

THURSDAY, 2 APRIL 2015

REPORT OF THE PORTFOLIO HOLDER FOR ECONOMY AND EDUCATION**COMMUNITY INFRASTRUCTURE LEVY****EXEMPT INFORMATION**

None

PURPOSE

Following consultation on the Community Infrastructure Levy Preliminary Draft Charging Schedule, approval is sought to prepare the Draft Charging Schedule for consultation. This report also seeks to update Members on the recent changes to the national Planning Practice Guidance, an impending judicial review (not related to Tamworth) and the potential implications this may have on the CIL charging schedule.

The report also updates Members on progress made for Governance and levy collection arrangements for the CIL.

This report sets out the changes to the section 106 arrangements post 6 April 2015 and how S106 monies will be collected and how they will operate alongside CIL.

RECOMMENDATIONS

- 1) **That the Draft Charging Schedule should be consulted upon post-Local Plan hearing sessions in June 2015.**
- 2) **Approve the Section 106 Statement set out in the attachments as the Councils position on developer contributions**
- 3) **That authority is delegated to the Director for Communities Planning and Partnership and the Head of Planning & Regeneration, in consultation with the Leader of the Council & Portfolio Holder for Economy and Education, to make amendments to the Section 106 Statement**

EXECUTIVE SUMMARY**Preliminary Draft Charging Schedule Consultation and next steps**

At its meeting on the 23rd October 2014, Cabinet approved the Preliminary Draft Charging Schedule (PDCS) for a 6 week public consultation in accordance with the Community Infrastructure Levy Regulations (as amended). The consultation took place between 30 October and 11 December 2014 and a total of 15 representations were received.

The representations are summarised as follows:

- More clarity should be given to the 210m² threshold and it should be divisible between 1 or 2 dwellings and should apply only to the net increase.
- It is important S106/S278 and CIL mechanisms dovetail and are managed effectively
- Viability evidence and PDCS do not include likely S106/s278 costs for retail
- Retail rates could discourage large retail developments distorting market, missing potential employment and undermining local and town centres
- Exceptional circumstances relief policy should be adopted

- Differential retail rates may present State Aid issues
- Economics of conversion schemes are different to new build and may not have been in 6 months continuous use in last 3 years
- Instalments policy should be adopted and linked to progress of development
- A flat rate levy for all development with an exemptions policy would prevent disincentives
- Infrastructure as payment in kind should be adopted
- PDCS does not differentiate specialist accommodation for the elderly
- Threshold of 10 dwellings for affordable housing S106 obligations will affect affordable housing delivery
- Testing of affordable housing does not reflect open tenure split in policy or market volatility
- Discretionary relief would be inconsistent

In response to the concerns raised during the consultation, further work has been undertaken to identify if any changes to the charging schedule and accompanying document should be made.

The retail viability assessment has been scrutinised and it is felt that the headroom which the assessment uses gives ample financial manoeuvrability to accommodate S106 or S278 costs. It is proposed not to alter the charge for retail.

Further detailed viability testing has been carried out on specialist accommodation for the elderly. This has been done to better understand how this particular model for delivering housing would be able to contribute to a CIL charge. The viability assessments carried out indicate that there could be a charge of £15 - £30 per sqm for retirement and extra care types of development. Specifically Care Homes would not be able to contribute to a CIL.

Following the feedback to questions regarding exemptions, discretionary relief, payment policies and payments in-kind it is proposed that accompanying the draft Charging Schedule policies will be created for these areas which can be applied once the CIL is adopted.

Work was carried out looking into issues of state aid raised in some responses and there does not appear to be any actual issues of state aid in the charging schedule.

In November 2014 Planning Minister Brandon Lewis announced via a [written ministerial statement](#) a threshold of developments of 10 homes or fewer beneath which affordable housing and tariff style contributions through S106 obligations should not be sought. The changes were introduced via a subsequent update to the national Planning Policy Guidance (PPG).

This change has primarily impacted on the Local Plan's policy for affordable housing. Currently the submitted Local Plan affordable housing policy requires developers of between 2 and 9 units to make a financial contribution to off-site affordable housing via S106 agreements. The affordable housing target of 40 per annum is not reliant on these small sites delivering affordable housing, therefore this change from national government should not impact on Tamworth's affordable housing targets. However, a secondary impact from this change is on the CIL. The Preliminary Draft Charging Schedule took into account the costs associated with policies in the Local Plan, one of which is affordable housing. As the ability to collect S106 on small sites has now been removed, further work was undertaken to see what the impact would be on CIL. It concluded that a specific higher CIL charge on smaller sites could be sought. The additional charging rate on sites of between 3 and 10 dwellings could be set at between £54 and £82 per sqm.

In January 2015 two Berkshire Council's submitted a judicial review to the High Court of the changes made to the PPG by DCLG. Their concern is that this change will limit the use of Section 106 of the Town and Country Planning Act 1990. As this is a judicial review it is a challenge to way the decision has been made, not a request for a judge to consider if it is the

right decision or not. As yet this has not been heard by the High Court.

Given that this ruling could have significant impacts on the rate of CIL charged by the Council, it is considered that the Draft Charging Schedule should not be consulted on until after the Local Plan hearing sessions have finished; by this time either a decision by the High Court will have been made, or the Local Plan affordable housing policy will have been debated; either to remain as submitted, or to change following the Ministerial Statement.

Following the results of the Local Plan hearing sessions a Draft Charging Schedule will be prepared and presented to Cabinet to approve a 6 week public consultation, followed by submission for independent examination.

It should be noted that the CIL can only be adopted once the Local Plan has been adopted by Council, therefore the progress of the Local Plan will drive the speed at which the CIL charging schedule can be adopted.

Section 106 Statement

This statement (see Appendix A) has been prepared to clarify how Section 106 (S106) Agreements and Community Infrastructure Levy (CIL) will be used together to deliver planning obligations after 6 April 2015, which is when new regulations governing S106 will come into force. The new regulations will prevent Local Authorities from pooling S106 contributions from more than five developments for one infrastructure item or project.

As the Tamworth CIL will not be in place by 6 April 2015 (the CIL can only be adopted after the Local Plan is adopted) there will be an interim period where S106 will be the only means to capture developer contributions and mitigate the impact of development. The statement sets out how the Council will use S106 in this interim period and how the Council intends to use both S106 and CIL once the CIL charging schedule is adopted.

OPTIONS CONSIDERED

The CIL viability assessment has taken into account the Local Plan and its requirements.

The charge per sqm has been considered alongside the requirements of the Local Plan policies and strikes a balance between raising CIL and the delivery of policies within the Local Plan, such as achieving a balanced mix of housing types and the delivery of affordable housing.

RESOURCE IMPLICATIONS

A retained fund of £24k exists for the preparation ,consultation and adoption of the CIL and as part of a separate Cabinet report member approval is sought to carry the fund into 2015/2016

LEGAL/RISK IMPLICATIONS BACKGROUND

The state aid issue has been investigated and no further work is required.

SUSTAINABILITY IMPLICATIONS

The CIL R123 list has been drawn from the Infrastructure Delivery Plan which is part of the Local Plan. This list includes infrastructure which will make improvements for local communities across Tamworth.

BACKGROUND INFORMATION

REPORT AUTHOR

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LIST OF BACKGROUND PAPERS

Whole Plan Viability, Affordable Housing and CIL Study – Further Advice 2015

APPENDICES

A) Statement on Section 106