

# Bath & North East Somerset Council

MEETING	<b>Council</b>
MEETING DATE:	<b>17th February 2015</b>
TITLE:	<b>Approval of Bath &amp; North East Somerset Community Infrastructure Levy</b>
WARD:	All
<b>AN OPEN PUBLIC ITEM</b>	
<b>List of attachments to this report:</b> Attachment 1: B&NES Charging Schedule	

## 1 THE ISSUE

- 1.1 This report recommends approval of the B&NES Community Infrastructure Levy (CIL). Following the examination hearings on the 8<sup>th</sup> January 2015, the Examiner recommended approval of the CIL, with modifications. The Council can only approve the CIL if it accepts the Examiner's modifications.

## 2 RECOMMENDATION

2.1 That Full Council ;

- 1) approve the B&NES Community Infrastructure Levy as modified by the Examiner (Attachment 1) with a commencement date of 6<sup>th</sup> April 2015
- 2) delegate responsibility to the Divisional Director for Development, in consultation with the Cabinet Member for Homes and Planning, to make minor amendments and to correct any errors to the documentation before CIL comes into effect.

## 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. This essentially replaces that part of Section 106 funding which the Council can no longer seek after 6<sup>th</sup> April 2015 when 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 Spend: The Regulation 123 List vs. Planning obligations**

- 3.3 The use of income generated through CIL must 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 Regulation 123 list is only a high level clarification of the types of infrastructure that CIL will be spent. Its preparation is a requirement in order to avoid double charging developers with both CIL and Section 106 contributions. The Regulation 123 List was reported to Cabinet on 11<sup>th</sup> February 2015 and can be amended at the authority's discretion.
- 3.4 The Council has secured nearly £20 million through Section 106 agreements in the last 10 years. The current Planning Obligation SPD has had to be reviewed to align it with CIL because the Council's ability to seek Section 106 is being scaled back. This will affect what infrastructure or contributions the Council seeks developers to provide through new development. The Regulation 123 List sets out the infrastructure that CIL will be spent on to distinguish it from the infrastructure that will be secured via s.106 planning obligations. The amended Planning Obligations SPD was adopted by Cabinet on 11<sup>th</sup> February and is due to come into effect alongside CIL on 6<sup>th</sup> April 2015.
- 3.5 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 and is regularly updated and refined. The costs and requirements in the longer term are unavoidably more difficult to identify. The IDP is therefore 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 arrangements for agreeing priorities for CIL spend will need to be clarified. This is a level of detail greater than that required in the Regulation 123 list and will need to take into account future budget decisions and the Capital Programme. 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 Section106 developer contributions.
- 3.7 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 the 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 (a cap applies) 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.

**Implementation of CIL**

- 3.9 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.

## 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 The Council can only approve the CIL if it accepts the Examiner's modifications.
- 4.3 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 8<sup>th</sup> January 2015 and the Examiner's report was received on 30<sup>th</sup> January. The Examiner concluded that, subject to some modifications, the B&NES Draft CIL Charging Schedule should be approved because provides an appropriate basis for the collection of the levy in the area. On this basis, the report seeks Council's approval of the CIL Charging Schedule (Attachment 1).
- 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 vital.
- 5.4 The proposed rates in the draft charging schedule, with modifications by the Examiner, are set out below. It reflects a careful consideration of balancing the costs of development with the need to maximise income for infrastructure. 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 set general rates which do not cause viability difficulties for development. Particular issues are explained in the table below.

Use	£/m <sup>2</sup>	Notes	Examiner's recommendations
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	The Examiner endorses the proposed rate.  He concluded that

		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.	the proposed rate is soundly based with a sufficient buffer level and does not pose a threat to development viability.
urban extensions	£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.	
Specialised, Extra Care & Retirement Accommodation	Urban extensions £50, elsewhere £100	<p>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.</p> <p>During the Examination, evidence showed 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.</p>	<p>The examiner acknowledges an additional significant cost associated with communal spaces. Higher than 30% non-saleable space would become more challenging or rendered unviable.</p> <p>Therefore he recommended excluding the schemes that provide non-saleable floorspace in excess of 30% of Gross Internal Area.</p>
Retail	£150	<p>The viability of high street retail development is higher in central Bath which would support a rate of £150/m<sup>2</sup>. In other centres, the viability evidence indicates that a £nil charge is appropriate.</p> <p>An exception to this is large supermarket, superstores and retail warehouses which would support a charge of £150 across the district.</p>	<p>The Examiner endorses the proposed rates.</p> <p>He concluded that the proposed rates and differentiation to be reasonable and supported by the evidence.</p>
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	The Examiner endorses the proposed rate.

		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 submitted draft charging schedule differentiated student housing as 'on-campus' and 'off-campus'. In order to reflect the evidence more closely and make the intention clear, the rate differentiation of student accommodation types was discussed at the hearings.	The Examiner accepted the rates and the post submission changes recommends to set £nil for schemes with sub-market rents and £200 for schemes with market rents.
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. This can be monitored in order to inform future reviews of CIL.	The Examiner endorses the proposed rate.
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.	The Examiner endorses the proposed rate.
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.	The Examiner endorses the proposed rate.
All uses in Bath Western Riverside (BWR) See map in Charging Schedule Attachment 1	£nil	At the examination Hearing sessions, the developer's representative explained that circumstances regarding BWR had changed which may result in a new planning application being submitted. Any new permission would fall under the CIL regime and the developer representative was of the view that this would cause significant viability issues.	The Examiner had considered the evidence submitted and recommends £nil for all development within the BWR area.

		<p>Given the strategic significance of BWR to the Core Strategy, the Examiner has asked the Council and BWR developer to prepare a Statement of Common Ground.</p> <p>The Statement sets out the viability issues and acknowledges that the development (including appropriate infrastructure provision such as a new primary school) is most effectively delivered through the s.106 mechanism if a new planning application were to be submitted.</p>	
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5.5 Reflecting the above considerations, the proposed Charging Schedule is set out in Attachment 1. The Regulation 123 List was due to be agreed by Cabinet in February.

**Discretionary Relief & Payment in Kind**

5.6 A local authority wishing to offer discretionary relief in its area must first give public notice of its intention to do so. Likewise, 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 listed in the Reg 123 list).

5.7 The report to Cabinet on 11<sup>th</sup> February sought delegation to the Divisional Director for Development, in consultation with the Cabinet Member for Homes and Planning, to give notice that Discretionary Exceptional Circumstances Relief, will be made available in the District and that ‘Payment in Kind and Infrastructure Payment’s will be made available in the District.

**Instalment Policy**

5.8 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.

5.9 The report to Cabinet on 11<sup>th</sup> February sought delegation to implement the following instalment policy where the total CIL liability is greater than £35,000;

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

**Monitoring and review arrangements**

5.10 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. Cabinet agreed on 11<sup>th</sup> February to recommend to Full Council that CIL should be reviewed within at least 2 years of approval.

**Planning Obligations Supplementary Planning Document**

5.11 The Planning Obligations SPD supplements the Core Strategy and Local Plan and it 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. The revised SPD was due to be adopted by Cabinet on 11<sup>th</sup> February, to become effective alongside CIL in April 2015.

## **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; and
- 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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<b>Background papers</b>	<p><i>Background papers available from; <a href="http://www.bathnes.gov.uk/cil">www.bathnes.gov.uk/cil</a></i></p> <ul style="list-style-type: none"> <li>• <i>B&amp;NES draft Regulation 123 list</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 (July 2014)</i></li> <li>• <i>B&amp;NES CIL Examiner's Report</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 Regulation 15(7) Consultation Statement</i></li> </ul>
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