

## Report to Cabinet

**Subject:** Community Infrastructure Levy Revised Draft Charging Schedule – consultation and submission for examination

**Date:** 13<sup>th</sup> November 2014

**Author:** Planning Policy Manager

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### Wards Affected

Borough-wide.

### Purpose

To seek approval from Cabinet for:

(a) the proposed responses to the main issues raised in the comments received on the Revised Draft Charging Schedule (June 2014) and associated documentation; and

(b) the submission documents for examination which comprise the Revised Draft Charging Schedule (June 2014), the Proposed Statement of Modifications (dated for submission January 2015), and supporting documents.

### Key Decision

This is a Key Decision.

### Background

1. The Community Infrastructure Levy is a charge levied on new buildings and extensions to buildings according to their floor area and the money raised from the development helps to pay for the infrastructure to ensure the Borough grows sustainably.
  2. The intention is for Community Infrastructure Levy and planning obligations to play complementary roles. Community Infrastructure Levy will provide infrastructure to support the development of an area. The levy cannot be expected to pay for all of the infrastructure required but it is expected to make a significant contribution. S.106 obligations will provide site specific impact mitigation to make individual developments acceptable in planning terms and to provide affordable housing.
  3. **Appendix A** “Community Infrastructure Levy and Section 106 Statement” provides a
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more detailed explanation of how the two systems will operate.

4. The Borough Council has adopted a protocol for addressing cross boundary impacts of new development. This document sets out the principles guiding how Gedling Borough will work with its neighbouring authorities and the County Council when dealing with section 106 planning obligations relating to development which would have an impact on the services and facilities in a neighbouring authority.
5. The Levy takes effect through a Charging Schedule which sets out the rate or rates of charge. The first public stage in preparing this document was the Preliminary Draft Charging Schedule and consultation took place in the autumn of 2012.
6. The 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. The Infrastructure Development Plan sets out the range of infrastructure required to support the Aligned Core Strategies. The viability assessment must show that the proposed rate of Community Infrastructure Levy can be borne by most development without making the project commercially unviable.

#### **Consultation Responses to the Draft Charging Schedule and Revised Draft Charging Schedule**

7. The Draft Charging Schedule was originally issued for consultation in October 2013 and the key issues raised were reported to Cabinet. However, following the conclusion of this consultation there were significant changes in circumstances with further amendments to the Community Infrastructure Levy Regulations 2010 which came in force in February 2014. In combination with the review of the distribution of housing supply in the Aligned Core Strategy it was concluded that it would be appropriate to review the Draft Charging Schedule and a Revised Draft Charging Schedule was issued for a further round of consultation. The comments received on the original Draft Charging Schedule were therefore superseded by the review. The six week consultation on the Revised Draft Charging Schedule concluded in September 2014, with 22 respondents making over 120 comments.
8. Comments received on the Revised Draft Charging Schedule included disappointment that the document was being consulted upon at a time when the Inspector's Report on the ACS was not available and before the decision on the strategic sites and infrastructure needs were finalised. Concerns that the levy was based on a partial understanding of the infrastructure costs was also raised. Respondents also raised concerns over the marginal viability of two strategic sites – Top Wighay Farm and Gedling Colliery/ Chase Farm
9. A summary of the main issues raised from the Revised Draft Charging Schedule consultations with officer comments is attached at **Appendix B**.

#### **Proposed Statement of Modifications to the Revised Draft Charging Schedule**

10. Following the conclusion of the Revised Draft Charging Schedule consultation, it became apparent that an incorrect earlier version of the Residential Charging Map

was included with the consultation documents for the Revised Draft Charging Schedule. This incorrect version of the plan highlighted the removal of a small triangle of land to the south of Lambley ward which was shown to be in Residential Zone 2. The correct version of the plan as shown in the Statement of Modifications at **Appendix C** confirms that Lambley ward is wholly within Residential Zone 3 which accords with the sales evidence collated in the Land and Value Appraisal Study which was updated in April 2014. The area in question is substantially built up and, as such, not considered to be a substantive change or impact unduly on the Revised Draft Charging Schedule. The inclusion of the whole ward within Zone 3 will also greatly assist future monitoring requirements.

11. No changes are proposed to the charging rates and, it is proposed to continue with the residential CIL levels of £45 per square metre for Zone 2 and £70 per square metre for Zone 3. It has been decided to continue with a single commercial Community Infrastructure Levy level across the Borough of £60 per square metre for retail development only.
12. Changes are proposed to the Regulation 123 list in response to comments received on the Revised Draft Charging Schedule. Concern was expressed that the strategic sites in the adopted Aligned Core Strategy of Gedling Colliery/Chase Farm and Top Wighay Farm were both exhibiting marginal viability. As discussed at the Aligned Core Strategy hearing sessions, there is a degree of flexibility which can be applied to the Affordable Housing proportions adopted for each site, if delivery appears to be compromised. In order to help reduce the burden of s106 payments the Borough Council is responding to concerns raised at consultation by placing the secondary schools for Top Wighay Farm and Gedling Colliery/Chase Farm on the Regulation 123 list.
13. In view of the addition of the two secondary schools it is considered essential to ensure that the projects listed on the Regulation 123 list have a realistic prospect of delivery. Further changes to the Regulation 123 list are therefore proposed and include the removal of Arnold Town Centre – Leisure Centre Improvements and the prospective Special Protection Area (pSPA) mitigation measures again, in part, in response to the comments received. Funding sources and expenditure for both projects are yet to be determined and for the pSPA it is viewed that it is more local in nature than strategic infrastructure and will therefore be suitable for s106 contributions.

#### **Further Issues Raised through Consultation which fall outside the remit of the Draft Charging Schedule**

14. A number of respondents have requested the Borough Council consider the use of an **instalment model** for payments of CIL. It is agreed that an instalment policy will be of particular importance for larger developments and will give developers the flexibility to pay contributions in line with development phasing schemes and will facilitate cash flow and therefore development viability. However, an instalment policy is not a matter required to be dealt with by a CIL Charging Schedule and it is viewed that there is a need to build in flexibility into the process. The Borough Council therefore propose to use a separate document which will form part of the submission to the Inspectorate, as shown in **Appendix D**. This approach was previously proposed in the Preliminary

Draft Charging Schedule.

15. Gedling Borough Council may make relief available for **exceptional circumstances** in its area (**Appendix E**). The power to do this will be activated following the adoption of the Charging Schedule. The Regulations on this matter make clear that relief should only be granted in truly “exceptional circumstances”. The fact that a development might be unviable at the time a planning application is considered is unlikely to constitute an “exceptional circumstance” in relation to CIL Regulations.
16. There may also be circumstances where it will be more desirable for a charging authority to receive land instead of monies. The Regulations provide for the charging authorities to accept transfers of land as **payment in kind** for the whole or part of the levy, subject to the Borough Council’s agreement.

### **Equalities Impact Needs Assessment**

17. To comply with the public sector equality duty an Equality Impact Assessment (Section 1(1) of the Equality Act 2010) has been carried out on the Revised Draft Charging Schedule. The Assessment shows that the Community Infrastructure Levy will have a positive impact on the protected characteristics as it will increase the funds available for infrastructure in the Borough. No amendments are needed to the Revised Draft Charging Schedule.

### **Next Steps**

18. Subject to Cabinet approval it is proposed to submit the Revised Draft Charging Schedule and Statement of Modifications along with the documents as listed below and attached as appendices to this report to the Planning Inspectorate for examination.

The Submission Documents include:-

- Revised Draft Charging Schedule (**Appendix F**);
  - Statement of Modifications (**Appendix C**);
  - Viability Assessment (**Appendix G**);
  - The Infrastructure Delivery Plan and the Existence of a Funding Gap (**Appendix H**); and
  - Exceptional Circumstances Relief (**Appendix E**).
19. Under section 212 (1) of the Planning Act 2009, before approving a charging schedule the Council must appoint a person (“the examiner”) to examine a draft. The examiner must be someone who, in the opinion of the Council —
    - (a) is independent of the council, and
    - (b) has appropriate qualifications and experience.

The council may, with the agreement of the examiner, also appoint persons to assist the examiner. It is anticipated that the examination will take place in the summer 2015. Following receipt of the examiner's report the Borough Council would need to approve the final version of the Charging Schedule.

20. It is also the intention to draft a Supplementary Planning Document on CIL which will address the complex management and implementation issues of CIL.

### **Alternative Options**

21. One option is not to submit the Revised Draft Charging Schedule with the Statement of Modifications to the Planning Inspectorate for examination but this would result in the inability to collect revenue from CIL and fund projects on Regulation 123 list. The production of a Community Infrastructure Levy has been previously recommended by Cabinet in accordance with the Community Infrastructure Levy Regulations 2010.

### **Financial Implications**

22. The new Community Infrastructure Levy guidance is more specific about what needs to be presented at examination and that more pre examination input will be required. Currently the Borough has allowed for a two day examination but the new guidance has confirmed that any person must be heard before the examiner at the Community Infrastructure Levy examination if they have requested to be heard. Attendance at the examination was previously by the invitation of the Inspector.
23. The cost of the examination and associated tasks is likely to be in the region of £10,000 although in view of the review of the guidance it would not be unreasonable to anticipate an increase on that amount. However, the implementation of the Community Infrastructure Levy will allow the Borough Council the opportunity to start collecting revenue towards the necessary infrastructure. The cost of the examination will be met from the Efficiency and Innovation Reserve and the likely costs can be contained in this budget.
24. The 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. This instalments model is now proposed for inclusion as supporting documentation alongside the Revised Draft Charging Schedule.
25. 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. Members have previously agreed that the implementation and future project management of Community Infrastructure Levy will require the appointment of a senior member of staff.
26. As noted in the Cabinet report in September 2013 communities that draw up neighbourhood plans will receive 25 percent of the planning levy charged on new developments in their area. Neighbourhoods without a neighbourhood plan but where Community Infrastructure Levy is still charged will receive a 15 percent share of the

revenue from development in their area but this will be capped at £100 per council tax dwelling.

## **Appendices**

- **Appendix A** – Community Infrastructure Levy and Section 106 Statement
- **Appendix B** – Revised Draft Charging Schedule Responses and Officer Comments
- **Appendix C** - Statement of Modifications to the Revised Draft Charging Schedule
- **Appendix D** - Proposed Instalment Model
- **Appendix E** – Exceptional Circumstances Relief
- **Appendix F** – Revised Draft Charging Schedule
- **Appendix G** – Viability Assessment
- **Appendix H** – The Infrastructure Delivery Plan and the Existence of a Funding Gap
- **Appendix I** – Equality Impact Assessment

## **Background Documents**

- Protocol for Addressing Cross Boundary Impacts of New Development

## **Recommendations**

THAT:

- (i) Under the provisions of Regulation 19 of the Community Infrastructure Levy Regulations 2010 the Statement of Modifications be published for a period of four weeks to allow for public representations.
- ii) In accordance with Regulations the Revised Draft Charging Schedule, Regulation 123 List, supporting documentation and representations received together with the changes the Council would propose to make in light of those representations be submitted for examination.
- iii) The Corporate Director be authorised to appoint the examiner and if necessary, appoint other persons to assist the examiner.

- iv) The Corporate Director in consultation with the Portfolio Holder for Leisure and Development be authorised to agree minor amendments to the revised draft documents in response to the consultation process.

### **Reasons for Recommendations**

1. In order to progress the introduction of a Community Infrastructure Levy in accordance with the statutory procedure.