

Report to Cabinet

Subject: Community Infrastructure Levy Draft Charging Schedule

Date: 12 September 2013

Author: Planning Policy Manager

Wards Affected

Borough-wide.

Purpose

To seek comments and endorsement from Cabinet for:

- (a) the proposed responses to the main issues raised in the comments received on the Preliminary Draft Charging Schedule (October 2012) and associated documentation; and
- (b) approval to go out for consultation with the Draft Charging Schedule

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. **Appendix A** "Operation of Community Infrastructure and section 106" provides a more detailed explanation of how the two systems will operate.
 3. 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.

4. 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 Preliminary Draft Charging Schedule

5. The six week consultation on the Preliminary Draft Charging Schedule concluded in October 2012, with 30 respondents making over 150 comments. The following key issues were raised:
 - Community Infrastructure Levy was welcomed as a means of securing delivery of necessary infrastructure required to support growth;
 - It was questioned how the charges compared to other districts;
 - It was suggested that a Supplementary Planning Document would be helpful;
 - Strategic Housing Land Availability Assessment should be used to establish an accurate estimate of potential Community Infrastructure Levy revenue from residential sites;
 - Importance of publishing a draft regulation 123 list alongside the next Draft Charging Schedule to identify what infrastructure is included to be funded by Community Infrastructure Levy was stressed;
 - Planning Obligations should remain the primary mechanism for delivering affordable housing;
 - The importance of including a review mechanism for Community Infrastructure Levy as part of annual monitoring was stressed;
 - It was considered that the Community Infrastructure Levy viability assessment for employment uses should be reworked;
 - There were concerns that appropriate sports infrastructure needs will not be identified and included as part of the investment schedule as assessments are out of date;
 - The importance of including a breakdown of what developer assumptions have been taken into account was stressed; and
 - No certainty has been given that Community Infrastructure Levy payments will be spent and what the priorities are.
6. A summary of the main issues raised by the consultation and the officer response is outlined in the Report of Responses attached in **Appendix B**.

Proposal – Changes to the Preliminary Draft Charging Schedule

7. One main area of change is the proposed change to the Community Infrastructure Levy Charging Zones which comprise:

- the inclusion of the whole of Bestwood Village within zone 1, previously the northern section was included within zone 2;
- Inclusion of Mapperley Plains ward within zone 2, previously it was within zone 3;
- Inclusion of Gedling ward within zone 2, previously within zone 3; and
- The inclusion of Teal Close wholly within zone 1, previously it was split between zones 1 and 3.

One further amendment to the schedule is the charging rate. The ability of residential schemes to provide CIL contributions varies markedly depending on the type of development, the geographical location and the existing use of the site. Following consultation and site specific testing it is considered that a reduction in the proposed rates in the Preliminary Draft Charging Schedule to provide a greater viability buffer would help to safeguard the economic position of the Borough and encourage identified strategic sites to come forward. It is clear infrastructure will need to be delivered through a combination of Section 106 and CIL. If too much burden is placed on delivery via CIL in the early years there is a danger sites will not come forward. Therefore, it is proposed to reduce the residential CIL levels to £45 per square metre for Zone 2 and £70 per square metre for Zone 3. This, alongside realistic drafting of the Regulation 123 list, will provide a clear strategic infrastructure delivery strategy which does not threaten new development in the Borough. This issue is explained further in **Appendix C Viability Assessment**.

8. The **Draft Charging Schedule** is attached at **Appendix D** which includes the revised plan of the residential charging zones.
9. These changes have been made in response to a review of the viability evidence and the land registry figures. It is considered that the levy schedules have been set at a realistic level and will not threaten the viability of future development.
10. One further change is the inclusion of the **Regulations 123 Statement**. The Community Infrastructure Levy delivers additional funding for charging authorities to carry out a wide range of infrastructure projects that support growth and benefit the local community. The Levy cannot be expected to pay for all of the infrastructure required, but is expected to make significant contribution. Regulation 123 of the Community Infrastructure Regulations provides for the Borough Council to set out a list of those projects or types of infrastructure that it intends to fund through the levy. When the Community Infrastructure Levy is introduced, section 106 requirements should be scaled back to those matters that are directly related to a specific site and are not set out in the Regulation 123 list.
11. The proposed Regulation 123 list is attached as **Appendix E**. The recommendation is to prioritise the Gedling Access Road in order to provide a new access road and bypass to the east of Gedling village which would enable the Gedling Colliery site to be developed. However, in order to comply with the new guidance and in response to comments raised at consultation, a viability modelling exercise has been undertaken on two of the Borough's key residential development sites. The results demonstrate that North of Papplewick Lane can support a reasonable level of viability. Top Wighay Farm, however, is unviable if a full s106 education contribution is required. However, if

secondary education is financed through CIL and s106 is used for site specific primary education then a margin of viability would be maintained for Top Wighay Farm. The inclusion of strategic education is considered appropriate for CIL and with confirmation that Top Wighay Farm is marginally viable the contribution to secondary school places should also be included on the Regulation 123 list. The deliverability of the Top Wighay Farm site is a matter that is likely to be debated at the forthcoming hearings on the Aligned Core Strategy and it is therefore important that the contribution to secondary school provision is included on the Regulation 123 list to ensure that the site is deliverable.

12. One further supporting document to accompany the Draft Charging Schedule is **The Infrastructure Delivery Plan and the Existence of a Funding Gap**, available at **Appendix F**. CIL is intended to assist in filling the funding gap that remains once existing funding sources (to the extent they are known) have been taken into account. If no gap exists then the requirement for introducing the levy would come under serious scrutiny. This document confirms the existence of a funding gap. The document sets out the CIL contributions that the Council could expect to receive over the life of the Aligned Core Strategy based on a number of assumptions about the location and size of future dwellings.

Exceptional Circumstances Relief

13. The Borough Council has also considered whether it would be appropriate to include **Exceptional Circumstances Relief** within the Draft Charging Schedule. The Borough Council may grant relief for exceptional circumstances from liability to pay the Community Infrastructure Levy if it appears that there are exceptional circumstances to justify doing so and that it considers it expedient to do. Before granting relief, the Borough Council needs to be satisfied that the costs relating to the section 106 agreement are greater than those related to the Community Infrastructure Levy and that the relief would not constitute notifiable State aid.
14. The use of Exceptional Circumstances relief has been considered and in particular the potential that it may be viewed as State aid. There are a number of factors that need to be assessed to ensure that the offering relief from the liability to pay the Community Infrastructure Levy does not constitute State aid. One concern is whether it distorts or threatens to distort competition and it is viewed that almost all selective aid will have the potential to distort competition. It is viewed that the use of section 106 agreements would be a better mechanism to review individual development sites and the associated contributions. Further information on Exceptional Circumstances Relief is attached at **Appendix G**.

Equalities Impact Needs Assessment

15. 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 Draft Charging Schedule (Sept 2013). The Assessments 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 Draft Charging Schedule.

Next Steps

16. Subject to Cabinet approval it is proposed to issue the Draft Charging Schedule for a six week period of consultation during October and November 2013. It will be published together with the Statement of Representations Procedure (**attached as appendix H**) and also with the available evidence on infrastructure, economic viability and the representations received and officer responses to the Preliminary Draft Charging Schedule consultation. The consultation period and availability of documents will be advertised locally and consultees can make representations within this period and may also request to be heard by the examiner.
17. The Draft Charging Schedule along with the documents attached as appendices to this report (with the exception of appendices a and g which are for information only) would then need to be formally submitted to the Planning Inspectorate in the spring of 2014 and the examination would then take place in the summer of 2014. Following receipt of the examiner's report the Borough Council will need to approve the final version of the Charging Schedule.
18. The issuing of further guidance notes on Community Infrastructure Levy by the Department for Communities and Local Government in 2012 and early 2013 has also had implications in terms of the level of evidence that is required to accompany the Draft Charging Schedule.
19. This guidance has confirmed that the Borough Council should set out at examination a draft list of infrastructure that is to be funded by the Levy and where the infrastructure has not been tested as part of another examination the Community Infrastructure Levy examiner will need to test that the evidence is sufficient in order to confirm the aggregated funding gap.
20. The guidance has also advised that the Borough Council are required to use appropriate available evidence and should sample directly an appropriate range of types of sites across the Borough in order to supplement existing data. The focus should be in particular on strategic sites which the Borough Council has duly addressed but a more fine grained approach is also advocated. This level of detail was previously expected to form part of the preparation for the examination but it is now suggested that it should be available to inform the Draft Charging Schedule.
21. It is viewed that the Borough Council has sufficient evidence to proceed but should be made aware that there may be greater examination costs as a consequence of requiring additional scrutiny of the infrastructure at the examination.

Alternative Options

22. Local Authorities do not have to use Community Infrastructure Levy but from 6th April 2014 they will be limited by the Community Infrastructure Levy Regulations from leveraging general contributions from new development for community infrastructure.
23. One option is not to progress CIL. However, if CIL is not progressed then there is less opportunity to fund strategic infrastructure (which is more difficult to fund through traditional s106 agreements). The other impacts would be that funding of

infrastructure would be:-

- less fair, because CIL widens the contribution base, catches the 'free riders' and requires almost all to contribute.
- less fair on larger developments which, where they are first in or last out of an area, tend to over-pay.
- less certain, because the charging schedule combined with the planning permission will determine the amount payable reasonably precisely.
- slower, because it removes the element of individual negotiation around the quantum of the payment.

24. Other options would be to introduce different levels of CIL, either higher or lower than the rates proposed. However, CIL has to be justified by appropriate evidence to demonstrate that the rates proposed are viable. As such, if rates were higher then this would prevent sites from coming forward for development. If rates were lower then this would not generate sufficient funding to bring forward the required infrastructure.

Financial Implications

25. The new Community Infrastructure Levy guidance issued in December 2012 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 may make representations about a Draft Charging Schedule and the current guidance confirms that a 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.
26. 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.
27. 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.
28. 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.
29. Members have previously agreed that the implementation and future project management of Community Infrastructure Levy may require the appointment of a senior member of staff who could coordinate a range of activities across a number of service areas including:- development management; planning enforcement; finance; land charges and legal.
30. The Regulations allow the Borough Council to set Community Infrastructure Levy

rates slightly higher than the levels required to meet infrastructure funding needs to cover administration costs but that needs to be balanced against the potential effect of imposing Community Infrastructure Levy upon development across the Borough. The Council will be undertaking this approach to fund its administration costs of implementing the CIL.

31. An announcement by the Department of Communities and Local Government in January 2013 confirmed that 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. The Planning Minister Nick Boles has confirmed that some guidelines on the neighbourhoods spending will apply and that they will be expected to work with the local planning authority. Examples of projects could include the reroofing of village halls, refurbishment of swimming pools, landscape parks or saving a local public house.

Appendices

- Appendix A Operation of CIL and Section 106
- Appendix B Report of Responses
- Appendix C Viability Assessment
- Appendix D Draft Charging Schedule
- Appendix E Regulations 123 Statement
- Appendix F Gedling CIL. The Infrastructure Delivery Plan the Existence of a Funding Gap.
- Appendix G Exceptional Circumstances Relief
- Appendix H Statement of Representation Procedure

Background Papers

- Equalities Impact Assessment

Recommendations

THAT:

- (i) The Draft Charging Schedule and Regulation 123 List together with the supporting documentation attached to the report be published for a period of six weeks to allow for

public representations and sent to each of the consultation bodies.

(ii) The Statement of the Representations Procedure be approved.

(iii) The Portfolio Holder for Leisure and Development to consider the representations received and be authorised to approve any changes the Council would propose to make in light of those representations.

iv) The 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 will be submitted to the Planning Inspectorate for examination.

v) The cost of the examination will be met from the Efficiency and Innovation Reserve.

Reasons for Recommendations

1. The production of a Community Infrastructure Levy has been previously recommended by Cabinet in accordance with the Community Infrastructure Levy Regulations 2010.