

FAREHAM

BOROUGH COUNCIL

Report to the Executive for Decision 15 April 2013

Portfolio:	Strategic Planning and Environment
Subject:	Adoption of Fareham Borough Community Infrastructure Levy
Report of:	Director of Planning and Environment
Strategy/Policy:	Fareham Local Plan
Corporate Objective:	Maintain and Extend Prosperity Leisure for Health and Fun A Balanced Housing Market Strong and Inclusive Communities Dynamic, Prudent & Progressive Council

Purpose:

This report seeks Executive approval of the Community Infrastructure Levy (CIL) Charging Schedule in accordance with the Community Infrastructure Levy Regulations 2010 (as amended) and other associated matters relating to the collection and spending of CIL receipts.

Executive summary:

Following two periods of consultation, the Draft Charging Schedule for the Community Infrastructure Levy was submitted for independent examination in November 2012. The Examiner's report was received on 13 December 2012. The Examiner has recommended that the Charging Schedule should be approved in its published form, without any changes.

In order that the Levy may come into effect, the Charging Schedule must be approved by a resolution of the full council. It is recommended, for the reasons set out in the briefing paper, that the Community Infrastructure Levy Charging Schedule be approved, together with the Regulation 123 List, the Instalments Policy and various delegated powers, with effect from 1st May 2013.

Recommendation:

That the Executive recommends that the Council:

- (a) Approves the Community Infrastructure Levy Charging Schedule as set out in Appendix B for implementation from 1st May 2013;
- (b) Approves for publication the 'Regulation 123 List' as set out in Appendix C;
- (c) Agrees the arrangements for payment of Community Infrastructure Levy by instalments as set out at Appendix D;
- (d) Delegates to the Director of Finance and Resources, in consultation with the Executive Portfolio holder, the authority to publish a revised instalments policy;

- (e) Does not make Exceptional Circumstances relief available in its area;
- (f) Does not make Discretionary Charitable Relief available in its area;
- (g) Delegates to the Director of Finance and Resources in consultation with the Director of Planning and Environment and the Executive Portfolio Holders for Policy, Strategy & Finance and Strategic Planning and Environment, the decision on whether or not to accept an offer of transfer of land in payment or part payment of a CIL liability;
- (h) Approves the delegation of the discretionary powers set out in Appendix E to the Director of Finance and Resources with the exception of the power to issue a CIL Stop Notice under Regulation 89 which shall be delegated to the Director of Finance and Resources in consultation with the Director of Planning and Environment and the Executive Portfolio Holders for Policy, Strategy & Finance and Strategic Planning and Environment;
- (i) Delegates the power to take proceedings in relation to any CIL offence to the Solicitor to the Council;
- (j) Authorises the post holders specified in Appendix F for the purposes of CIL Regulation 109; and
- (k) Delegates power to the Director of Planning and Environment to amend the list of posts at Appendix F.

Reason:

To meet the requirements of the Community Infrastructure Levy Regulations 2010 (as amended) for adoption and implementation of the Charging Schedule.

Cost of proposals:

The cost of preparing the Charging Schedule for the Levy has been met from within existing budgets, part or all of which may be recovered in due course under the provision of the Community Infrastructure Levy regulations.

The cost of implementing the Levy, including administration, collection and enforcement can be covered by a proportion of Levy receipts.

- Appendices A:** [The Examiner's Report](#)
B: [The CIL Charging Schedule](#)
C: [The Regulation 123 List](#)
D: [The CIL Instalments Policy](#)
E: [Discretionary Powers contained in Part 9 of the CIL Regulations](#)
F: [Posts authorised for the purposes of Regulation 109](#)

Background papers: None

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BOROUGH COUNCIL

Executive Briefing Paper

Date: 15 April 2013

Subject: Adoption of Fareham Borough Community Infrastructure Levy

Briefing by: Director of Planning and Environment

Portfolio: Strategic Planning and Environment

INTRODUCTION

1. The Community Infrastructure Levy (CIL) is a planning charge on new development that generally involves a net increase in building floorspace, to fund infrastructure. The ability for a local planning authority to charge the levy came into effect from April 2010, but the levy cannot be set until an adopted Core Strategy is first in place.

PREPARATION OF THE DRAFT CHARGING SCHEDULE & CONSULTATION

2. Following adoption of Fareham's Core Strategy in August 2011 the Executive in November 2011 approved a timetable for the preparation the CIL charging schedule. The first formal stage in the process to adopt a CIL Charging Schedule was the publication of a Preliminary Draft Charging Schedule, along with viability evidence and an infrastructure delivery plan, for public consultation. This was undertaken during March and April 2012 following approval by the Executive on 5 March 2012.
3. The outcome of the consultation was reported to the Executive on 16 July 2012, with the Draft Charging schedule amended to take account of comments and additional evidence concerning viability. At that meeting the Executive also agreed for consultation on the Draft Charging Schedule to be undertaken. That consultation, which took place from 31 July to 11 September 2012, resulted in a total of 13 representations being received.

EXAMINATION

4. The Draft Charging Schedule, together with the supporting evidence and the representations, was submitted for independent examination in November 2012. The Examiner's report was received on 13 December 2012 and a copy is attached at Appendix A. The Examiner has recommended that the Charging Schedule should be approved in its published form, without any changes.

THE CHARGING SCHEDULE

5. As recommended by the Examiner, the Charging Schedule is attached at Appendix B. The appropriate commencement date must be inserted into the charging schedule before it is formally approved.

IMPLEMENTATION ARRANGEMENTS

6. Charges will be levied on new development at the rate set out in the charging schedule and become payable once development commences. The Council will need to set the date from when it will take effect. Members are advised that arrangements are in place to administer the Levy such that commencement on 1 May 2013 is recommended.
7. Charging schedules apply to planning permissions which are granted after that date so a reasonable period of time needs to be available for applicants to be aware of the change from developer contributions through s106 agreements to the levy. From March onwards, applicants and planning agents have therefore been informed verbally and in writing of the likely commencement date. A meeting has also been arranged for regular users of the planning application service to provide further information and answer queries.

SPENDING CIL RECEIPTS: RELATIONSHIP WITH S106 PLANNING OBLIGATIONS

8. The CIL Regulations place restrictions on the use of s.106 planning obligations to secure the provision of infrastructure once a CIL charging schedule has been brought into effect. Those restrictions are intended to ensure that developers are not asked to fund the same infrastructure via both s.106 planning obligations and CIL.
9. A charging authority is therefore required to prepare and publish a list of those items or types of infrastructure it intends to fund through CIL. If a list is not prepared, the assumption is that CIL will be used to fund all infrastructure and s.106 agreements cannot be used for infrastructure provision.
10. The list, commonly referred to as the Regulation 123 List, should be based on the Infrastructure Delivery Plan that formed part of the evidence base to justify the need for the levy.

THE 'REGULATION 123 LIST'

11. The Regulation 123 List sets out what infrastructure projects or types the Council intends will be, or may be, wholly or partly funded by CIL. Following the publication of the list, s.106 planning obligations may no longer be used to secure the infrastructure projects or types mentioned in it.
12. Following consultation with Hampshire County Council the Regulation 123 List set out in Appendix C has been produced. It is recommended that the list be approved for publication.

13. The inclusion on the list of an infrastructure project or a type of infrastructure does not represent a commitment by the Council to provide that project or type of infrastructure either with or without funding from CIL. The only function of the list is in relation to the future use of s.106 planning obligations.
14. A Regulation123 list can be amended from time to time (subject to following the procedure set out in the CIL Regulations and governmental guidance) and it is anticipated that annual monitoring of the list will be undertaken as part of the monitoring that is required for CIL and the Local Plan.

MONITORING & REPORTING

15. To ensure that the levy is open and transparent a report must be put on the Council's website by 31st December each year. The report will show how much money was received from the levy and how much was unspent at the end of the last financial year. The report must also set out expenditure in the preceding financial year with summary details of what infrastructure the levy funded, how much was spent on each item and how much on administrative expenses.

INSTALMENTS POLICY

16. Unlike s.106 planning obligations where there is flexibility regarding when the payment or provision becomes due, CIL must be paid on commencement of development. However it could prove difficult for developers to pay the full amount of CIL for which they are responsible within a short period from the commencement of their development, especially in the current difficult economic climate. CIL Regulation 69B therefore enables charging authorities to adopt and publish a policy enabling the payment of CIL by instalments.
17. The proposed Instalments Policy, set out in Appendix D, seeks to strike a reasonable balance between the need to obtain CIL income as soon as possible and assisting with a developers cash flow for paying the CIL before income is received from their development. It is recommended that the Instalments Policy be adopted from the same date as that on which the Charging Schedule comes into effect.
18. CIL Regulation 69B also allows charging authorities to bring into effect a new instalments policy at any time by publishing it on their web site (subject only to the previous instalments policy having been in effect for at least 28days). If it should prove that the terms of the current instalment policy are causing demonstrable difficulties for developers it will desirable to amend the policy as swiftly as possible. Therefore it is recommended that the power to publish a new instalments policy be delegated to the Director of Finance and Resources in consultation with the Director of Planning and Environment and the Executive Portfolio holder.

EXCEPTIONAL CIRCUMSTANCES RELIEF

19. CIL Regulation 55 enables charging authorities to make “Relief for Exceptional Circumstances” available within their area. This type of relief is strictly governed by the CIL Regulations. The major restriction on granting such relief is that there also has to be a s.106 planning obligation in place for the development and the cost of complying with its requirements must exceed the CIL liability. As the Council currently does not use planning obligations to secure affordable housing, it is very unlikely that a situation could arise where exceptional circumstances relief could be given. For that reason it is recommended that exceptional circumstances relief is not made available in Fareham borough.

DISCRETIONARY CHARITABLE RELIEF

20. Development is exempt from the payment of CIL if the owner of the land is a charitable institution and the development will be used wholly or mainly for charitable purposes. In addition, CIL Regulation 44 enables charging authorities to make discretionary charitable relief available within their area. This type of relief, if made available, would apply to development wholly owned by one or more charitable institutions but held for investment purposes to provide an income for the charity as opposed to being used by a charity itself. The number of cases where this type of relief would arise is likely to be extremely limited, but officers believe that if such cases do occur, there is no reason why the Council should forego the CIL income. It is therefore recommended that Discretionary Charitable Relief is not made available in Fareham.

DELEGATION TO OFFICERS

21. CIL Regulation 73 allows a charging authority to accept the transfer of one or more parcels of land in full or part payment of CIL. It is recommended that the decision on whether or not to accept an offer of transfer of land to pay or part pay a CIL liability is delegated to the Director of Finance and Resources in consultation with the Director of Planning and Environment and the Executive Portfolio Holders for Policy, Strategy & Finance and Strategic Planning and Environment.
22. ‘Part 9 Enforcement’ of the CIL Regulations contains a number of discretionary powers relating to the enforcement of the CIL Regulations and the collection of CIL. These powers are summarised in Appendix E. It is recommended that the power to exercise all the discretionary powers set out in Appendix E be delegated to the Director of Finance and Resources with the exception of the power to issue a CIL Stop Notice under Regulation 89 which shall be delegated to the Director of Finance and Resources in consultation with the Director of Planning and Environment and the Executive Portfolio Holders for Policy, Strategy & Finance and Strategic Planning and Environment.
23. CIL Regulation 111 gives collecting authorities the power to take proceedings in relation to any CIL offence. It is recommended that the power to authorise such proceedings be delegated to the Solicitor to the Council.

POWERS OF ENTRY

24. CIL Regulation 109 allows any person authorised in writing by a collecting authority to enter land at any reasonable hour for certain specified purposes in connection with the collection of CIL. It is recommended that the officers holding the posts listed in Appendix F be authorised for the purposes of Regulation 109 and that the Director of Planning and Environment be authorised to amend the list.

REVIEW

25. It is important that CIL charges remain appropriate. For instance as market conditions change the CIL rate will need to reflect this in future reviews of the CIL. Charging authorities are allowed to revise a part of their charging schedule. However, any revisions, in whole or in part, must follow the same process as that applied to the preparation, examination, approval and publication of the initial schedule, as specified in the CIL regulations.
26. Through the preparation of the Plan for the New Community North of Fareham (NCNF), the Council will need to carefully review the implications of the development of the NCNF for the Infrastructure Delivery Plan. Extensive work will be undertaken in determining the infrastructure requirements associated with the development of the NCNF and the range of funding sources available, together with consideration of the overall viability of the development. Therefore, an early review of the charging schedule should be undertaken in parallel with the NCNF Plan to ensure a potential differential charging zone for the NCNF is considered alongside emerging viability and further infrastructure evidence. Adoption of the reviewed Charging Schedule should take place at the same time as the adoption of the NCNF Plan. The reviewed CIL Charging Schedule should be in place prior to the determination of any anticipated planning applications at the NCNF.

RISK ASSESSMENT

27. If the Council was not to adopt and implement the CIL the Council would not be able to collect developer contributions towards infrastructure costs to its full potential given the limited use of Section 106 planning obligations from April 2014.

FINANCIAL IMPLICATIONS

28. As the 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, some if not all of the costs associated with preparing and adopting the charging schedule may be recovered in due course.
29. Based on the charge rate for residential development, the viability study estimated that over the plan period to 2026 around £9.7 million could potentially be raised. This figure excludes any estimate of levy applied to the development of the New Community North of Fareham.

30. It is clear that CIL will provide a substantial receipt over the plan period; however this will only meet a relatively small proportion of the anticipated infrastructure costs in the borough for the same period. For this reason, it is important that the application of CIL is focussed on the priorities for the borough (both within the remit of the borough council and county council), so that they are most appropriately used. This prioritisation process will be incorporated into the Finance Strategy as part of the Council's capital planning work later this year.

CONCLUSION

31. Due to restrictions on the use of s.106 planning obligations to secure the provision of infrastructure from April 2014 it is in the Council's interest that the Community Infrastructure Levy Charging Schedule be approved and brought into effect as soon as possible. Implementation of the levy is a complex process requiring decisions on matters including the list of infrastructure on which the levy may be spent, payment by instalments, exceptional circumstances relief, discretionary charitable relief, the acceptance of land in lieu of payment, enforcement and proceedings, and powers of entry.
32. It is recommended, for the reasons set out in the above paragraphs, that the Community Infrastructure Levy Charging Schedule be approved, together with the Regulation 123 List, the Instalments Policy and various delegated powers, with effect from 1st May 2013.

Reference Papers:

Community Infrastructure Levy Regulations 2010, as amended

Community Infrastructure Levy Guidance - Department for Communities and Local Government - December 2012

Report on the Examination of the Draft Fareham Borough Council Community Infrastructure Levy Charging Schedule - The Planning Inspectorate - 13 December 2012