



**AGENDA ITEM:
SUMMARY**

Report for:	Finance and Resources Overview & Scrutiny
Date of meeting:	4th June 2013
PART:	1
If Part II, reason:	

Title of report:	Community Infrastructure Levy (CIL) Update
Contact:	<p>Cllr Andrew Williams, Leader of the Council and Portfolio Holder for Planning and Regeneration</p> <p>Robert Freeman – Strategic Planning and Regeneration Officer (Infrastructure Planning) (ext 2663)</p> <p>James Doe – Assistant Director, Planning, Development and Regeneration (ext 2583)</p>
Purpose of report:	To update Members on the progress towards the adoption of CIL and seek support for the adoption of a formal response to the public consultation on the Preliminary Draft Charging Schedule (PDCS) and associated next steps.
Recommendations:	<ol style="list-style-type: none"> 1. To note the progress and programme for the development of a CIL for Dacorum. 2. To support the timescales for adopting CIL as outlined at paragraph 3.8 and Appendix 1 of this report 3. To note the proposed response to the public consultation on the Preliminary Draft Charging Schedule as set out in Appendix 3 to this report 4. To support the preparation of Policies on Discretionary Relief and Exceptional Circumstances Relief from CIL, Instalments, 'Payments in Kind' and the Interaction of CIL and S.106 prior to public consultation on a Draft Charging Schedule, as set out in paragraphs 3.7 and 4.21 and Appendix 3 of this report

<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, which will continue to be provided via S106. Officers from the Strategic Housing service are involved in developing the CIL charging schedule, for which affordable housing requirements will be a key consideration. If CIL is set too high then developers may not be able to meet the affordable housing policy requirements.</p> <p><u>Safe and Clean Environment</u> The infrastructure provided through CIL monies is likely to include open space and urban realm improvements to support the development of the borough, both of which 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.</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 CIL 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 administration. The project is therefore 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.</p> <p><u>Value for money</u> Where possible, technical work that supports the CIL has been jointly commissioned with adjoining authorities to ensure value for money. Also, see above regarding the project ultimately being cost neutral.</p> <p><u>Legal</u> CIL should reduce the need for involvement of the Council's planning solicitor, as it will reduce the role of s106 agreements. The Council's legal department may need to become involved</p>

	<p>in cases where liable parties do not pay CIL.</p> <p><u>Human Resources</u> A member of the Strategic Planning and Regeneration team has taken over the role of leading CIL development and associated infrastructure planning work, for an initial two year period. Any additional staff needs will be considered as the project develops. It is likely that the current secondment which ends in early 2014 will need to be extended.</p> <p><u>Land</u> Once in place, CIL will be payable for any chargeable development on Council owned land. The opportunity exists for the Council to accumulate land for the delivery of infrastructure in lieu of payment in accordance with Regulation 73 of the CIL Regulations.</p>
Risk implications:	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.
Equalities implications:	An Equality Impact Assessment has been 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.
Health and safety implications:	None
Sustainability implications:	The CIL charging schedule is intended to enable the delivery of infrastructure required to support development planned through the Core Strategy; the Core Strategy has been subject to a Sustainability Appraisal.
Consultees:	The CIL Task and Finish Group have discussed both the programme for the introduction of CIL and the proposed response to consultation responses on the Preliminary Draft Charging Schedule. Their advice is reflected in this report.
Background papers:	<ul style="list-style-type: none"> • CIL examination report – Wycombe District Council http://www.wycombe.gov.uk/council-services/planning-and-buildings/planning-policy/community-infrastructure-levy/examination.aspx • CIL Guidance Notes 2013 (Department for Communities and Local Government) • CIL Regulations 2010 (amended 2011, 2012 and 2013) • Community Infrastructure Levy Viability Study (BNP Paribas Real Estate) (December 2012) • Community Infrastructure Levy Viability Study Update

	<p>(BNP Paribas Real Estate) (June 2013)</p> <ul style="list-style-type: none"> • Dacorum Infrastructure Delivery Plan (June 2012) • Infrastructure Funding Gap Assessment (December 2012) • Preliminary Draft Charging Schedule (December 2012) • Project Initiation Document • Strategic Planning and Environment OSC - November 2012
<p>Glossary of acronyms and any other abbreviations used in this report:</p>	<p>BCIS – Building Cost Information Service CIL – Community Infrastructure Levy CRG – Corporate Regeneration Group DCLG – Department for Communities and Local Government DCS – Draft Charging Schedule IFGA – Infrastructure Funding Gap Assessment InDP – Infrastructure Delivery Plan NPPF – National Planning Policy Framework PDCS – Preliminary Draft Charging Schedule PID – Project Initiation Document</p>

BACKGROUND

1.0 Introduction:

- 1.1 The Community Infrastructure Levy 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. The level of charge must be informed by evidence of infrastructure need and scheme viability, and once set will be mandatory for developers to pay.
- 1.2 DBC is responsible for setting the charges, collecting the money and allocating the money for spend. Both the rate at which CIL is set and how its revenue is used will have a big impact on the future growth of the borough. The Council can spend CIL revenues on '*infrastructure to support development of its area*'; it can be spent on the provision of new infrastructure or the on-going costs of infrastructure – but it cannot be used to correct existing deficits in infrastructure provision.
- 1.3 The current mechanism for raising funds from new developments to mitigate the impact upon infrastructure is through the use of planning obligations secured under Section 106 of the Town and Country Planning Act 1990 (as amended). These will continue to play a role in funding new infrastructure. However the way that they may be applied to new developments will significantly change. The Government has made it clear through the CIL Regulations and CIL Guidance that it expects the use of S.106 to be scaled back to those matters that are directly related to a specific site and those which are not identified in CIL spending plans. The Government introduced restrictions upon pooling of S.106 agreements at an early stage in the introduction of CIL. The Council will need to develop a clear and co-ordinated approach to the collection and use of CIL and S106.

2.0 CIL Policy and Guidance

The DCLG CIL Guidance 2013

- 2.1 The DCLG published new CIL Guidance on the 14th December 2012. This set out a change in emphasis in the CIL Regulations and clarified how the Regulations are expected to be interpreted by both charging authorities¹ and by extension, examiners appointed to examine such schedules. The update to this Guidance was published on the 26th April 2013 to cover the CIL (Amendment) Regulations 2013.
- 2.2 A fundamental change was in the application of Regulation 14 of the CIL Regulations. Regulation 14 requires the charging authority to strike what it considers to be the appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy on the economic viability of the development across the area. The DCLG CIL Guidance establishes that this is not solely a matter for the charging authority, but should be subject to greater scrutiny by the CIL examiner at examination. It was reiterated that the charging schedule should not threaten the delivery of the local plan –

¹ Dacorum Borough Council is the charging authority.

including a requirement for the local authority to 'show and explain' how the proposed levy supports the plan and development.

- 2.3 The role of the CIL examiner has become more judicial. Where initially CIL examiners were concerned with checking viability, they are now expected to be more analytical. They are required to analyse the evidence of historical use of Section 106 and delivery. They must examine evidence on viability at a finer grain and on the basis of site specific viability evidence. They must scrutinise the links between the items of infrastructure identified in spending plans and the aims and objectives to the Core Strategy.
- 2.4 The role of the charging authority at examination has become more narrative. The charging authority must provide a greater explanation and evidence on how funds for infrastructure have historically been secured and allocated. The charging authority must also explain proposals for new infrastructure items and their links to the Core Strategy and outline the charging authorities strategy for the delivering these items of infrastructure through use of either Section 106 or CIL funding.

CIL (Amendment) Regulations 2013

- 2.5 The primary purpose of this amendment to the CIL Regulations was to explain and set out the requirements for neighbourhood funding. Under Regulation 59 of the CIL Regulations the Council has a duty to pass CIL receipts to local Council's for developments within their areas. The amount due to the local body varies between 15%-25% depending on whether a Neighbourhood Plan has been adopted.

3.0 The CIL Project

- 3.1 The PID developed for CIL was updated in February 2013 in light of the above changes in CIL Policy and Guidance. The PID sets out the key aims for the project and the necessary steps involved in its implementation. A copy of the project plan (as amended) is appended at Appendix 1 of this report. Officers would highlight the increase in workload between June 2013 and October 2013 as a result of the Government's new requirements.
- 3.2 There are three main areas of work which are necessary to provide additional information in response to the DCLG Guidance and CIL Regulations in advance of consultation on the Draft Charging Schedule and examination.

Viability Evidence

- 3.3 The Council has commissioned BNP Paribas Real Estate to undertake additional viability studies on Strategic sites and Local Allocations from the Core Strategy and other key development sites. These studies will test the ability of these sites to deliver the planning objectives set out in the Core Strategy and associated S.106 and CIL payments. The report will recommend options for delivering the infrastructure improvements necessary as a result of developing these sites. This could include setting a reduced CIL rate for these sites and increase the dependence upon S.106 as a mechanism for delivering on-site infrastructure.

Spending Plans

- 3.4 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 Council will not be able to seek S.106 contributions towards infrastructure items upon this list and will be subject to restrictions over the use and pooling of future S.106 monies once CIL is adopted (or April 2014 whichever is earliest²).
- 3.5 A number of local authorities that have already introduced a CIL did not fully consider their spending plans until after the CIL examination. However following the Guidance and CIL (Amendment) Regulations 2013, it is now necessary to provide this detail at the CIL examination stage.
- 3.6 Officers from both the Borough and County Council are considering the content of the InDP projects and those projects brought forward to the Infrastructure Funding Gap Assessment (IFGA) to justify the collection of CIL. The infrastructure project schedule is being reviewed to determine the best mechanism to deliver the infrastructure in question and allocate this to the most appropriate CIL or S.106 list. Clearly there will be a need to engage Members in finalising these spending plans and arrangements have been made to discuss these matters with the CIL Task and Finish Group.

Supporting Policies

- 3.7 Paragraphs 173-178 of the NPPF place an obligation on the Council to ensure that sufficient measures are in place to facilitate the delivery of the Core Strategy and ensure that the viability of schemes is not threatened. The Council has a number of mechanisms that can be used to assist developers with scheme viability. These include the following items:
 - *Discretionary Relief Policy*
Charitable organisations already benefit from a statutory exemption to paying CIL where they can clearly demonstrate they are developing their own land for charitable purposes, but would not qualify for relief were the development not explicitly for charitable purposes. The Council has scope under the CIL Regulations to publish a Discretionary Relief Policy which would allow charities to carry out enabling development without triggering a CIL payment. The Council would need to be clear who and how organisations qualified for relief. Members of the CIL Task and Finish Group advised that any such policy should make clear that charities would be expected to be formally registered with the Charities Commission.
 - *Exceptional Circumstances Policy*
The Council can publish a policy on the application of an Exceptional Circumstances Policy which would relieve the need to pay CIL. The CIL Regulations make it clear that in order to utilise an Exceptional Circumstances Policy the proposed development would need to be subject to a S.106 which would exceed the CIL bill and should not be subject to State Aid. The DCLG consultation on CIL - Further Reforms seeks to address the poor use of this policy by authorities which have already implemented CIL. They propose altering the

² This date is currently subject to consultation on CIL – Further Reforms. The Government are proposing to extend this deadline to April 2015.

percentage of the CIL bill which would need to be exceeded by a S.106 agreement to qualify for Exceptional Circumstances Relief.

- *Instalments*
The Council can facilitate the delivery of developments by seeking to reduce the 'up front' burden to developers associated with the full cost of CIL by phasing payments. In order to do so the Council would need to publish an Instalments policy setting out when and how these payments may be received.
- *Payments in Kind*
The Council is permitted under Regulation 73 to enter into "land agreements" to ensure the transfer and protection of land upon which infrastructure is expected to be provided in lieu of CIL payments. The decision on whether to accept a land payment rests with the charging authority. It would be beneficial for the Council to set out a clear policy on 'Payments in Kind' prior to examination. The proposals under the DCLG consultation, CIL- Further Reforms, proposed to extend this provision of in kind infrastructure.

Implications for the CIL Programme

3.8 The CIL programme has been delayed by some 6-8 months to that set out in the initial PID. The timescale is still challenging a number of due to the need to prepare and publish the draft policies listed in paragraph 3.7 in advance of consultation on the Draft Charging Schedule. This timetable is dependent on a timely and appropriate input from other infrastructure providers notably Hertfordshire County Council. The following timescales for the project are now envisaged:

- Consultation Draft of the DCS to Cabinet for approval – October 2013
- Public Consultation on the DCS: December 2013 – January 2014
- Prepare Charging Schedule for examination – January 2014- March 2014
- Submission to the Planning Inspectorate for examination: April 2014
- Examination completed and Examiner's report received: June 2014
- Final Charging Schedule considered by Cabinet and Full Council: October 2014-November 2014
- Adopt CIL in January 2015.

4.0 Consultation on the PDCS

4.1 The PDCS was subject to public consultation between the 12th December 2012 and 12th March 2013. Responses to the consultation were received from the groups and organisations listed in Appendix 2.

Consultation Results

4.2 The following table provides a quantitate summary of the answers to questions posed on the PDCS. A number of people and organisations responding to the PDCS consultation provided written statements relating to their concerns which could not be categorised as a simple Yes/No response.

Table 1 – Summary of Consultation Responses by Question

Questions on the PDCS	Yes	No
Question 1 - Do you think the identified infrastructure needs are supported by evidence and are up to date?	8	6
Question 2 - Do you think that a sound funding gap has been identified to justify the need for CIL?	9	4
Question 3 - Do you consider the rates proposed put the overall development of the area at risk?	7	7
Question 4 - Do you think that different residential rates are appropriate and supported by evidence?	9	3
Question 5 - If you support differential rates, do you think the boundaries between different zones are appropriate boundaries?	5	4
Question 6 - Do you think it is appropriate to have a single rate for retirement housing across the Borough?	6	3
Question 7 - Do you think the proposed rate for retirement housing is appropriate?	6	3
Question 8 - Do you think the proposed rate for large retail is appropriate?	5	4
Question 9 - Do you think the proposed threshold for large retail is appropriate?	8	1
Question 10 – Do you think there should be a nil rate for ‘other’ uses and if not which ‘other’ uses should be charged?	8	2
Question 11 – Do you think the Council should adopt an Exceptional Circumstances policy?	16	2
Question 12 – Do you think the Council should adopt an Instalments policy?	16	1

- 4.3 A full summary of the comments raised in relation to the PDCS, including issues which could not be recorded above, is set out at Appendix 3 to this report. The Council’s proposed response to these comments is also set out at Appendix 3. The results of the consultation and key issues have been discussed by Members of the CIL Task and Finish Group and their comments are reflected within the body of this report. Members are requested to recommend that Cabinet agree the schedule in Appendix 3 as the Council’s formal response to the consultation.

4.4 The key changes to the CIL rates as a result of the consultation are set out in Table 2 and Table 3. The changes to the Charging Schedule are supported by further viability testing by the consultants BNP Paribas as reported in the Viability Study Update. An explanation of the changes follows these two tables.

Table 2: Proposed CIL Charging Schedule rates set out in the PDCS (December 2012)

Development Type	CIL rate (per sq.m)		
	Zone 1: Elsewhere	Zone 2: Berkhamsted and surrounding area	Zone 3: Hemel Hempstead and Markyate
Residential	£150	£250	£100
Retirement Housing	£125		
Large Retail (over 280sqm)	£200		
Other	Nil		

Table 3: Proposed Amended CIL Charging Schedule rates for inclusion in the DCS (June 2013)

Development Type	CIL rate (per sq.m)		
	Zone 1: Elsewhere	Zone 2: Berkhamsted and surrounding area	Zone 3: Hemel Hempstead and Markyate
Residential	£150	£250	£100
Retirement Housing	Nil	£125	Nil
Convenience based supermarkets and superstores and retail warehousing (net retailing space of over 280 square metres)	£150		
Other	Nil		

Key Housing Sites including Strategic and Local Allocations

4.5 During the consultation concerns were raised by a number of landowners in the Borough regarding the impact of CIL upon the viability of large housing sites including those set out as Strategic sites and Local Allocations within the Core Strategy. These sites are vital to the overall supply of housing within the Borough.

4.6 A number of these sites have key pieces of infrastructure associated with them (often site-specific infrastructure) which the Council and County Council may prefer to secure through the use of S.106. There is perception amongst the development industry that developers will effectively be 'double charged' for these works through CIL and that the costs associated with the planning requirements, CIL and S.106 may be prohibitively high undermining housing delivery.

4.7 The PDCS does not explicitly address this issue as it does not set out the overall strategy for the use of both CIL funds or S.106 and how these mechanisms may interact on larger housing sites. The publication of spending plans under

Regulation 123 will add greater clarification and certainty and will clearly form the focus for future discussions.

- 4.8 It is likely, but not a certainty, that new charging areas will need to be introduced for these large sites with either a low or nil CIL charge applicable to them. This may be necessary to reflect the higher development costs associated with planning requirements in the Core Strategy (for example affordable housing requirements) and delivery of large items of infrastructure on site (for example, a new primary school).
- 4.9 Officers have instructed BNP Paribas to undertake additional site specific viability work to consider the ability of Strategic sites and Local Allocations and other key housing sites to contribute both S.106 and CIL payments and, if it is viable to do so, the rate at which a CIL may be set for these sites. This approach is encouraged under the DCLG CIL Guidance 2013. The results of this work will be considered by the CIL Task and Finish Group and reported to members in October 2013 when the DCS is agreed for publication.

Residential Rates

- 4.10 No changes are proposed to the residential CIL rates within the Borough, despite concerns being raised during the consultation over the impact of the Hemel Hempstead rate upon developments in the northern wards of the town and the relatively high charge on residential development within Zone 2 (Berkhamsted and surrounding area).
- 4.11 Members of the CIL Task and Finish Group are still minded to set a single residential rate for CIL across Hemel Hempstead, notwithstanding concerns raised during the public consultation exercise. The group recognised that although a CIL of £100 per square metre might be regarded as towards the high end of charging in the northern part of Hemel Hempstead, on balance this was considered acceptable given that a relatively small proportion of the overall development for the Borough is expected to take place as a result of windfall developments within this area. The treatment of designated housing sites with a lower CIL charge could mitigate these concerns.
- 4.12 The evidence within the BNP Paribas Real Estate Viability Study (December 2012) does not support the reduction in a charge for Berkhamsted and objectors have been requested to substantiate their claims with additional viability evidence should they still wish to dispute the residential rates for this charging zone.

Retail Rates

- 4.13 A number of major retailers have responded to the PDCS. These responses cover three main themes; whether it is fair to charge retailers CIL on the basis of the impact on infrastructure, whether splitting retail charges between large and small retailer operations falls within the scope of the CIL Regulations, and whether the charges are justified on viability evidence.
- 4.14 A key test for the charging authority is to provide a clear delineation between different retail operations which must be on the basis of use and viability evidence. Many CIL examinations have examined this issue of 'large v small' retail and it is useful that the DCLG consultation on CIL- Further Reforms has clarified the issue by suggesting amendments to the Regulations to "allow

different rates to be applied to both different uses and scales of development e.g. small shops, retail warehouses and supermarkets”

- 4.15 The Council consulted on the basis of large retailers being subject to CIL, with a threshold of some 280 square metres used to differentiate between uses. Although this is clearly within the scope of the CIL Regulations, it is considered that this threshold does not necessarily reflect the relative viability of retail schemes and their characteristics. There is clear evidence to suggest that convenience based supermarkets and superstores³ and retail warehouses⁴ (with a net retail sales space of over 280 square metres) are more viable and this threshold has been adopted by a number of authorities to differentiate between retail uses (notably Wycombe District Council) BNP Paribas Real Estate recommend that we this threshold is adopted when moving forward with a retail charge.
- 4.16 BNP Paribas Real Estate has undertaken some additional viability testing of retail schemes in light of comments received during the consultation on the PDCS. Additional retail appraisals have been carried out to reflect two different scales of retail store. The updated appraisals incorporate updated construction costs from BCIS and incorporated assumptions on residual S.106 costs. As a result of these appraisals the maximum CIL rate identified as viable has been reduced for the retail uses. BNP Paribas Real Estate recommended that the CIL charging schedule is amended from £200 per square metre to £150 per square metre.
- 4.17 These recommendations have been discussed by the CIL Task and Finish group who have endorsed these proposed alterations to the charging schedule.

Retirement Housing Rates

- 4.18 BNP Paribas Real Estate updated the retirement appraisals to reflect the comments of developers in the retirement housing sector. The appraisals tested a sales model for retirement housing rather than the rental model for disposal of retirement units and demonstrated that generally retirement housing can only afford to pay a CIL within the highest value areas within the Borough (Zone 2 – Berkhamsted and surrounding areas)
- 4.19 The CIL Task and Finish Group discussed this recommendation at its meeting of the 13th May 2013 and requested further clarification on whether a lower CIL charge (lower than the £125 per square metre in the PDCS) could still be applied to the lower value areas. It has also requested that the definition of retirement housing is clarified to ensure that it does not cover care home and extra care accommodation. The feedback from BNP Paribas Real Estate is that a reasonable charge could not be maintained in other areas in the Borough and as such officers are advocating the complete removal of the charge from Zones 1 (Elsewhere) and Zone 3 (Hemel Hempstead and Markyate)
- 4.20 The removal of this charge for this type of development is unlikely to have a significant impact upon the totality of CIL payments as the submission of this type of scheme is a relatively rare occurrence.

³ Superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace.

⁴ Retail warehouses are large stores specialising in the sale of household goods (such as carpets, furniture, electrical goods), DIY items and other ranges of goods catered for mainly by car-borne customers.

Discretionary Relief, Exceptional Circumstances Relief and Instalments

4.21 There is clear support for the introduction of policies to support the use of Exceptional Circumstances Relief and Instalments within the responses to the PDCS and from members of the CIL Task and Finish Group. Members of CIL Task and Finish also indicated that they wish to include policies on Discretionary Relief alongside the charging schedule, however these would need to be carefully drafted to minimise any potential loop holes which could be exploited by the construction industry in order to avoid CIL payments to the detriment of infrastructure funding.

5.0 Next Steps and recommendations

5.1 The Committee is asked to note the timescales for the introduction of CIL as outlined in this report. The key dates within the timetable are set out at paragraph 3.8 of this report and the full programme is set out in Appendix 1

5.2 The next stage is to prepare the DCS and associated policies for public consultation. This will include discussing the Council's spending priorities for CIL receipts and procedures for governing the expenditure of CIL receipts and will involve high level discussions with the CIL Working Groups at both Borough and County Council levels and the CIL Task and Finish Group. The CIL Task and Finish Group are due to meet again on the 29th July 2013 to discuss these matters.

5.3 The committee are asked to note the proposed CIL rates contained in Table 3 of this report for inclusion in the DCS. The DCS will be published for public consultation in late December 2013; a consultation period of 6 weeks is expected (as per recommendations of CIL-Further Reforms) but given that it will be over Christmas, officers are proposing to extend this consultation until the end of January 2014.