



AGENDA ITEM: 12

SUMMARY

Report for:	Cabinet
Date of meeting:	10th February 2015
Part:	1
If Part II, reason:	

Title of report:	Community Infrastructure Levy (CIL) – Adoption of the Charging Schedule and associated documents.
Contact:	<p>Cllr Andrew Williams, Leader of the Council and Portfolio Holder for Planning and Regeneration</p> <p>James Doe – Assistant Director, Planning, Development and Regeneration (ext 2583)</p>
Purpose of report:	The report seeks authorisation to progress the adoption of the Community Infrastructure Levy (CIL) Charging Schedule and associated policy documents in order that the Levy may be collected from the 1 st July 2015.
Recommendations	<p>It is recommended that Cabinet recommend to Council that:</p> <ol style="list-style-type: none"> 1. The CIL Charging Schedule is adopted in accordance with Regulation 25 of the CIL Regulations 2010 (as amended) 2. The Regulation 123 list is adopted alongside the Charging Schedule as the basis for allocating CIL funding and as set out in Appendix 2 3. The CIL policies on Exceptional Circumstances Relief, Discretionary Charitable Relief, Instalments and Payments in Kind are adopted. 4. The Planning Obligations SPD is un-adopted by the Council on the 1st July 2015. 5. Progress towards the implementation of CIL is noted. 6. The implementation date for CIL is delayed until the 1st July 2015

	<p>7. Decisions over the spending of CIL receipts are taken by Council based on recommendations of an Infrastructure Advisory Group comprising officers and members.</p> <p>8. They delegate authority to the Assistant Director Chief Executives Unit to amend the Constitution to allocate specific operational functions required to facilitate the day to day operation of CIL.</p>
<p>Corporate Objectives:</p>	<p>Preparation and implementation of a CIL contributes to all of the corporate objectives.</p> <p><u>Affordable Housing</u> Affordable housing will be exempt from paying CIL and the CIL revenues cannot currently be used for provision of Affordable Housing. We will continue to secure Affordable Housing through the completion of planning obligations under S106 of the Town and Country Planning Act 1990 (as amended). The Charging Schedule is not considered to undermine the delivery of affordable housing in accordance with the Core Strategy. The viability assessments upon which our charges are based incorporate assumptions over the delivery of affordable homes.</p> <p><u>Safe and Clean Environment</u> Open space and green infrastructure improvements have been identified as possible recipients of CIL funding within the Councils Draft Regulation 123 List Such works would contribute to a safe and clean environment.</p> <p><u>Building Community Capacity</u> CIL revenues may be used to social enterprise and local community infrastructure which supports those in the most deprived areas Local communities should feel empowered to carry out improvements within their neighbourhood by the delegated of a proportion of CIL funding to them under Regulation 59 of the CIL Regulations</p> <p><u>Regeneration</u> CIL will be used in combination with S106 to support the delivery of the key regeneration priorities for the Council.</p> <p><u>Dacorum Delivers</u> Developing the CIL represents Value for Money as it will become cost-neutral once it is up and running as explained below. It will lead to the delivery of infrastructure required to support new development so will improve the reputation of the Council</p>
<p>Implications:</p>	<p><u>Financial</u> The cost of developing and implementing the Council's CIL Policies and Procedures is being borne by the Local Development Framework (LDF) budget, and may be repaid from future CIL receipts. Once implemented, up to 5% of CIL receipts may be used for its ongoing administration. The full 5% has already been committed from the first year receipts for</p>

	<p>administrative purposes. The project is expected to be cost-neutral in the long term.</p> <p>Once CIL is in place the Council will be responsible for collecting and allocating significant sums of money to the delivery of infrastructure. The delay in implementation will result in a loss of income for infrastructure projects.</p> <p><u>Value for money</u> Officers have sought to get value for money in the commissioning of technical work and purchasing of supporting infrastructure such as new planning software. The Council will be responsible for allocating CIL money for spend, and thus will have a responsibility to ensure efficient use of funds.</p>
<p>Risk Implications</p>	<p>The Project Initiation Document (PID) was updated in February 2013 and sets out full details of the risks associated with the introduction of a CIL. They include insufficient buy-in from infrastructure providers and key stakeholders, changes in Government policy and team capacity.</p>
<p>Community Impact Assessment</p>	<p>An Equality Impact Assessment was carried out for CIL in support of the PID. No significant issues have arisen, largely as any expenditure from CIL monies will need to be reflective of the need to develop infrastructure in the Borough, as set out in the Borough's Infrastructure Delivery Plan.</p> <p>The Equalities Impact Assessment prepared for CIL will be translated into a new Community Impact Assessment in due course.</p>
<p>Health And Safety Implications</p>	<p>There are no health and safety implications arising from this report.</p>
<p>Monitoring Officer/S.151 Officer Comments</p>	<p>Monitoring Officer:</p> <p>A robust CIL charging schedule is essential if the Council is to continue to meet the infrastructure requirements arising from development in the Borough. The draft charging schedule (DCS) has been considered by an independent Inspector who concluded that the DCS provided an appropriate basis for the collection of CIL in the area.</p> <p>Consultation on the Charging Schedule and associated CIL Policies has been carried out in accordance with the CIL Regulations 2010 (as amended) and representations considered by the independent Inspector.</p> <p>Accordingly, the DCS appears to have met the required statutory requirements and it is appropriate for the charging schedule to be formally adopted.</p>

	<p>Furthermore, robust governance procedures will need to be agreed to ensure that funds can be allocated to appropriate infrastructure in a timely and efficient manner. Progress on the governance framework has been made and formal approval from Cabinet will be sought in due course.</p> <p>S.151 Officer</p> <p>No comments to add to the report.</p>
<p>Consultees:</p>	<p>Consultation on the Charging Schedule and associated CIL Policies has been carried out in accordance with the CIL Regulations 2010 (as amended) as set out in Core Documents 7 (Community Infrastructure Levy – Legislative and Regulatory Compliance Statement) and 9 (Statement of Representations) to the CIL Examination. These were considered as part of the examination process.</p> <p>In terms of internal processes, both the CIL Task and Finish Group and a Corporate CIL Working Group have advised on the preparation of the Charging Schedule, Regulation 123 list and associated CIL policies. There have been reports to Cabinet at key stages in the process and the Planning and Regeneration Portfolio Holder has been kept apprised of progress.</p> <p>Progress on the CIL project is regularly reported through CORVU.</p>
<p>Background papers:</p>	<p>Cabinet report on the Submission of CIL – 29th April 2014</p> <p>Council report on the Submission of CIL – 9th July 2014</p> <p>Cabinet report on Governance Arrangements for the Community Infrastructure Levy (CIL) – 25th November 2014.</p> <p>Inspector’s Report on CIL – October 2014</p> <p>All documents, including the supporting policies at paragraph 3.1, submitted to the Planning Inspectorate in support of the CIL Charging Schedule are available from the online examination library at:</p> <p>http://www.dacorum.gov.uk/home/planning-development/planning-strategic-planning/community-infrastructure-levy-(cil)/cil-examination-library</p>
<p>Glossary of acronyms and any other abbreviations used in this report:</p>	<p>CIL – Community Infrastructure Levy</p> <p>CS – Core Strategy</p> <p>DCS – Draft Charging Schedule</p> <p>DPD – Development Plan Document</p>

	InDP – Infrastructure Delivery Plan NPPF – National Planning Policy Framework NPPG – National Planning Policy Guidance R123 – Regulation 123 of the CIL Regulations
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1.0 Background

- 1.1 The Community Infrastructure Levy (CIL) is a new way of collecting financial contributions from new developments to help fund the provision of infrastructure required to support growth in the Borough. It is a tariff style system applied to the area of the development as a cost per square metre and may vary by both use and location.
- 1.2 The Charges to be applied by the Council are set out within its Draft Charging Schedule (DCS). The DCS was submitted to the Planning Inspectorate in July 2014 and underwent an independent examination on 26 September 2014. On 21 October 2014, the Council received the Inspector's Report on the Council's DCS, which recommended its approval. The charging table from the DCS is attached at Appendix 1.

2.0 Examination

The Inspectors Report – General Conclusions

- 2.1 The examination tested whether the Council had set a CIL charge which reflects an appropriate balance between the need to fund infrastructure and the economic viability of new development in accordance with the CIL Regulations. As such it looked at evidence of infrastructure needs and a number of technical studies regarding the viability of new development. 'CIL buffers' were added between theoretical maximum charges and those being proposed to account for changes in economic circumstances. The report contains the following Non-Technical Summary:

Non – Technical Summary

This report concludes that the Dacorum Borough Council Draft Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. The Council is able to demonstrate that it has sufficient evidence to support the schedule and can show that the levy rates would be set at levels that will not put the overall development of the area, as set out in its Core Strategy, at risk.

- 2.2 The CIL charges would make a significant and important contribution to filling the likely infrastructure funding gap.
- 2.3 The background economic viability evidence for both residential and commercial development that has been used is reasonable, robust, proportionate and

appropriate. The general picture was one of strong viability able to support CIL charges with good (and in many cases considerable) headroom.

- 2.4 The evidence demonstrates that the overall development of the area, as set out in the Dacorum's Core Strategy (CS), will not be put at risk if the proposed CIL charges are applied.
- 2.5 It is recommended that the Draft Charging Schedule is adopted and that the formal notification of adoption is published in accordance with Regulation 25 of the CIL Regulations 2010 (as amended).
- 2.6 The full report on the CIL Examination can be found on our website under the following link:

<http://www.dacorum.gov.uk/docs/default-source/strategic-planning/dacorum-cil-report-.pdf?sfvrsn=0>

Issues arising during the Examination

- 2.7 The following key issues and conclusions were drawn out through the examination process.

Whether the CIL Charges are appropriate in relation to Berkhamsted?

- 2.8 The Council's viability consultants, BNP Paribas Real Estate (BNPPRE) assessed that the blended maximum CIL charge for this area would be £350psm which in the Inspectors view, is quite a conservative recommended maximum CIL charge. The Inspector acknowledged that the £250 CIL charge in this zone although amounting to an average of some 5.73% of scheme development costs, could be comfortably accommodated without any discernible threat to viability in the area in view of the strong housing market in this locality.

Whether the CIL Charges are appropriate on Strategic Sites?

- 2.9 The Inspector highlights in his report that although the NPPG does support the setting of low or zero rate CIL charges for strategic sites, it is clear that this would normally relate to circumstances of '*...low, very low or zero viability*'. As such significant questions were raised by the Inspector over the setting of zero CIL rates for the Strategic sites at Spencer's Park and Land to the west of Hemel Hempstead (LA3) given that the Council's viability appraisals show that, even with the added infrastructure burdens, both strategic schemes remaining viable by a comfortable margin. In his view, additional charges should be levied on these sites. The Inspector stopped short of rejecting the DCS on this basis as it clearly did not undermine the delivery of the CS.
- 2.10 In reaching this conclusion, the Inspectorate has held little regard to the Council's argument about the need for these sites to fund proportionate infrastructure under CIL. Whilst in theory CIL could be levied, the Council would have difficulty spending such sums on infrastructure which would not constitute similar infrastructure to that secured via its detailed Section 106 requirements from these sites. The Council would find it more difficult to demonstrate that it was not double charging for infrastructure in conflict to the CIL Regulations 2010 (as amended) were a charge to be levied for both Spencer's Park and LA3. It was noted that the charge did not confer any financial advantage given that these sites would be subject to substantial S.106 agreements.

Whether the Regulation 123 list is appropriate?

- 2.11 The Council is required under Regulation 123 of the CIL Regulations to publish a list of infrastructure types or specific infrastructure schemes that will be wholly or partially funded by CIL (the Regulation 123 List). As CIL is expected to become the primary source of infrastructure funding payable by developers, the CIL Regulations prohibit the use of CIL and S.106 monies to fund the same piece of infrastructure and seeks to limit the application of S.106 by introducing pooling restrictions upon its use.
- 2.12 The draft Regulation 123 list considered at the examination is set out at Appendix 2 to this report¹. It was reviewed by Cabinet with the Draft Charging Schedule in April 2014 and by Full Council in July 2014. The Regulation 123 list includes a column of exclusions, identifying infrastructure that will be secured through S.106 Planning Agreements or other mechanisms. The Inspector agreed that this was a useful format to use for the Regulation 123 list.
- 2.13 The Inspector expressed concerns with regards to the drafting of the Council's Regulation 123 List and the potential for 'double dipping', a process whereby developers would be charged twice for similar items of infrastructure, at paragraph 13 of his report. In doing so, he specifically identified education contributions as an area of potential conflict due to the inclusion of a threshold of some 500 units above which such contributions would be sought under the existing Section 106 arrangements.

The Inspectors Report – Other Recommendations

- 2.14 The Examiner recommended that the Council addressed his concerns with regards to the Regulation 123 list through drafting revisions and reporting arrangements to ensure there is no 'double dipping'.
- 2.15 Officers from the Council held a meeting with County Council officers on the 18th December 2014 to discuss this recommendation and other procedural matters relating to the implementation and governance of CIL. The inclusion of a threshold associated with the provision of educational facilities was included on the R123 specifically at the request of the County Council and is based on its evidence over the infrastructure needs for education. The child yield associated with this scale of development is sufficient in its own right to justify the provision of a new school on or near the site and in such cases it would be beneficial to secure the direct provision of facilities through a S.106 process in the interests of certainty and expedient delivery.
- 2.16 It should be noted that Officers do not expect the Council to receive many developments which would reach this threshold and be liable for CIL. Indeed the threshold is beyond the scale of most allocations within the Core Strategy and Site Allocations DPD. In such cases the dynamics of CIL and S.106 and the provision of an Exceptional Circumstances policy should be sufficient to allow the Council to make proportionate adjustments in CIL Liability from the site in question. In other words, the charge under CIL would, for example, be reduced to reflect the cost for providing educational facilities under this alternative

¹ On the day of the Examination an amended R123 was supplied to the Examiner. This is the version attached at Appendix 1. The wording of the R123 differs slightly to the version previously considered by Cabinet and Council on the 29th April 2014.

mechanism. Officers are further satisfied that there is an appropriate distinction between CIL and S.106 projects.

- 2.17 Officers would recommend that, notwithstanding the Inspectors concern, the R123 is published without any further amendment and as set out in Appendix 2.

3.0 Policies and Supporting Documents

- 3.1 A number of additional policy documents were submitted to the Inspector in support of the DCS with Modifications (See Statement of Modifications). These included policies on:

- Discretionary Charitable Relief
- Exceptional Circumstances Relief
- Instalments
- Payments in Kind (Land)

- 3.2 The Inspector has declined to comment on these policies within his report and these do not form part of the formal Examination process. The content of these policies was set out within the Cabinet report of the 29th April 2014 and has already been considered by Cabinet and Council members. Officers recommend that these policies are formally adopted by the Council in their modified form.

4.0 Planning Obligations SPD

- 4.1 The Council currently secures planning obligations in accordance with its Planning Obligations SPD (April 2011). A ministerial statement on the 28th November 2014 on Affordable Housing and Planning Obligations fundamentally altered the application of this policy by introducing higher thresholds for the use of S.106 agreements and this will further change as a result of the CIL Regulations 2010 (as amended).

- 4.2 The Planning Obligations SPD should be considered as effectively redundant from the 1 July 2015 when the CIL is implemented as the full restrictions over the use of Section 106 agreements contained within the CIL Regulations 2010 (as amended) come into force once CIL is operational. From the 6 April 2015, the Council will no longer be able to pool more than 5 contributions towards an infrastructure project or typology. As the pooling restrictions date back to April 2010, the Council has already exceeded this threshold for the majority of pooled sums. Once the CIL Charging Schedule takes effect, the Council cannot seek planning obligations towards infrastructure projects or types of infrastructure listed on the Regulation 123 list as those which may be funded by CIL. In the absence of the Planning Obligations SPD, the Council will have to rely on the content of its Core Strategy, its Regulation 123 list and InDP as the policy basis upon which to secure more prescriptive contributions towards new infrastructure projects. It is envisaged that fewer S.106 obligations will be secured as a result of these changes with an associated decline in income.

- 4.3 It should be noted that the restrictions in the CIL Regulations are not applicable to affordable housing.

- 4.4 It is recommended that the Planning Obligations SPD is formally un-adopted from the 1 July 2015.

5.0 Implementation of CIL

5.1 In addition to the matters covered so far, the Council needs to agree a practical implementation date from which to commence charging, and ultimately collecting, CIL. It was anticipated originally that this would be from 1 April 2015, yet there are a number of factors that have arisen in recent months that make a slightly later start date of 1 July 2015 more practical.

Staffing and Resources

5.2 The Development Management team is undergoing a significant period of change in terms of personnel. As the general economic picture improves, turnover in the development-related professional employment market increases. As a result there has been the loss of both the Group Manager for Development Management and the Assistant Team Leader (Major Applications) from the team and two additional members of staff. Further change will take place with the retirement of the Assistant Team Leader (Planning Registry) at the end of March.

5.3 Although a process of recruitment and restructuring of the Development Management team has commenced, with some posts already recruited to, there is concern regards the loss of significant experience from the team both in terms of local and general planning knowledge. New officers will need time to familiarise themselves with the Borough, its planning policies and processes. CIL is a complex process and additional training will be required to familiarise staff with the complexities of CIL.

5.4 There is also concern with the ability of the remaining officers to process the current workload prior to the implementation date. There is a reasonable expectation from the development industry that applications are processed efficiently and the publication of an implementation date has been reflected in the early submission of a number of planning applications in order to avoid CIL charges.

Validation of Planning Applications

5.5 A number of authorities, which have implemented CIL, have made the submission of CIL Additional Information Forms a Validation requirement for all planning applications. The indication in the NPPG is that authorities can legitimately refuse to validate applications that are not accompanied by this information without going through a process of formal consultation on changes to its Local Validation List.

5.6 The submission of this information is considered to be essential to considering the application and the expedient processing of CIL. Accordingly all planning applications received by the Council from the 1st July 2015 will not be registered unless accompanied by this CIL Additional Questions form. Forms are available from the Planning Portal under:

<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>

5.7 These will be made available under the planning applications section of our website alongside a Guide to CIL Forms and Notices.

CIL Software

- 5.8 The Council has recently purchased new planning software to assist us with the implementation our CIL functions and monitor and administer planning obligations secured under Section 106 of the Town and Country Planning Act 1990 (as amended). The new software, Exacom, is in the process of being fully installed and training for staff has commenced on a test system in preparation for our implementation date. Three webinar sessions have already been held with planning and ICT staff taking them through key tasks and responsibilities. Up to 12 sessions are included under our contract with Exacom and additional sessions will be arranged. These days will focus on the relevant CIL tasks undertaken by the key departments involved in processing and administering the CIL charges. A training day will also be held on site with Exacom immediately prior to implementation and aimed at all staff involved in the CIL process and interested parties. The date of this training day has yet to be finalised.
- 5.9 No decision has been taken as to whether we extend access to the CIL software to Councillors and external parties including Town and Parish Councils. The system is web based and access could be restricted by login. The Council is not restricted in terms of a number of login details to be provided by Exacom or system administrators. In the event that additional access is granted to the Exacom system there will be a need for the Infrastructure Officer to explain how CIL and the software system operate to external parties.

Training

- 5.10 In addition to software training for Council staff, officers are holding internal briefing sessions and briefing sessions with applicants, agents and local developers to familiarise them with their obligations under CIL and the need for additional information in support of planning applications. Information has already been publicised via the website/FAQ's and through a mailshot and officers have attended the regular Development Management Agent forums at key dates during the adoption of CIL. A specific workshop for developers and agents took place on 21 January 2015. All Development Management staff will be receiving additional training on CIL.

Constitution

- 5.11 There is a need to make a number of amendments to the Council constitution to enable various departments to undertake key CIL tasks. The main tasks and responsibilities are as follows:

Task	Responsible Section
Review and make alterations to the CIL Charging Schedule and Associated Policies	Strategic Planning and Regeneration
Report of CIL Collection and Expenditure	Strategic Planning and Regeneration

Assessing the amount of CIL Liability including determining applications for CIL relief	Planning, Development and Regeneration
Issue Liability Notices	Strategic Planning and Regeneration
Demand Notices for CIL.	Finance
Collection and Administration of CIL payments	Finance
Processing of applications for Payment in Kind	Strategic Planning and Regeneration
Determining applications for Payment in Kind	Planning Development and Regeneration
Enforcement against non-payment of CIL	Finance
Enforcement of CIL functions – Stop Notices	Planning Enforcement

5.12 It is recommended that final and detailed changes to the Council constitution to incorporate these tasks and the general processing of CIL are delegated to the Assistant Director Chief Executives Unit, but Members are asked to endorse the delegations as indicated above.

5.13 The approval of new Charging Schedules, changes to the Regulation 123 list and Council CIL policies together with decisions over the spending of CIL will remain subject to the approval of Council.

6.0 Conclusions

6.1 There is no reason why the Council should not progress to the formal adoption of the Draft Charging Schedule, Supporting Policies and Regulation 123 list immediately following the meeting of Council on the 25th February 2015 and Cabinet are asked to support this recommendation.

6.2 A number of matters need to be resolved prior to the implementation of CIL as set out within the report and it is suggested that the implementation date is put back from the 1st April 2015 to the 1st July 2015 to accommodate these requirements.