

COMMUNITY INFRASTRUCTURE LEVY.

Portfolio Holder Cllr Richard Chesterton
Responsible Officer Head of Planning and Regeneration

Reason for Report:

To decide whether to proceed with the implementation of the approved CIL Charging Schedule due to take effect in Mid Devon as from 1st June 2014.

RECOMMENDATIONS:

1. That the Council sets aside the current CIL Charging Schedule and does not implement CIL from 1st June 2014.
2. That the Head of Planning and Regeneration be authorised to proceed with the preparation of a new CIL Charging Schedule for Mid Devon

Relationship to Corporate Plan: The implementation of CIL has the potential to assist in the delivery of two of the Corporate Plan's objectives: a thriving economy and better homes.

Financial Implications: The implementation of CIL has the potential to raise significant funding to support the provision of essential infrastructure. However the proposed charge of £40 per sq m would only realise an average of £3,520 per house of which at least 15% will be passed to Town and Parish Councils. This is well below the amounts required to provide necessary infrastructure associated with large developments such as the Tiverton Eastern Urban Extension (EUE). In addition, the current structuring of the Regulation 123 list does not allow for such sites to be brought under the previous S106 contribution approach after CIL has started to be charged.

Legal Implications: The adoption of a CIL Charging Schedule is not mandatory. The Council can choose not to proceed with CIL and rely instead on Section 106 agreements. The pooling restriction will however mean that more than five non-specific contributions into a general fund such as are made for public open space and air quality will no longer be legal after April 2015.

Risk Assessment: The introduction of CIL would reduce the need for negotiation and would mean payments are made for most new dwellings. This would counteract the provisions making pooling of s106 for more than five sites being made illegal after April 2015. However, where there are significant infrastructure costs, such as on strategic sites, the risk is that the amount raised through CIL would not fund the significant infrastructure costs of such sites.

1.0 Introduction

- 1.1 CIL is a new system of requiring payments by developers towards the cost of infrastructure based on the viability of development. It was intended to largely

replace the system of Section 106 (s106) payments which are individually negotiated for larger sites or based on a payment schedule for particular types of infrastructure. CIL can be levied on all forms of development and is based on a fixed charging schedule so negotiation is not required. Unlike s106 payments the money raised can be pooled and spent on any infrastructure from the regulation 123 list in any area of Mid Devon.

- 1.2 Mid Devon has pursued the implementation of CIL since the inception of the new system and was awarded 'Frontrunner' status by the Government. An Infrastructure Plan was developed alongside the Allocations and infrastructure DPD in October 2009 and a draft preliminary CIL Charging Schedule was produced in October 2011 with a charge of £113 per sq m for dwellings. Following consultation this was revised to £90 per sq m for dwellings in the draft charging schedule. This was then made available for public representations and an Examination was held in November 2012 to determine whether the Council's proposed charge was sound.
- 1.3 The Examiner did not find the Council's proposed charge to be sound and reduced the level of the charge to £40 per sq m. The Examiner considered that viability information indicated that CIL would generally only be viable across Mid Devon at £40 per sq m with a 35% affordable housing provision the Examiner fixed the CIL charge at that level.
- 1.4 The significant reduction in the CIL charge severely reduced the expected contribution towards infrastructure from CIL. Based on the average size of a new house in Mid Devon of 88 sq m this would mean an average payment of £3,520 per house. This reduction meant that the Council would struggle to gather funding to support the provision of much needed infrastructure in Mid Devon. However research on the income derived from s106 Agreements for large sites over recent years indicated that an average of £3,605 or £41 per sq m (£33 s106 plus £8 Air Quality/POS) has been generated. In comparison the predicted level of income from CIL this meant that the implementation of CIL would generate similar levels of income to what was being raised through the existing system
- 1.5 Based on the comparison of CIL with the current system as set out above it was concluded that there was little financial benefit in retaining the current system of s106 contributions. This decision also took into account that the s106 system was originally to be legally reined back when the 'pooling' of contributions ceased in 2014 (this date has now been pushed back to April 2015). Also, current levels of affordable housing could increase with the introduction of CIL, the reduced charge could make Mid Devon more competitive and overall levels of funding from development for communities in Mid Devon will not reduce. The adoption of the CIL charge of £40 per sq m for dwellings was therefore recommended by Cabinet to Council. The implementation date for CIL is currently set as 1st June 2014.

2.0 Recent developments

- 2.1 Since the original consideration of a CIL Charging Schedule by Cabinet there have been a number of significant developments. Firstly the date for the limitation on the pooling of s106 contributions has been rolled back to April

2015. This means that current air quality and public open space contributions can continue until 1st April 2015. The same applies to other site specific contributions which do not relate to specific projects such as contributions towards improved education provision. This reduces the financial imperative to implement CIL based on a £40 per sq metre residential charge

- 2.2 The Local Plan review process has now commenced and the production of a new Draft CIL Charging Schedule will take place prior to the publication of the submission Local Plan later this year. A viability study and a new infrastructure plan are currently under preparation to support the introduction of a new CIL Charging Schedule. Government guidance recommends that a CIL Charging Schedule is prepared alongside new Local Plans. This means that if the Local Plan is produced to timetable a new CIL Charging Schedule will be in place by May 2015. Given that this new charge could be higher than that currently proposed and the current system can continue until April 2015 the justification for introducing CIL in June 2014 has now reduced.
- 2.3 Most recently Government guidance produced in February this year about how CIL should be operated has removed the ability of the Council to revise its Regulation 123 list. The Regulation 123 List is the list of infrastructure which CIL will be spent on. It was expected that the items of large infrastructure associated with very large sites such as Tiverton EUE could be deleted from this list so that Section 106 Agreements could still be entered into to secure these outside CIL. However the guidance now states that revisions to do this are not appropriate and the only deletions permitted are those excluded in an infrastructure plan.
- 2.4 In relation to Tiverton EUE the only item of infrastructure which could be excluded from the CIL charge under our existing Regulation 123 list was the road improvements required for the development. All other items such as the school provision and sports/community provision would therefore need to be paid from CIL. With the level of CIL at £40 per square metre the potential income from CIL was vastly outweighed by the cost of the infrastructure required. The income from CIL for example for the 330 houses proposed in the north east corner of the Tiverton EUE site would have totalled £900,240 (330 x £3520, less 22.5% as affordable housing is excluded from CIL payments) whereas the actual amounts agreed with the developer through s106 negotiations amount to a total of £5,530,470 (330 x £16,759). If CIL charging starts on 1st June 2014 and this current planning application is determined after that date, the council will therefore lose £4,630,230 on the first part of Tiverton EUE. If the same levels of contribution are agreed across the rest of EUE phase 1 then a figure of £10,708,998 could be realised through s106 compared to £1,743,192 from CIL, a disparity of £8,965,806. The total disparity for the whole of the EUE therefore could be £13,596,039. The same situation could also arise on other major development sites such as NW Cullompton if planning applications come forward and determined in the current financial year meaning that the amount of funding lost through the implementation of CIL at this time could run into many more millions of pounds.
- 2.5 The Council has invested in computer software and a member of staff to implement CIL as well as using consultants to prepare evidence for the

previous CIL Examination. The expectation was that these expenditures would be recovered from CIL Incomes. However the council could not predict that the implementation of CIL, which was originally expected to net £10,000 per house, would have such significant financial implications for the delivery of large sites and work on the revision of the CIL charging schedule has already commenced. The software which has been purchased also contains packages that will allow for much better administration of Section 106 agreements within the Council and the management of projects in receipt of s106/CIL funding. This CIL/S106/project management software suite requires configuration and implementation before the individual modules go live. It was always intended to go live with all three modules. The proposed rescheduling of the introduction of the CIL charge will mean a temporary re-prioritisation of the work of the CIL Monitoring Officer in order to concentrate on the administration of s106 contributions and preparation for the introduction of the contribution of the pooling limit in April 2015

3.0 Proposed course of action

- 3.1 Implementing the proposed CIL charge of £40 per square metre in Mid Devon will significantly damage the delivery of very large sites by reducing infrastructure funding by some 80%. It is therefore proposed the Council set aside the currently proposed CIL charge in favour of preparing a new CIL Charging Schedule alongside the new Local Plan. The implementation date for CIL of the 1st of June 2014 should therefore be cancelled and staff and resources should be devoted to preparing the new CIL Charging Schedule. This will allow the continuation in a Section 106 agreement approach for the first phases of Tiverton EUE and the infrastructure associated with the development to be funded appropriately.

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List of Background Papers:

The Community Infrastructure Levy Regulations 2010
<http://www.legislation.gov.uk/ukxi/2010/948/contents/made>

Community Infrastructure Levy Guidance
http://www.planningportal.gov.uk/uploads/cil/cil_guidance_main.pdf

Planning Committee 21st May 2015: Officer report application 13/01616/MOUT