, the proposed DCS is set out in Attachment 1.

### **The Regulation 123 list**

- 5.11 Charging Authorities must prepare a Reg 123 list which sets out those types of infrastructure on which CIL could be spent and the list must be included as part of the evidence at exam . The B&NES Reg 123 list is based on the Council's Infrastructure Delivery Plan (IDP) which underpins the Core Strategy. The IDP is regularly reviewed and updated through cross service working.
- 5.12 Preparation of the Reg 123 List must recognise the fact that Local Authorities cannot spend CIL on the same infrastructure that is being funded via s.106. Therefore the Reg 123 List must take account of the strategy for the provision of infrastructure, including taking account of which elements of infrastructure will be funded by CIL and which through on-site or pooled S.106 agreements. This will then inform, but not dictate, future spending arrangements, including the Council budget and the capital programme.
- 5.13 The draft Reg 123 is included in Attachment 1. The Reg 123 List can be reviewed responding to changes in infrastructure priority and requirements.

- 5.14 Delivery the Bath Enterprise Area are likely to benefit from allocation of CIL revenue although decisions on the priorities for CIL spend will be taken as part of future budget decisions.

### **Planning Obligations SPD**

- 5.15 The current Planning Obligation SPD seeks to secure funding for infrastructure through developer contributions based on formulae. This will largely be curtailed by April 2015 and the CIL regulations will limit the use of planning obligations to affordable Housing and site-specific infrastructure. CIL Regulation 122 restricts the use of S.106 obligations to three tests which are;
- necessary to make the development acceptable in planning terms
  - directly related to the development; and
  - fairly and reasonably related in scale and kind to the development
- 5.16 However, contributions through s.106 may be pooled from up to only five separate planning obligations for a specific item of infrastructure. Therefore the Council's existing Planning Obligations SPD, which is based on a formulaic calculation of developer contributions towards paying for infrastructure, has been revised and is attached as Attachment 2.
- 5.17 Parts of the BWR SPD (Part 3 the Implementation Plan and Appendix C Developer Contributions) will also be superseded by the revised Planning Obligations and CIL in due course.

### **Other issues**

- 5.18 **Local spend:** The regulations require that the proportion of CIL to be given to local communities is 15% (with a cap of up to £100 per existing council tax dwelling a year) of receipts from development in their area. This rises to 25% uncapped in areas with an adopted Neighbourhood Plan.
- 5.19 Many town and parish councils are working collaboratively with B&NES on the Placemaking Plan with very positive results. B&NES has the discretion to also award those communities involved in the Placemaking Plan 25% of CIL receipts from development in their area.
- 5.20 Where there is no Parish or Town Council, as in Bath, the charging authority (B&NES) will engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding. Charging authorities should set out clearly and transparently their approach to engaging with neighbourhoods using their regular communication tools e.g. website, newsletters. The Council AGM in May established a cross-party working group to consider options to strengthen community representation and civic



governance within Bath, and to report back on these options, including a preferred option. This will include the arrangements for spend of the local element of CIL in Bath

- 5.21 **Instalment policy:** A charging authority can set its own levy payment deadlines and/or offer the option of paying by instalments. If it does so, it must publish an instalments policy on its website and make it available for inspection at its principal offices. It requires at least 28 days' notice to adopt or change the policy. Where no instalment policy is in place, payment is due in full at the end of 60 days after development commenced.
- 5.22 Where the total CIL liability is greater than £35,000, the B&NES CIL document proposes the following instalment policy for consultation;
- 33% on 60 days after development commenced
  - 33% 12months after deployment commenced
  - 34% 18months after development commenced.
- 5.23 **Relief:** The Community Infrastructure Levy Regulations make a number of provisions for charging authorities to give relief from the levy. Some types of relief are mandatory; others are offered at the charging authority's discretion. 'Community Infrastructure Levy relief' means any exemption or reduction in liability to pay the levy.
- 5.24 Mandatory exemptions are defined by the regulations and include vacant buildings (subject to the vacancy test), affordable housing, self-build housing and buildings with charitable uses.
- 5.25 Discretionary exemptions include;
- discretionary charitable relief (for a charitable investment)
  - discretionary social housing relief (for affordable housing types which do not meet the criteria required for mandatory social housing relief and are not regulated through the National Rent Regime)
  - discretionary exceptional circumstances relief (Charging authorities may offer relief from the levy in exceptional circumstances where a specific scheme cannot afford to pay the levy.)
- 5.26 A local authority wishing to offer discretionary relief in its area must first give notice publicly of its intention to do so. This can be done following the adoption of the CIL.
- 5.27 **Monitoring and review arrangements:** To ensure that the levy is open and transparent, charging authorities must prepare short reports on the levy. Charging authorities must publish a report on their

website by 31 December each year, for the previous financial year. Where a charging authority holds and spends the neighbourhood portion on behalf of the local community, it should ensure that it reports this as a separate item. For CIL local funds, Parish, Town and Community Councils must also report on their levy income and spending.

**Programme**

- 5.28 In April 2015, the scope of S.106 contributions will be scaled back impacting on investment in those Districts that have not adopted a CIL. The Timetable for the preparation of CIL and associated documents is set out below. There is limited contingency if the CIL is to be agreed by the deadline of April 2015. Any delay beyond the April deadline risks loss of CIL income.
- 5.29 It is therefore recommended that CIL proceeds quickly to submission for examination after the consultation and this would be facilitated by delegating authority to the Strategic Director Place to make any amendments following the consultation in conjunction with the Cabinet member for Housing and Planning.

Consultation	July - Sept 2014
Amendments post consultation	Sept 2014
Submission	Oct 2014
Examination	Dec 2014/January 2015
Adoption	By April 2015

**The Bath Western Riverside SPD**

- 5.30 The current policy framework for BWR is set out in the B&NES Local Plan and the BWR Supplementary Planning Document (SPD). The latter provides a comprehensive Spatial Masterplan and an Implementation Framework including infrastructure requirements and developer contributions. The SPD was prepared on the basis that all infrastructure costs within the SPD area were funded proportionately from contributions from all development and Appendix C of the SPD sets out the basis for developer contributions.
- 5.31 However, Appendix C (prepared in 2008) is now out of date and needs to be updated in light of legislative changes, policy changes and cost increase. Appendix C will be superseded by CIL and revised Planning Obligations SPD in 2015, therefore this is an interim measure to be effective up to the adoption of CIL.

## **6 RATIONALE**

- 6.1 Section 5 sets out the rationale for the decision but the key point is that if B&NES does not prepare a CIL by April 2015, its ability to align new development with the necessary infrastructure will be severely curtailed.

## **7 OTHER OPTIONS CONSIDERED**

- 7.1 The adoption of a CIL Charging Schedule is discretionary for the Council, however, the scaling back of the use of pooled S106 obligations is not discretionary. As such, should the Council elect not to adopt a CIL Charging Schedule, it is likely to have significant implications with regard to funding infrastructure in the District
- 7.2 More detail options regarding CIL rates, scope of Reg 123 list, instalment policy are set out in section 5 above.

## **8 CONSULTATION**

- 8.1 The parties consulted in the ongoing preparation of the draft Charging Schedule (and the preliminary Draft Charging Schedule) include;

- Internal Council Services
- External Infrastructure providers
- Commercial agents
- Local chambers of commerce and economic groups
- Adjoining Councils
- the local community
- Other bodies set out in the Statement of Community Involvement

- 8.2 If agreed, the DCS must be published for consultation for a period of at least 6 weeks. It is recommended that the consultation begins as soon as possible. However, because this would mean the consultation takes place over the August holiday period, it is recommended that the consultation period is extended to 8 weeks to run from 24/7/14 to 18/9/14.

- 8.3 Consultation arrangements for the DCS, Reg 123 List and the revised Planning Obligations SPD are to;

- use the current contact database (some from LDF database);
- notify individuals, organisations and statutory consultees in the CIL;
- advertise in the Local Press & website;
- target consultation within the business sector;
- engage with Parish & Town Councils; and

- engage with other bodies set out in the Statement of Community Involvement.

8.4 To assist the understanding of CIL and the particular context for the preparation of the B&NES CIL, a Q&A paper and leaflet will be published alongside the other documents.

8.5 Anyone who objects to the CIL and the associated documents will have the opportunity to pursue their objections via the examination.

## 9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

<b>Contact person</b>	Lisa Bartlett – 01225 477281, Simon de Beer - 01225 477616, Kaoru Jacques 01225 477288
<b>Background papers</b>	<ul style="list-style-type: none"> <li>• <i>Background papers available from; <a href="http://www.bathnes.gov.uk/cil">www.bathnes.gov.uk/cil</a></i></li> <li>• <i>Viability Test Update by BNP Paribas</i></li> <li>• <i>B&amp;NES CIL Evidence Paper</i></li> <li>• <i>B&amp;NES Core Strategy as proposed to be adopted July 2014</i></li> <li>• <i>B&amp;NES Core Strategy Inspector' Report June 2014</i></li> <li>• <i>B&amp;NES Infrastructure Delivery Plan IDP</i></li> <li>• <i>B&amp;NES EqIA Report</i></li> <li>• <i>SEA/SA Screening Report</i></li> <li>• <i>Regulation 15(7) Consultation Statement</i></li> </ul>
<b>Please contact the report author if you need to access this report in an alternative format</b>	