

30<sup>th</sup> May 2012**REPORT OF THE PORTFOLIO HOLDER FOR ECONOMIC DEVELOPMENT****Community Infrastructure Levy****EXEMPT INFORMATION**

None

**PURPOSE**

To provide Members with an appraisal of introducing a Community Infrastructure Levy and seek approval for undertaking the necessary evidence base collection and production of a preliminary draft charging schedule.

**RECOMMENDATIONS**

1. **The Cabinet agrees to the introduction of a Community Infrastructure Levy;**
2. **The Director of Communities Planning and Partnerships leads on the production of an evidence base and a preliminary draft charging schedule to be considered by Cabinet prior to public consultation;**
3. **The Director of Communities Planning and Partnerships leads on the production of the necessary procedures and processes to enable the efficient operation of a CIL; and**
4. **The Director of Communities Planning and Partnerships leads on discussions with infrastructure providers to draft protocols for the passing of collected CIL monies for the delivery of infrastructure, the monitoring of the implementation of those monies and to seek financial assistance with producing the evidence base for CIL.**

**EXECUTIVE SUMMARY**

The Community Infrastructure Levy (CIL) is a discretionary charge so the options available to the Council are to introduce CIL or to continue with the current regime of developer obligations secured through section 106 and other legal agreements. There are revenue costs to introducing CIL which are able to be recovered via the CIL. The potential receipts that could be recovered through CIL are expected to be higher than the section 106 regime. It will become more difficult to rely on s106 Agreements in respect of developer obligations after April 2014 as their use is to be restricted. It is therefore proposed that CIL is introduced and work begins on establishing the evidence base and the necessary protocols and procedures to enable the efficient operation of a CIL. A preliminary draft charging schedule is proposed to be produced and brought back to Cabinet for approval to consult upon.

**RESOURCE IMPLICATIONS**

The cost of establishing CIL is estimated to be a minimum of £45k. The Council has a budget of £40k for the financial year 2012/2013 and it is envisaged that the shortfall of £5k can be met from future CIL receipts and those organisations that are seeking to have CIL receipts passed to them will be asked to contribute on a proportionate basis to the establishment of the CIL and share some of the set up costs.

There will be an ongoing revenue cost associated with implementing and monitoring CIL. At

present up to 5% of CIL receipts could be used to cover administration expenses. It is considered that this would be sufficient to cover our expenses in an average year.

## **LEGAL/RISK IMPLICATIONS BACKGROUND**

CIL can provide an income stream for infrastructure, but will only provide top up funding and will not replace mainstream sources. Introducing CIL does minimise the risk of the identified infrastructure needed to deliver growth in Tamworth being under funded.

The administration of CIL could be complex with potential legal and financial impacts. This risk is minimised by putting in place agreed processes and protocols.

There is a risk that the introduction of CIL could impact on development viability. This is minimised by undertaking viability assessments to ensure that an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the imposition of the levy upon the economic viability of development across their area is struck.

There is a risk that the introduction of CIL could make Tamworth less attractive to developers if set too high. The Regulations state that a “charging authority must **aim** to strike **what appears to the charging authority** to be an **appropriate balance**” between the desirability of funding infrastructure from the levy and the potential effects of the levy upon the economic viability of development across their area. Each Local Authority that introduces CIL will also have to determine what the appropriate Levy is for their area. Working with neighbouring authorities and infrastructure providers should help to minimise differences in collection of evidence and determination of the ‘appropriate balance’ and therefore levy. It should be noted that land values in Tamworth can be lower than neighbouring authorities so by definition the Levy is likely to be at a lower level.

The introduction of CIL will give developers greater certainty that the required infrastructure to support development will be provided. It also provides greater certainty to developers up front on the costs of development as there will be a fixed rate. It also is a fairer system that captures more types of development than s106. As a consequence more developers bear the costs of the infrastructure that supports development.

CIL will be able to be used to fund the ongoing costs of the infrastructure provided (e.g. maintenance). In this respect it will be more flexible than s106 as the decision on how much can be used to support infrastructure will be decided by the Council.

## **SUSTAINABILITY IMPLICATIONS**

CIL will contribute to the provision and maintenance of the necessary infrastructure to support sustainable growth and development.

## **BACKGROUND INFORMATION**

Cabinet received a report in August 2011 on infrastructure delivery and it resolved that an option appraisal for the Community Infrastructure Levy (CIL) be approved. That report introduced the concept of CIL and what powers were associated with it. It highlighted some of the implications of CIL but suggested that further work be undertaken to look at the options of whether CIL should be implemented in Tamworth or whether the existing regime of developer contributions is continued.

It is considered that the main issues of consideration are:

- a) Do we have an infrastructure funding gap?
- b) Restrictions on the future use of Section 106 Agreements
- c) Potential amount of funding that could be raised through CIL and s106
- d) The costs of both models

e) Governance

**a. Do we have an infrastructure funding gap?**

During the process of finalising the new Local Plan the Council has sought to gain greater clarity on the infrastructure that is required to support development, the cost of providing that infrastructure, the body responsible for that infrastructure and potential delivery dates.

It is apparent that many organisations are unable to consider their long term infrastructure requirements, but those that can estimate that they will be unable to provide the infrastructure themselves and will look to developers to contribute. This is particularly true for large infrastructure items such as highways, education, open space improvements and leisure. For example the cost of a new leisure centre is estimated at between £6m-£10m and identified funding available is well short of this. It is therefore considered that there is a funding gap between the cost of providing the required infrastructure to support sustainable communities and that CIL or developer contributions will assist in meeting some of that gap.

**b. Restrictions on the future use of Section 106**

This infrastructure funding gap is not new and in the past has been met by developers through section 106 agreements in most cases, particularly for education and open space requirements.

However, from April 2014 the Council will not be able to collect more than 5 planning obligations (which are back dated to include those collected since April 2010) for a project or type of infrastructure. For some infrastructure requirements this will have little impact particularly where the infrastructure need arises from the development itself - such as an access road or junction improvements. However, for infrastructure such as 'off site open space improvements' or 'education contribution' only 5 developments would be able to contribute through planning obligations. This will reduce the potential amount that could be collected for these items significantly as they would be limited to 5 contributions and in many cases these have already been collected. The CIL regulations are still in their infancy and are interpreted by the legal profession theoretically as no challenges and therefore case law is not in place yet. There is a suggestion though that if a s106 agreement was very specific – such as open space improvements for x park, then greater flexibility could be achieved, however it would still place a theoretical cap on the amount that could be collected. This would have implications for new infrastructure required which is not yet envisaged.

**c. What is the potential amount that could be raised through CIL and s106?**

CIL is only applicable to those developments that gain planning permission after its adoption, estimated at 2014.

The Core Strategy is planning for the development of 4500 residential units between 2006 and 2028, 38400sqm of retail floor space, 36 hectares of employment land and 20,000sqm of offices.

Sizes of residential properties can range from 65m<sup>2</sup> for a 2 bedroom property to 162.02m<sup>2</sup> for a 5 bedroom property.

The average floorspace of a residential unit is approximately 78m<sup>2</sup> which equates to a 3 bedroom semi-detached. One hectare of employment land could be estimated to generate 40,000 m<sup>2</sup> of floor space. The table below shows the potential floorspace that could be eligible for CIL if a spring 2013 adoption occurred.

	Core	Estimated	Committed	Estimated new	Potential
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	Strategy Target	Constructed 2006 - 12	Floor space (with planning permission)	commitment Floor space (planning permission 2012-13)	for CIL 2014-28
<b>Residential</b>	351,000sqm (4,500 units)	98,280sqm (1260 units)	32,526sqm (417 units)	101,400sqm (1300 units)	118,794sqm (1523 units)
<b>Retail</b>	38,400		20,700sqm		17,700sqm
<b>Employment</b>	Office: 20,000sqm General employment (36ha): 144,000sqm =166,000sqm	-	67,600sqm (11.9ha)	57,200sqm (9.3ha)	41,200sqm (14.8ha)

The rate that could be charged per square metre is difficult to estimate without undertaking the detailed evidence collection. However, a cue could be taken from other authorities that have progressed further with CIL.

	Shropshire	Newark & Sherwood	Colchester	Mid Devon	Torbay	Bristol	Broadland/ Norwich
<b>Residential</b>	£40 - 80	£45 - 75	£120	£113	£100m <sup>2</sup>	£50 - 70	£75 - 160
<b>Retail</b>	-	£100	£120 - 140	£250	£150m <sup>2</sup>	£120	£135
<b>Employment</b>	-	£5 - 20	-	-	-	-	£5

If these rates are applied to Tamworth then the following amounts would be collected for the plan period (average yearly figures in brackets)

	Shropshire	Newark & Sherwood	Colchester	Mid Devon	Torbay	Bristol	Broadland/ Norwich
<b>Res</b>	£4.7m- £9.5m (£0.3m- £0.6)	£5.3m- £8.9m (£0.3m- £0.6m)	£14.3m (£0.9m)	£13.4m (£0.9m)	£11.8m (£0.7m)	£5.9m - £8.3m (£0.3m - £0.5m)	£8.9m - £19m (£0.6m - £1.3m)
<b>Retail</b>	-	£1.77m (£0.1m)	£2.1m - £2.4m (£0.14m - £0.17m)	£4.4m (£0.29m)	£2.6m (£0.17m)	£2.1m (£0.14m)	£2.4m (£0.16m)
<b>Emp</b>	-	£0.2m- £0.8m (£0.01m- £0.05m)	-	-	-	-	£0.2m (£0.01m)
<b>Total</b>	£4.7m- £9.5m (£0.3m- £0.6)	£7.2m- £11.5m (£0.48m- £0.76m)	£16.4- £16.7m (£1.1m)	£17.8m (£1.18m)	£14.7m (£0.96m)	£8m- £10.4m (£0.5- £0.7m)	£11.5m- £21.6m (£0.8m- £1.4m)

Through other pieces of evidence already undertaken to support the Core Strategy we know that land values are lower than average in Tamworth and therefore it is likely that we would be looking at rates which are comparable or below the lower rates above (e.g. Shropshire, Newark and Bristol). It is clear that even with CIL the funding gap for all projects would not be closed.

With regards to s106, in theory the same amount of funding could be achieved because the key issues are land and sales values and viability. However, because s106 would be limited and contributions would be linked to infrastructure spatially, this will limit the amount that

could be asked for. For example, we could only ask for a contribution towards a new leisure centre 5 times or a development could only make contributions that support a local park.

**d. Cost of establishing and maintaining a CIL or s106 regime**

Charging Authorities can recover their administration costs from CIL income up to a total of 5% (although this cap is proposed to be removed by the Government), and this will need to be considered when calculating the charge. The set-up costs of CIL, including fees involved in setting the charge and any training, can be included and defrayed against the first 3 years income.

Whilst this will allow costs incurred in setting up CIL to be recovered alongside ongoing costs of maintaining CIL (if below the current 5% cap), this will reduce the amount collected for infrastructure itself.

The costs involved in establishing CIL relate to evidence collection and the examination itself.

Evidence	Current Status	Estimated Cost
Identify and cost infrastructure needs, development costs (including construction costs, land values)	Draft IDP complete	Nil. TSP responsible for keeping up to date and accurate
	Information obtained for residential, lack of information on commercial development	£5,000 to commission consultant/ agent Nil if researched by Council (this could take longer)
Sales Value	Information obtained for residential, lack of information on commercial	£5,000 to commission consultant/ agent Nil if researched by Council (this could take longer)
Calculate 'viable charges'	Could estimate residential but not for others	£10,000 to commission consultant /agent to test scenarios
Evidence check	Will be necessary if TBC estimate. Unlikely to be required if already commissioned a surveyor	£10,000 to commission consultant /agent

The cost of collecting the evidence could be a minimum of £20,000 if consultants were used. If done by officers this could be a significant time resource and make the program for proceeding to examination longer, reducing the amount that could be collected.

The cost initially estimated by the Government was £25 -70,000. The cost of examination based on the experience of Shropshire, which on a two day examination for a fairly straightforward levy was £25,000.

Therefore the capital cost of establishing CIL is estimated to be a minimum of £45,000. The Council has already budgeted £40,000 for the financial year 2013/14.

There is likely to be a cost of administering the CIL. Regular monitoring will need to be undertaken alongside the cost of producing and sending out the relevant Notices, receiving payment, allocating monies to projects and other organisations and reporting on annual expenditure.

A robust system will need to be in place that brings together existing systems (such as planning registration process and building control processes) and new requirements (annual reporting). This could be developed in-house or a bespoke piece of software could be purchased. The cost of this is unknown but as stated above, it could be recovered from the

CIL receipts.

The Localism Act has brought in a requirement for a 'meaningful proportion' (yet to be determined) of CIL to be passed to parish councils, and where these don't exist charging Authorities will be required to engage with their communities to determine how to spend those receipts. This will add further burden to the Council.

The Section 106 regime is part of the current application process, accounting processes monitoring processes and costs the council in officer time, and on occasion the cost of specialist legal advice if required. Part of these costs could be recovered if locally set planning fees are introduced but this would not recover as much as potentially could be recovered via CIL.

#### **e. Governance**

If CIL is introduced a number of governance issue will be raised;

*Who decides what infrastructure funding is spent on?*

- This will be down to the charging authority, TBC, and there is considerable discretion and flexibility and allows funds to be passed to another body to spend for CIL purposes, such as the County Council, Environment Agency or LEP. A decision making process will need to be in place and will be a good way of demonstrating to the public and developers how the funding is to be spent. The IDP should be the starting point for identifying required infrastructure.

*How are priorities for funding set?*

- This will be the responsibility for the charging authority and again a decision making process will be required. There will be times, particularly in the early years of CIL, where low levels of funding are raised and it will not be possible to pay for all required infrastructure early on, particularly the larger cost items. Therefore decisions will need to be made as to what money gets spent or passed on when.

*Who is responsible for providing the infrastructure?*

- As the charging authority there will be an expectation that the Council also takes responsibility for providing the infrastructure. Expectations will need to be managed about what can be provided and when. Other bodies such as the Highways Authority will be better placed to deliver infrastructure and so some of the CIL monies could be passed to others. This will require decision making process as outlined above but will also require a system to monitor progress made on spending when it has been passed to others.

*Who will take responsibility for CIL at TBC?*

- The Government sees the planning system to have 3 main functions:-
  - to give people the opportunity to shape the look and feel of their communities, including protecting and promoting important environmental and social interests;
  - to provide sufficient housing to meet demand; and
  - to support economic development through the provision of infrastructure and by using land use planning to support economic activity

Change will primarily be delivered by development and the Government has recognised that incentives can encourage communities to recognise the benefits of growth. CIL therefore has an important role. Guiding development of the right quality, in the right place and supported by the right infrastructure will require planners with communities and partners to work with private sector developers to activate their vision. A well considered infrastructure plan which demonstrates what is needed, where, when and how it will be provided is a pre-requisite of the process. Whilst planners are an important profession to input into the process of establishing and maintaining CIL it is not something they can do alone or should do alone. The CIL should be seen and presented as a corporate initiative.

To ensure it meets corporate obligations, corporate buy in is essential, including political leadership buy-in.

It will require the input and ongoing resource commitment of a range of professions and departments across the Council including ICT, Legal and Democratic, Planning, Building Control, Revenues, Finance, Environmental Management, Community Development and Partnerships.

### Options Appraisal

Option	Resource Implications	Legal/Risk Implications
Proceed with establishing and monitoring CIL	<p>Cost to establish and maintain but can be clawed back through levy raised.</p> <p>The levy will allow a wider range of infrastructure to be funded and potentially and overall larger amount to be raised and could stimulate neighbourhood planning – additional resource.</p> <p>There is likely to be competing demands on the limited resource collected and some bodies may be better placed to deliver infrastructure. If other bodies are benefiting from CIL they could be approached to contribute to establishing it.</p>	<p>The legislation has been worded to favour the introduction of CIL, there are legal restrictions on the continued use of s106.</p> <p>There will be governance issues and difficult decisions over passing monies to other bodies and the prioritisation and spending of CIL. Agreed processes and procedures will need to be put in place.</p> <p>If CIL is established, because it is difficult for developers to avoid paying, where there is a viability issue developers will seek to vary s106 agreements which will still be used for affordable housing, therefore affordable housing may suffer.</p>
Continue with current s106 regime	<p>S.106 will be regulated on a case-by-case basis which will place additional burden on officer time.</p> <p>Monitoring of s106 to ensure pooling does not occur will place additional burden on officer time.</p> <p>Will reduce the amount that</p>	<p>Tight restrictions on use on s106, potentially leaving the Council open to legal challenge if not done correctly.</p>

## **Summary**

There still remains a number of questions to be worked through and understood but it would seem that CIL is here to stay and will be the preferred method of raising finance to pay for infrastructure by Government.

The difficulties in continuing to use s106, and the potential flexibility of CIL and the potential money it can raise suggest that the Council should decide to put CIL in place and undertake the necessary evidence collection to enable this to happen as soon as possible to maximise the potential amount collected. If this course of action is approved by Cabinet officers will commission consultants to undertake the relevant studies in order to put in place an evidence base for the examination of CIL. This could be done independently or working with other public sector organisations in Staffordshire.

Officers will also work on draft protocols, processes and procedures to enable the smooth operation of a CIL regime and work with colleagues in other public sector organisations such as the County Council, Environment Agency and the Highways Agency on what infrastructure needs to be provided for by CIL and mechanisms for passing on the collected CIL at the appropriate time. These organisations will also be asked to contribute to putting in place the required evidence base.

## **Draft Timetable**

- Key dates:
  - May 2012 – establish project team
  - May 2012 Cabinet for approval to proceed
  - June – November evidence collection
  - February 2013 Cabinet / Council to publish preliminary draft charging schedule
  - June 2013 Cabinet / Council for approval to Publish draft schedule for formal 4 weeks for representations to be made and if no substantial objections, submit
  - June 2013 Publish
  - August 2013 Submit
  - October 2013 examination
  - December 2013 Inspector Report
  - January 2014 Cabinet / Council to adopt
  - March 2014 Levy takes effect

## **REPORT AUTHOR**

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## **LIST OF BACKGROUND PAPERS**

Report to Cabinet, 31 August 2011, "Infrastructure Delivery Plan"

## **APPENDICES**