

## **Report to Cabinet**

**Subject: Community Infrastructure Levy Preliminary Draft Charging Schedule – Proposed Consultation**

**Date: 12<sup>th</sup> July 2012**

**Author: Planning Policy Manager**

### **1. Purpose of the Report**

- 1.1 This report seeks authorisation for the Preliminary Draft Charging Schedule to be issued for a period of consultation during the summer of 2012.

### **2. Background**

- 2.1 The Community Infrastructure Levy is a charge levied on new buildings and extensions to buildings according to their floor area. In this way money is raised from development to help the Borough Council pay for infrastructure to ensure the Borough grows sustainably. Community Infrastructure Levy provides a much more consistent and transparent mechanism to raise financial contributions currently sought under section 106 of the Town and Country Planning Act 1990. Although the Community Infrastructure Levy process should result in a scaling back in the use of section 106 agreements it will not replace them altogether. Under Community Infrastructure Levy, developers are still required to provide “on-site” infrastructure through Section 106 contributions to mitigate the direct impact of the development proposed. Section 106 will continue to be used for affordable housing and anything required just for the specific development site to make it acceptable in planning terms.
- 2.2 The Borough Council were successful with their application to join Phase 2 of the Community Infrastructure Levy Front Runner project in June 2011. The Borough Council appointed NRL in early 2012 to provide support and assistance in the process of setting a Community Infrastructure Levy charge.

- 2.3 Local Authorities do not have to use Community Infrastructure Levy but from 6<sup>th</sup> April 2014 they will be prevented by Community Infrastructure Levy Regulation 123 from using planning obligations to leverage general contributions from new development for community infrastructure.

### **3. Proposal**

#### **3.1 The Charging Schedule**

The levy takes effect through a Charging Schedule which sets out the rate or rates of the charge. It must pass through two formal rounds of consultation before being subjected to independent examination.

- The Preliminary Draft Charging Schedule as shown in Appendix 1 is the proposed document for the first round of consultation which, if authorised, will go out for consultation during August and September 2012. The schedule indicates the likely level of charging the Borough Council are proposing for inclusion in the Preliminary Draft Charging Schedule. Comments will be invited from specified consultation bodies, including parish councils, and also from those living and working in the area.
- Following this stage, a further round of formal consultation will be undertaken on the Draft Charging Schedule, which will again be consulted on widely.

- 3.2 In advance of the first round of consultation it is proposed to undertake some informal market testing of the development industry and landowners in order to gauge an early view as to whether they consider that the proposed rates are appropriate. This informal consultation may result in some minor changes to the schedule in advance of the formal round of consultation in September.

- 3.3 The Preliminary Draft Charging Schedule relies on two important pieces of evidence – infrastructure planning and a viability assessment of the impact of the proposed rate of Community Infrastructure Levy on development in the Borough Council's area.

- 3.4 The Infrastructure Development Plan sets out the range of infrastructure required to support the Aligned Core Strategies and wider Local Development Framework. The detailed schedule of infrastructure is contained within section 10 of the Infrastructure Development Plan which is available at Appendix 2. The infrastructure projects set out are critical to the successful delivery of the Core Strategies including when they are needed and how they will be funded and delivered. It is important to note that the Infrastructure Delivery Plan is viewed as a living document which will require ongoing review as development proposals and infrastructure requirements are confirmed in more detail. In particular the document will

- be reviewed and updated to reflect the results of ongoing transport modelling work.
- 3.5 The viability assessment, which is the second area of evidence, must show that the proposed rate of Community Infrastructure Levy can be borne by most development without making the project commercially unviable and undermining the growth Community Infrastructure Levy is meant to support.
- 3.6 **What is the Right Level of Charge**  
The Regulations allow Community Infrastructure Levy to be set at different rates for different types of land use and/or to be applied at different rates in different parts of the Borough Council area. Differential charges must be justified by demonstrating different viability impacts on different types of land use or in different charging zones. Having examined the findings of the evidence base, it is considered that the most appropriate approach is to have variable rates of Community Infrastructure Levy by area and use. The proposed areas and charges per square metre are outlined in part 4 of the Preliminary Draft Charging Schedule.
- 3.7 Unlike section 106, Community Infrastructure Levy is non-negotiable, so applying and collecting it is purely an administrative process. Community Infrastructure revenue from a particular scheme can be spent by the Borough on any community infrastructure required to support growth and is not tied to a particular project.
- 3.8 **The Regulation 123 Statement**  
Under Regulation 123 of the Community Infrastructure Levy Regulations, local authorities are required to prepare and publish a statement on those items or types of infrastructure that it intends to fund through Community Infrastructure Levy. There is no prescribed process for compiling or amending the Regulation 123 statement. The statement must be published on the authority's website but otherwise the format, amendment process and consultation are a matter for the Local Planning Authority. The statement does not need to be in place prior to adopting the charging schedule.
- 3.9 It is recognised that there is flexibility of over what items of infrastructure may be provided through Community Infrastructure Levy. The Infrastructure Delivery Plan provides the strategic level of detail but there is also the potential to include objectively assessed local areas for funding. One such area may include open space and the draft Parks and Open Space Strategy will help provide guidance on local requirements.

### **3.9 Enforcement and Payment Recovery**

The Regulations provide a wide range of options for enforcing and recovering Community Infrastructure Levy which is not paid by the due date. These include the ability to stop development until Community Infrastructure Levy is paid, to seize and sell the debtor's assets, to sell the development itself and also the possibility of a prison sentence.

- 3.10 A Stop Notice literally stops the construction work and is likely to be highly effective in forcing payment because of the cost to the developer of having the project brought to a halt. A Liability Order would allow the Council to use a bailiff to recover and sell the debtor's goods and if the amount realised did not cover the full Community Infrastructure Levy liability the Council may then apply to the Court to have the debtor sent to prison.

### **3.11 Buildings Exempt from Paying Community Infrastructure Levy**

Community Infrastructure Levy will not be charged on developments that do not involve a net increase in floor space and therefore sub-divisions of existing dwellings to form other dwellings will not be charged. Structures which are not buildings, or which people do not regularly go into to use are also not liable. This would include buildings such as water pump stations or electrical substations. Affordable housing development and development for charitable purposes will also be exempt in accordance with the Regulations.

### **3.12 Next Steps**

The proposed consultation is the first stage in preparing the Community Infrastructure Levy Charging Schedule. All responses will be fully considered before a Draft Charging Schedule is prepared for independent examination. Once the Borough Council considers the Draft Charging Schedule is ready for independent examination, it will be published together with the available evidence on infrastructure, economic viability and the responses received during this consultation. The Borough will then have a further period of representations which is anticipated to take place during December 2012 and January 2013, prior to independent examination in May 2013.

## **4. Resource Implications**

- 4.1 In virtually all cases Community Infrastructure liability will be calculated when planning permission is issued. The trigger for payment is the commencement of development, with some payments being made through instalments.
- 4.2 Implementing Community Infrastructure Levy requires an up-front injection of time and money but it is anticipated that the Borough Council should

see an increase in revenue after Community Infrastructure Levy partially replaces section 106. In addition, the reduction in the number and complexity of section 106 agreements will improve development management performance.

- 4.3 It is considered that the implementation and future project management of Community Infrastructure Levy will require the appointment of a senior member of staff who would ideally be located within the Planning Policy section of Planning and Economic Development. Community Infrastructure Levy will require careful co-ordination of a range of activities across a number of service areas, including development management, planning enforcement, finance, land charges and the legal section. A Community Infrastructure Levy officer will need to manage and record complex activity on all Community Infrastructure liable applications as well as providing guidance to agents, developers and members of the public.
- 4.4 The Regulations allows a charging authority to set Community Infrastructure Levy rates slightly higher than the levels required to meet infrastructure funding needs in order to cover administration costs. The Regulations advise that charging authorities should strike an appropriate balance between securing additional investment for infrastructure, including administrative expenses, and the potential effect of imposing Community Infrastructure Levy upon development across their area.

## **5. Recommendation**

That Cabinet support a recommendation which:

- 1) Approves the Preliminary Draft Charging Schedule to allow a period of public representations; and
- 2) Authorises the Corporate Director in consultation with the Chairman of Planning Committee to approve any drafting or other minor editing changes to the Preliminary Draft Charging Schedule to take account of the informal market testing, in advance of the period of public representations.