

FAREHAM

BOROUGH COUNCIL

Report to the Executive for Decision 02 June 2014

Portfolio:	Planning and Development
Subject:	CIL First Review - Preliminary Draft Charging Schedule
Report of:	Director of Planning and Development
Strategy/Policy:	Fareham Local Plan
Corporate Objective:	To protect and enhance the environment To maintain and extend prosperity To ensure that Fareham remains a safe and healthy place to live and work To provide a reasonable range of leisure opportunities for health and fun To work with our key partners to enable and support a balanced housing market To build strong and inclusive communities To be a dynamic, prudent and progressive Council

Purpose:

This report seeks Executive consideration and approval of the Community Infrastructure Levy (CIL) First Review Preliminary Draft Charging Schedule for consultation in accordance with the Community Infrastructure Levy Regulations 2010 (as amended).

Executive summary:

The Community Infrastructure Levy was first introduced by Fareham Borough Council in May 2013. A commitment was provided at that time to review the Borough's CIL rates once the infrastructure planning and viability evidence to support the Welborne Plan was complete to ensure that rates applicable at Welborne would be appropriate and would not threaten the viability of that strategic development.

Consultation on a Preliminary Draft Charging Schedule is the first stage in the review of the Borough's CIL and is required by the legislation. The production of the Preliminary Draft Charging Schedule has been based on evidence gathering, including updating the economic viability assessment undertaken in support of the current CIL and drawing on updated known infrastructure requirements, costs and funding streams, including those produced to support the Welborne Plan.

The revised Community Infrastructure Levy rates proposed in the Preliminary Draft Charging Schedule are as follows:

- Any development at Welborne : £0 / m² (Please note: Whilst a zero rate/£0 is proposed at Welborne, s106 agreements/planning obligations will be used to

secure satisfactory development and deliver essential infrastructure, including the delivery of affordable housing.)

- Residential (1-4 units): £185 / m²
- Residential (5+ units): £120 / m²
- 'Extra Care' to meet housing needs which require public subsidy: £0 / m²
- Hotels: £35 / m²
- Care homes for the elderly: £35 / m²
- Retail:
 - Comparison retail¹ (out of town): £35 / m²
 - Comparison retail (in-town): £0 / m²
 - Convenience retail² (500m² or more): £140 / m²
 - Convenience retail (499m² or less): £75 / m²
- Standard Charge (applies to all development not separately defined for example: offices, warehouses, leisure, education): £0 / m²

Recommendation:

- (a) That the First Review Community Infrastructure Levy Preliminary Draft Charging Schedule consultation document (as set out at Appendix A) be approved for a six week consultation period in accordance with the Community Infrastructure Levy Regulations 2010 (as amended).
- (b) That the Director of Planning and Development, in consultation with the Executive Member for Strategic Planning and Environment, be authorised to make any necessary minor changes to the Preliminary Draft Charging Schedule consultation document prior to publication for consultation.
- (c) That the proposed timetable for the review of CIL, set out in the accompanying Executive Briefing Paper, be approved.

Reason:

Consultation on the Community Infrastructure Levy Preliminary Draft Charging Schedule is required by Community Infrastructure Levy Regulations 2010 (as amended).

Cost of proposals:

The cost of preparing the CIL Charging Schedule, to include updating the Borough-wide viability assessment by consultants and the independent CIL examination, is currently estimated at £75k spread over the two financial years, 2013-14 and 2014-15. These costs can be met within existing budgets, but part or all of which may be recovered in due course under the provision of the Community Infrastructure Levy arrangements.

Appendices:

A: First Review CIL Preliminary Draft Charging Schedule Consultation Document

B: Fareham Economic Viability Assessment (Update 2014) Executive Summary

¹ A convenience unit is a shop or store selling mainly everyday essential items, including food, drinks, newspapers/magazines and confectionary.

² A comparison unit is a shop or store selling mainly goods which are not everyday essential items. Such items include clothing, footwear, household and recreational goods.

Background papers:

- Updated Infrastructure Delivery Plan for Fareham Borough (excluding Welborne) – to be published as part of the consultation exercise
- Fareham Economic Viability Assessment (Update 2014) – to be published as part of the consultation exercise

FAREHAM

BOROUGH COUNCIL

Executive Briefing Paper

Date: 02 June 2014

Subject: CIL First Review - Preliminary Draft Charging Schedule

Briefing by: Director of Planning and Development

Portfolio: Planning and Development

INTRODUCTION

1. The Community Infrastructure Levy (CIL) is a planning charge on new development. The ability for a local planning authority to charge the levy came into effect from April 2010 and Fareham first introduced the levy in May 2013 with approximately £169,000 in levy receipts having been received by the Council in the intervening period.

WELBORNE AND THE NEED TO REVIEW CIL

2. Fareham's current CIL applies across the whole Borough, including Welborne which means that the current CIL rates for residential, retail and other development would apply to Welborne. However, based on clear evidence provided by the infrastructure planning and viability appraisal work underpinning the Welborne Plan, the decision has been made to use section 106 agreements as the mechanism to secure developer contributions for Welborne. Section 106 agreements which provide greater flexibility than CIL in terms of setting trigger points for key infrastructure delivery required at large strategic sites over significant planning timeframes and allow for the use of a deferral of contributions policy which is a key part of the approach to ensuring that the Welborne Plan can operate in a flexible way.
3. National CIL Guidance requires local authorities to keep their CIL rates under review and to revise rates where circumstances have changed and where current rates may no longer be appropriate. Although Fareham's CIL has only recently been introduced, the finalisation of the Welborne Plan and the decision to rely on section 106 for Welborne have given rise to the need to review current CIL rates. A commitment to undertake such a review, once the Welborne Plan was complete, was made when the current CIL rates were being set in late 2012 and early 2013.

4. The CIL legislation requires that any review of CIL applies to the whole of the charging authority's area, which means the Borough of Fareham. Therefore, a review of the rates within the Welborne area alone is not possible and in order to ensure that an appropriate differential CIL rate can be applied at Welborne, a full review of the Borough's CIL is required. It also provides the opportunity to reflect changes in recent legislation and guidance, as well as reflect on the impact of CIL on development since operating within the Borough.

THE PRELIMINARY DRAFT CHARGING SCHEDULE

5. The first formal stage in the review of the Borough's CIL Charging Schedule is to publish a Preliminary Draft Charging Schedule for public consultation. The Preliminary Draft Charging Schedule needs to be based on viability evidence and be informed by an Infrastructure Delivery Plan (IDP).
6. To illustrate that a CIL rate is justifiable the charging authority (Fareham Borough Council) must determine the size of its total or aggregate infrastructure funding gap. To determine the size of the infrastructure funding gap, officers have updated the IDP in consultation with infrastructure providers. The IDP identifies the quantum and type of infrastructure required to realise local development needs as set out in Local Plan Part 1: Core Strategy and within the emerging Local Plan Part 2: Development Sites and Policies Plan. The IDP estimates costs, identifies potential funding sources and the lead delivery organisation for each piece of infrastructure. The updated IDP, covering the parts of the Borough outside of Welborne, is included as a background paper to this report and will undergo public consultation alongside the Preliminary Draft Charging Schedule between mid-June and late July³. The overall aggregated infrastructure costs from the IDP are summarised in the Preliminary Draft Charging Schedule Consultation Document (See Table 1 in Appendix A).
7. The updated Infrastructure Delivery Plan indicates that there is a total funding gap of £93,528,800 in the Borough, taking into account the other known sources of funding that will or are likely to be available. It is important to note that the above figure does not include any infrastructure that will be required to deliver the Welborne development, due to the use of section 106, rather than CIL to fund a significant proportion of Welborne's infrastructure requirements. In practice additional external funding will also be required, beyond developer contributions, in order to ensure that the infrastructure required by Welborne is deliverable. Therefore the funding gap referred to above relates entirely to the infrastructure required by other development within Fareham Borough as set out with the Core Strategy and the emerging Development Sites and Policies Plan. It should be noted that whilst it is necessary to identify a total funding gap as part of the CIL Review, this calculation represents a snapshot in time, and sources of infrastructure funding other than CIL will change over time and in nature. *It is anticipated that non-CIL sources of funding will become more defined as development proposals progress, and opportunities to reduce the*

³ There is also a separate IDP covering the Welborne development. As the Welborne IDP has not been updated and was consulted on alongside the Publication Draft Welborne Plan, it has not been included as a background document to this report and will not be consulted on in June/July.

gap will emerge.

8. In reviewing and setting CIL rates, the Council is required to strike an appropriate balance between the desirability of funding infrastructure from CIL and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across the Borough, using appropriate available evidence to inform the Preliminary Draft Charging Schedule.
9. To this effect independent consultants were appointed to undertake an updated CIL economic viability assessment to consider the impacts of the proposed revised CIL rates on the economic viability of development across the Borough. An Executive Summary of the updated viability assessment is attached at Appendix B and the full report will be made available as part of the consultation exercise.
10. Consistent with their approach in 2012 assessment, the consultants used the 'residual valuation method' to assess development viability, in line with accepted practice and as recommended by Royal Institute of Chartered Surveyors and other guidance. Residual valuation methodology was applied to different land uses and development scenarios, taking account of differences in values across the Borough. The schemes and scenarios tested were drawn from the types of development being proposed within the emerging Development Sites and Policies Plan. In each case a formula was used to estimate typical residual land values, which is what the site should be worth once it had full planning permission. The residual value calculation requires a wide range of inputs, or assumptions, including the costs of development and the required developer's return.
11. Having estimated the residual value, the consultants then compared this with the 'benchmark land value' or 'land cost', which is the minimum land value the landowner might be expected to accept to release his or her land for the development specified. If the residual land value is below the benchmark value, the development is not financially viable, even without CIL. If the residual value is above the benchmark value, the development is viable and the excess of residual over benchmark value measures the maximum amount that may be potentially captured by CIL. If the two values are equal, the development is just viable, but there is no surplus value available for CIL.
12. The report tests a series of development scenarios and in the main the imposition of CIL is not considered a critical factor in determining whether a scheme is viable or not, with the relationship between scheme value, costs, the provision of affordable housing and existing use value benchmarks being far more important. However, there are a number of reasons why the level of CIL charged should not be set at the margin of viability, or in other words, it should not seek to capture too much of the residual value above the benchmark value:
 - The viability evidence undertaken is a snapshot in time and property markets change constantly over time which means that the CIL rates set must ensure that they can remain appropriate for the life of the charging schedule and not result in choking off significant amounts of development,

for example, if there was a further downturn in the market. The Statutory Guidance on CIL specifically requires charging authorities to take this aspect into account.

- The viability appraisals are undertaken using generalised assumptions to find an 'average' valuation for the type of development being appraised. In reality, both values and costs vary significantly which means that the levy rates chosen must allow for the fact that some developments have abnormally high costs, for example, where the remediation of contaminated land is required.
- The viability appraisals themselves involve a relatively wide margin of error due to the assumptions that have to be made. Levy rates must take this into account when being set.
- A charge that seeks to extract very high levels of value relative to the maximum viability would be much more likely to be strenuously opposed by landowners and developers which will make the levy more difficult to implement and would be more likely to put development in the area at serious risk.

13. Taking these factors into account, the consultants have proposed charges that secure the best possible level of funding for infrastructure but avoid the problems of setting rates too close to the margin of viability.

Residential

14. For residential development, the appraisals were undertaken on a variety of development sizes and types. These resulted in a wide range of maximum possible levy charges, depending on the type and size of development, ranging from £0 to £413 per square metre. However, one of the most significant factors in determining the maximum potential charge is the level of affordable housing delivery assumed. Those residential developments within the Borough where 40% on-site affordable housing would be sought were found to have a maximum levy charging potential at the lower end of this wide range. Therefore, in order to ensure that affordable housing would remain deliverable at the levels set out in the Core Strategy, the residential charge rates proposed needed to be well below the top of the range of maximum charges.
15. Neither the legislation nor the guidance set requirements on how far below potential maximum charge levels a charging authority's rates should be set. This is left to the judgement of the authority. In Fareham's case, where a current CIL is in operation, the advice provided was to maintain the current level of CIL charge for most residential developments. Taking into account the annual mandatory index-linked increases in CIL rates, a rate equivalent to the £105 per square metre that was set in May 2013 would be £120 per square metre, assuming that the revised CIL rates take effect after 1 January 2015.
16. One of the recent changes to CIL legislation that has taken effect after Fareham introduced its current CIL rates is the power to set differential rates by reference to the size of developments. Taking account of the residential viability evidence referred to above, the potential now exists for Fareham to set a higher differential rate for small residential developments which do not make any contributions to affordable housing. The viability evidence demonstrates that

such developments, comprising 1-4 dwellings, have stronger viability than other residential development and could bear a higher CIL rate. The Preliminary Draft Charging Schedule sets out a rate of £185 per square metre for such schemes.

Extra Care and similar schemes designed to meet housing needs

17. In the current Fareham CIL rate structure, schemes developed for the elderly that comprise of self-contained dwelling units and which offer care and support on site (sometimes known as 'Extra Care') are charged CIL at the normal residential rate. This situation ignores the fact that some such schemes are developed specifically to meet the needs of those who cannot access private market equivalents. These will only be viable with direct public sector financial support, even where they do incorporate a small portion of units for private rent or sale. Having considered the views of Hampshire County Council and others, it is proposed to recognise such specific circumstances as a separate form of development and to provide a new 'zero' differential rate for Extra Care or similar schemes which provide more than 50% affordable housing and which require public sector support to become viable.

Care homes

18. The current CIL charging schedule includes a £60 per square metre rate for care homes. Further viability work on this type of development has been undertaken and this has indicated that, such schemes are struggling in viability terms within the Fareham area. Although they remain generally viable, they are unlikely to be able to bear the level of CIL currently applicable within Fareham. Therefore, it is proposed to reduce the differential rate for care homes to £35 per square metre. This is a level, which the evidence indicates would be less likely to threaten the viability of care home developments.

Retail

19. As with the previous evidence undertaken, the viability of retail development is complex due to the highly variable values of different types of retail in the Borough. For example, the consultants found that medium-large format 'convenience retail'⁴ is generally able to sustain a much higher levy charge than 'in-town' 'comparison retail'⁵ within Fareham. A weakening of viability in 'in-town' comparison retail is reflected in a weakening 'in town' comparison retail market, as for example, the effect of internet shopping continues to increase. A new finding of the evidence was that the viability of convenience retail did not vary very much with location across the Borough. Clear viability differences were found however, depending on the size of development, with smaller convenience retail showing a reduced level of viability compared to larger schemes, which included the main supermarkets.
20. As a result of the updated evidence, some changes to Fareham's current retail CIL rate structure are proposed. Based on the findings, it is proposed to maintain the zero differential rate for 'in-town' comparison retail, and reflecting

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⁵ A comparison unit is a shop or store selling mainly goods which are not everyday essential items. Such items include clothing, footwear, household and recreational goods.

the weaker viability of this type of development 'out-of-town' the differential rate for 'out-of-town' comparison retail is proposed to be reduced to £35 per square metre. This geographical differential rate structure within and outside of Fareham's town, district and local centres does not apply to convenience retail. For convenience retail, the evidence pointed to rolling forward the current CIL rate for larger schemes. Taking indexation into account, £140 per square metre is proposed for schemes with a net addition of more than 500 square metres of convenience retail floorspace. For smaller convenience schemes, below the 500 square metre threshold, a reduced rate of £75 per square metre is proposed to take account of the weaker viability of these forms of development.

Hotels

21. Updated viability appraisal work was undertaken on the viability of a three-star 'budget' hotel with 55 bedrooms, typical of out-of-town business park locations. Although the viability of such schemes was found to be fractionally weaker than previously seen, it was concluded that there was adequate viability to continue charging a CIL rate of £35 per square metre. It is recommended that CIL remains at this rate for hotels within the Borough.

Office and light industrial

22. Viability appraisal work was also undertaken on a range of employment uses, including office and light industrial developments. The appraisals looked at speculative development within the Borough, in other words developments where there was no established user for the building being developed. The results indicated that there was a negative viability and therefore, there continues to be no potential for any levy charge at the present time. This situation is consistent with the findings of other authorities outside of central London that have already introduced CIL.

Other development

23. The consultants also looked at a number of other uses which were not covered by the categories referred to above, including youth hostels, cinemas, scrap yards and others. No specific viability appraisals were undertaken for such uses, primarily as they are not forms of development being proposed within Fareham's Local Plan and very little additional floorspace in these types of uses is expected to be delivered over the plan period. Based on the consultants' wider experience of such uses, the overall evidence suggests that there is no scope for any levy charge on these types of facilities. This is reflected by the proposed continuation of a zero 'standard CIL charge rate' to cover all relevant types of development that are not subject to the specific differential rates referred to above.

CONSULTATION

24. A charging authority which proposes to issue a CIL charging schedule must first prepare a preliminary draft charging schedule for consultation. This is set out within the CIL First Review Preliminary Draft Charging Schedule Consultation Document at Appendix A.

25. The Regulations do not prescribe a required length of the consultation period for the Preliminary Draft Charging Schedule, however Government guidance considers that at an appropriate period would be at least six weeks. Government guidance makes clear that it is for the charging authority to decide how best to undertake the consultation exercise.
26. Consistent with the consultation undertaken on the previous preliminary draft charging schedule in 2012, it is proposed that Fareham's consultation will take place in the following forms:
 - *Emails and letters* – to be sent to relevant individuals and organisations on the Council's Local Plan consultation database - including statutory consultees, neighbouring authorities, developers, agents and other statutory and service or infrastructure providers.
 - *Website* - The Preliminary Draft Charging Schedule and supporting evidence to be published on the Council's website with instructions for submitting comments to the consultation.
27. The charging authority must take into account any representations made during the Preliminary Draft Charging Schedule consultation before publishing a Draft Charging Schedule which represents its firm proposals for the review of CIL.

NEXT STEPS

28. Following consideration of consultation responses to the Preliminary Draft Charging Schedule and when the Council considers that a Draft Charging Schedule is ready for examination, it must publish the Draft Charging Schedule and the appropriate available evidence on infrastructure costs, other funding sources and economic viability. The Council must then call for representations to be made within a period of at least four weeks. The Council will need to appoint an examiner to hold an Examination in Public into the Draft Charging Schedule. Any person may make representations about a draft charging schedule and that person must be heard before the examiner at the CIL examination, if they have requested to be heard.
29. Following the examination, the examiner will make recommendations to the Council which can fall into one of three categories. The examiner can recommend that the draft charging schedule be approved, approved with modifications or rejected. Any modifications suggested by the examiner are not binding on the Council, as long as the problem identified is corrected before the charging schedule is approved. A report detailing how the identified problems have been corrected by the Council must be published at the same time as the approved charging schedule.
30. Assuming that the examiner does not reject the Draft Charging Schedule and once any problems identified by the examiner have been corrected, the charging schedule should be formally approved by a resolution of Full Council. Presuming there are no difficulties or delays in the process, or delays caused

by the parallel examinations of Local Plan Parts 2 and 3, the CIL Charging Schedule could then be adopted by the Council in spring 2015.

THE USE OF SECTION 106

31. Once the levy is adopted, CIL regulations restrict the use of section 106 planning obligations. Pooled contributions may then only be sought from up to five separate section 106 agreements for each infrastructure project or type that is not intended to be funded by the levy.
32. The restrictions on the use of section 106 agreements begun to apply within Fareham in May 2013 when CIL was first introduced and CIL now represents the primary source of developer contributions in Fareham. However, it is still appropriate that many developments are liable both to pay CIL *and* to enter into a section 106 agreement. The CIL payments and section 106 planning obligations will cover different things and fund different types or items of infrastructure. As the law requires, developments will not be charged for the same items of infrastructure through both section 106 agreements and CIL.
33. Whilst CIL has therefore replaced section 106 agreements in many cases, section 106 agreements will still be used for some local infrastructure requirements required to make the development acceptable in planning terms. These might include local access or connection to services or local open space. Some of these requirements may be physically off site, but will be secured under Section 106 where they are clearly linked to the development site and needed to make that particular development scheme acceptable. Section 106 agreements will also continue to be used for purposes other than the securing of monetary contributions, for example, to impose restrictions on the use of land.
34. In order to clarify the types or items of infrastructure for which contributions will in future no longer be secured via section 106 agreements, the Council has published a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL. This is known as the "Regulation 123 list". This list is not a part of the charging schedule, but is published on the Council's website when the CIL Charging Schedule is adopted. A key purpose of this list is to allow developers or other interested parties to check, at the point at which a section 106 agreement is being sought by the Council, that they are not being 'double charged' for any particular type or item of infrastructure. It is important to regularly review the Regulation 123 list to ensure it reflects the latest position in infrastructure needs. Therefore, a revised Regulation 123 list has been included within the Preliminary Draft Charging Schedule Consultation Document (Appendix A) to facilitate engagement.
35. In addition to the Regulation 123 list, CIL Guidance requires local authorities to provide details of the purposes for which section 106 agreements will be sought. This is being taken forward through the development of two Planning Obligations and Affordable Housing Supplementary Planning Documents, one

for Welborne and another for the remainder of the Borough. These Supplementary Planning Documents are now available in draft and are the subject of other reports to be considered by the Executive of Fareham Borough Council at the same time as this report on the first review of CIL.

THE CIL REVIEW TIMETABLE

36. The timetable for preparing the First Review CIL charging schedule and adopting the new levy rates are proposed as follows:

- January 2014 – May 2014 – Evidence gathering: update Infrastructure Delivery Plan, identify other funding streams, undertake updated viability testing;
- 2 June 2014 – Executive approval of Preliminary Draft Charging Schedule Consultation Document;
- 12 June – 24 July 2014 – Public consultation on Preliminary Draft Charging Schedule;
- July – August 2014 – Consider comments, prepare Draft Charging Schedule;
- October 2014 – Executive and Full Council approval of Draft Charging Schedule;
- October – November 2014 – Public consultation on Draft Charging Schedule;
- December 2014 - Submit Draft Charging Schedule and representations to Independent Examiner;
- February 2015 - Independent Examination; and
- April 2015 – Fareham Borough Council adopts the reviewed CIL charging schedule.

RISK ASSESSMENT

37. Levy receipts will not be sufficient to deliver the full infrastructure required as a result of development proposals set out within the Fareham Local Plan. However, the levy is currently helping and will continue to help close the funding gap between the estimated total costs of infrastructure required to support the development of the area and the known and likely other sources of funding. Introducing CIL rates at a level that would, in theory, be sufficient to fund the entire infrastructure requirement would result in the bulk of planned development being unviable. The imposition of the levy must have a net positive effect on growth in the area and any attempts to introduce a CIL rate

structure that did not achieve this, due to overly high rates that made development across the Borough unviable, would be likely to be rejected at the independent examination.

FINANCIAL IMPLICATIONS

38. The CIL regulations permit administrative expenses, including those incurred before the charging schedule is published, up to 5% of the amount of levy collected during the first three years, to be recouped from CIL receipts. Therefore, some if not all of the costs associated with reviewing the current CIL and adopting the new charging schedule may be recovered in due course.
39. Since the introduction of CIL across Fareham in May 2013, approximately £169,000 has been received in CIL receipts. In addition, CIL liabilities amounting approximately to a further £2.35 million have been issued, but not yet received by the Council.

CONCLUSION

40. For the reasons set out above, the Executive is asked to approve the Community Infrastructure Levy First Review Preliminary Draft Charging Schedule Consultation Document for a six-week public consultation and that the proposed timetable for the review of CIL, set out in paragraph 36 above, be approved.

Reference Papers:

CIL Legislation:

- Part 11 of the Planning Act 2008
- Part 6 of the Localism Act 2011 (See Chapter 2)
- The Community Infrastructure Levy Regulations 2010
- The Community Infrastructure Levy (Amendment) Regulations 2011
- The Community Infrastructure Levy (Amendment) Regulations 2012
- The Community Infrastructure Levy (Amendment) Regulations 2013
- The Community Infrastructure Levy (Amendment) Regulations 2014

CIL Statutory Guidance:

- CIL Guidance (February 2014)