

Bath & North East Somerset Council

MEETING	Cabinet	
MEETING DATE:	11th February 2015	EXECUTIVE FORWARD PLAN REFERENCE:
		E 2735
TITLE:	Bath & North East Somerset Community Infrastructure Levy and Supplementary Planning Document	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: Attachment 1: B&NES Draft Charging Schedule Attachment 2: Regulation 123 List Attachment 3: Draft Planning Obligations SPD Attachment 4: Draft Planning Obligations SPD Consultation Statement		

1. THE ISSUE

- 1.1 This report seeks Cabinet and then Council approval of the B&NES Community Infrastructure Levy (CIL) and the associated Regulation 123 Infrastructure List. It also seeks Cabinet adoption of the revised Planning Obligations Supplementary Planning Document (SPD). The hearings were held on the 8th January.
- 1.2 The Examiner's final report was received on 30/1/2015 and he has recommended approval of the CIL, with modifications. An update report will therefore be required for the Cabinet meeting as this report was largely prepared prior to receipt of the final report. The Council can only adopt the CIL if it accepts the Examiner's modifications.

2. RECOMMENDATION

2.1 That Cabinet recommends to Full Council that;

- a) the B&NES Community Infrastructure Levy (Attachment 1) along with modifications made by the Examiner, is approved with a commencement date of 6th April 2015,
- b) the CIL charging schedule is kept under review and any proposed adjustments to the charging schedules are reported to Cabinet before 6th April 2017 for recommendation if appropriate to Council, and

- c) responsibility is delegated to the Divisional Director for Development, in consultation with the Cabinet Member for Homes and Planning, to make any minor amendments and to correct any errors to the documentation.

2.2 That Cabinet agrees;

- a) that the revised Planning Obligations Supplementary Planning Document (Attachment 3) is adopted and becomes effective alongside CIL on 6th April 2015,
- b) the Regulation 123 Statement (Attachment 2), and
- c) delegate responsibility to the Divisional Director for Development, in consultation with the Cabinet Member for Homes and Planning, to;
 - i. give notice that 'Discretionary Exceptional Circumstances Relief', 'Payment in Kind' and 'Infrastructure Payment's will be made available in the District
 - ii. implement a payment instalment policy as set out in paragraph 5.23 below.
 - iii. finalise the commuted sum formula for off-site affordable housing contributions
 - iv. to make any minor amendments and to correct any errors to the documentation.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

Background

- 3.1 The purpose of CIL is to contribute to the funding of the 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, essentially replacing that part of Section 106 funding which the council could no longer secure after April 2015 once developer contributions are scaled back. CIL can only be levied if there is a funding gap in infrastructure provision.
- 3.2 The preparation of the CIL charging schedule and the review of the Planning Obligations SPD has been funded by the Local Development Framework budget.

CIL & Planning obligations

- 3.3 The Council has secured nearly £20 million through Section 106 agreements in the last 10 years. However, the current Planning Obligation SPD has been reviewed to align it with CIL because the Council's ability to seek Section 106 is being scaled back and because councils are not permitted to double charge ie using both CIL and developer contributions to pay for the same element of infrastructure. This will affect what infrastructure the Council seeks developers to provide or make a contribution towards. The Regulation 123 list sets out the infrastructure that CIL will be spent on to distinguish it from the infrastructure that Section 106 planning obligations will fund.

Implementation of CIL

- 3.4 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 Section 106/CIL Monitoring Officer to implement CIL. Charging Authorities can use up to 5% of their total receipts to cover the cost of setting up and administering the levy.

CIL Spend

- 3.5 The use of income generated through CIL will need to be spent on infrastructure. The types of infrastructure for CIL spend are listed in the B&NES Regulations 123 list guided by the Infrastructure Delivery Programme (IDP). The IDP identifies the infrastructure required across a broad range of Service Providers and statutory undertakers to deliver the District's plans for growth as set out in the Core Strategy. The IDP includes an estimate of the costs which 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.
- 3.6 Once the Council has completed the regulatory process to enable it to charge CIL, the mechanisms for agreeing priorities for CIL spend will need to be clarified. This will need to take into account future budget decisions and the capital programme.
- 3.7 Under CIL regulations the Council, as the charging authority, will need to prioritise and agree allocations of available CIL funding towards these infrastructure needs. 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 Section 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 and the Capital programme. 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.
- 3.8 Fifteen per cent of CIL income (capped) must be passed on to the local community where it is generated and this rises to 25% (uncapped) where there is an adopted Neighbourhood Plan.

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

The Charging Schedule

- 5.1 The hearings into the B&NES CIL were held on 8th January 2015 and the Inspector's draft report is due early February 2015, after the deadline for the dispatch of this report. Based on the proceedings at the hearings it is anticipated that the Inspector will recommend that

the CIL is approved, most likely with some minor modifications. On this basis, this report seeks cabinet approval of the CIL draft Charging Schedule although an update report is likely be required to ensure that the Cabinet has the necessary information available to make a decision.

- 5.2 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. It must be informed by evidence of **viability** of development although there is some room for pragmatism. The Council therefore commissioned a development viability assessment to inform the formulation of the charging schedule.
- 5.3 Given that CIL is a fixed tariff, it is important that the Council sets 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 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.
- 5.4 The draft charging schedule was agreed by Cabinet in July 2014 for public consultation and this will form the basis of the adopted CIL, with modifications by the Examiner.
- 5.5 The draft levies based on the viability evidence are set out below. It reflects a careful consideration of balancing the costs of development with the need to maximise income for the Council. It should be born in mind that the CIL charge is only a relatively small part of development costs which will ultimately be born by the land owner. The Council has been careful to err on the side of caution in setting the proposed rates. Issues raised via the examination process which might result on modifications by the examiner are referred to in the notes column.

Draft Charging Schedule Rates

Use	Rate/ m²	Notes
Residential	£100	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 across the district is considered reasonable.
Specialised, Extra Care & Retirement Accommodation	£100	The viability evidence recognises that these uses have different viability consideration due to their 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. The Council accepted that schemes with higher non-saleable floorspace may have viability issues and the proposal to exclude

		the schemes which provide non-saleable floorspace in excess of 30% of Gross Internal Area from CIL rate was discussed at the hearings.
Urban extension	£50	These sites warrant a different charge to the district-wide residential rate. The most effective approach to provision of site specific infrastructure, primarily for primary school provision should be via Section 106 agreements. This justifies the lower rate to be charged in the urban extension sites identified in the Core Strategy.
Retail	£150	The viability of development is higher in central Bath which would support a rate of /m ² . 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	£100	In Bath this rate 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.
Student housing	Market £200 Sub-market: £nil	The degree to which developments can absorb CIL is largely 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). Student housing let at commercial rents can absorb a higher charge than at the sub-market rents. The Council accepted at the hearings that the "market vs sub-market" terminology is more helpful than "on-campus vs off-campus"
Office	£nil	Although there is a demand for space, such development does not generate rents that would be high enough to support new development, particularly in Bath where build costs are significantly higher. The viability evidence identifies that office development is unlikely to come forward in the short to medium term.
Industrial and warehousing	£nil	The viability evidence indicates that these uses are unlikely to generate positive residual land values and therefore a zero rate is recommended.
Other uses.	£nil	BNP Paribas has also tested 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.

5.6 In addition to the above, the Examiner heard evidence about the particular viability issues in relation to the Bath Western Riverside Scheme and the developer's request for the application of a NIL charge. In light of the importance of this scheme to the Council's development strategy, it is likely that the Examiner will address this in his report, either by

accepting a NIL charge or by other mechanisms. This will be addressed in the update report.

- 5.7 Reflecting the above considerations, the proposed Draft Charging Schedule is set out in Attachment 1. An update report will be required to set out any modifications made by the examiner once his report is published.

Planning Obligations Supplementary Planning Document

- 5.8 The Planning Obligations SPD supplements the Core Strategy and Local Plan and will also supplement the Placemaking Plan when adopted. The SPD sets out the Council requirements on developer contributions related to new development. It has been reviewed alongside the preparation of CIL in order to reflect the new regulations which scale back developer contributions to site specific infrastructure.
- 5.9 The public consultation on the draft SPD was undertaken from 24th July to 18th September 2014. The issues raised and the Council's responses are set out in the Consultation Statement (Attachment 4).
- 5.10 One of the main issues raised was the concern over the formula for off-site affordable housing contribution in lieu of on-site provision. It was agreed to revise the formula and a workshop was held with key stakeholders to explore alternative formula options on 20th January.
- 5.11 At the workshop an overall approach was agreed but more work is needed to finalise the formula which does not undermine the development viability and the delivery of housing including affordable housing.
- 5.12 Recent changes to national planning policy limit the scope to seek affordable housing from small sites of less than 10 dwellings. However the changes are unclear and legal clarification is being sought. This may have implications for how Core Strategy Policy CS9 will apply in the district.
- 5.13 Summary of other issues and responses:
- General support for document in clarifying the role of S106 vs. CIL.
 - Support for the Council's approach to Transport Infrastructure Works and Green Infrastructure sections of the SPD, including the recognition that Green Infrastructure will be integral to development proposals.
 - Concern regarding potential overlap between Regulation 123 list and Section 106 in relation to provision of open space. The SPD is clear CIL will fund specific green space requirements identified in the Green Space Strategy and major development sites will be expected to provide open space provision to mitigate the impact of development.
 - Challenge the contribution to address impact where employment land and jobs are lost. This requirement has been removed from the SPD.
 - Objection to the requirement for a developer to provide total land and costs of building a new school. This has been addressed by adding reference to pooling contributions from up to 5 developments and apportioning contribution to each development.

- Specific site level flood risk infrastructure has been added as a measure in response to representations from the Environment Agency.

The Regulation 123 list

- 5.14 The Council was required to prepare for the examination a Reg 123 list which sets out those types of infrastructure on which CIL could be spent. The B&NES Reg 123 list is based on the Council's Infrastructure Delivery Programme (IDP) which underpins the Core Strategy. The IDP is regularly reviewed and updated through cross service working.
- 5.15 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 Section 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 Section 106 agreements. This will then inform, but not dictate, future spending arrangements, including the Council budget and the capital programme.
- 5.16 The draft Reg 123 is included in Attachment 2. The Reg 123 List can be reviewed responding to changes in infrastructure priority and requirements.
- 5.17 The Bath Enterprise Area is 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.
- 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

Relief

- 5.21 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.
- 5.22 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.
- 5.23 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.)

5.24 A local authority wishing to offer discretionary relief in its area must first give notice publicly of its intention to do so. It is recommended that such a notice is given.

Payment in Kind and Infrastructure Payments

5.25 Under the CIL regulations, a charging authority (the Council) may accept one or more land payments instead of all or part of the CIL due (ie a payment in kind). Also, the Council may set a policy to accept one or more “infrastructure payments” (value of infrastructure) in place of the whole or part of the CIL due. The infrastructure must be strategic in nature (as in types of infrastructure on the Reg 123 list).

Instalment Policy

5.26 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.

5.27 Where the total CIL liability is greater than £35,000, the B&NES CIL document proposes the following instalment policy for consultation;

- 33% 60 days after development commenced
- 33% 12 months after deployment commenced
- 34% 18 months after development commenced.

Monitoring and review arrangements

5.28 The CIL, the IDP, the Regulation 123 List and the Planning Obligations will be regularly monitored and key issues reported through the Authority Monitoring Report where appropriate. This monitoring will inform the need for future reviews.

6 RATIONALE

6.1 The Council has sought to set CIL rates which have struck an appropriate balance between revenue maximisation on one hand and the potentially adverse impact upon the viability of development on the other.

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 Section 106 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.

8 CONSULTATION

8.1 CIL was subject to statutory consultation procedures which were undertaken in line with the B&NES Statement of Community Involvement. 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 Consultation arrangements for the DCS, Reg 123 List and the revised Planning Obligations SPD were;

- Notification of those who have requested to be kept informed
- Notification in the Local Press & website
- Targeted consultation within the business sector
- Engagement with Parish & Town Councils
- Engagement with other bodies set out in the Statement of Community Involvement.

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.

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Background papers	<p><i>Background papers available from; www.bathnes.gov.uk/cil</i></p> <ul style="list-style-type: none"> • <i>Examiner's Report January 2015</i> • <i>Viability Test Update by BNP Paribas</i> • <i>B&NES CIL Evidence Paper</i> • <i>B&NES Core Strategy as proposed to be adopted July 2014</i> • <i>B&NES Infrastructure Delivery Plan IDP</i> • <i>B&NES EqIA Report</i> • <i>SEA/SA Screening Report Regulation 15(7) Consultation Statement</i>
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