



AGENDA ITEM: 10

SUMMARY

Report for:	Finance and Resources Overview & Scrutiny
Date of meeting:	5th November 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 public consultation on a Draft Charging Schedule and associated policies.
Recommendations:	<ol style="list-style-type: none"> 1. To note the progress and programme for the development of a CIL for Dacorum. 2. To note the content of the Draft Charging Schedule and policies on Discretionary Relief, Exceptional Circumstances Relief from CIL, Instalments, Payments in Kind and Regulation 123 List and support consultation with the public thereon.
Corporate objectives:	<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</p>

	<p>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>
Implications:	<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 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 to cover the CIL</p>

	<p>examination and the early implementation of CIL.</p> <p><u>Land</u></p> <p>Once in place, CIL will be payable for any chargeable development on Council owned land. The opportunity also exists for the Council to accumulate land for the delivery of infrastructure in lieu of CIL payment in accordance with Regulation 73 of the CIL Regulations. A draft policy on Payments in Kind is included at Appendix 6.</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 Sustainability Appraisal incorporating a Strategic Environment Assessment.
Consultees:	<p>The CIL Task and Finish Group have discussed the programme for the introduction of CIL and draft versions of the Instalments policy and the Regulation 123 List.</p> <p>The supporting CIL policies have been circulated to members of the CIL Task and Finish Group and members of the CIL Working Group by email.</p> <p>The County Council have been regularly consulted over the content of all CIL documents. Their comments and advice received is reflected in this report.</p>
Background papers:	<ul style="list-style-type: none"> • Cabinet Report – 23rd July 2013 • 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 (BNP Paribas Real Estate) (June 2013) • Core Strategy 2006-2031

	<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 – June 2013 <p>Key documents can be located on the Council's CIL web pages.</p>
<p>Glossary of acronyms and any other abbreviations used in this report:</p>	<p>BCIS – Building Cost Information Service CIL – Community Infrastructure Levy DCLG – Department for Communities and Local Government DCS – Draft Charging Schedule ECR – Exceptional Circumstances Relief 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.
- 1.4 Regulation 14 of the CIL Regulations 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 Council set out its initial proposals for CIL rates in a Preliminary Draft Charging Schedule (PDCS) and consulted on a PDCS between December 2012 and March 2013. Members agreed both the timetable for the adoption of CIL and a response to this public consultation at the meeting of Cabinet on the 23rd July 2013.

2.0 The Draft Charging Schedule

- 2.1 The next stage towards the adoption of a CIL is to publish the Draft Charging Schedule (DCS). The DCS should be made available for inspection at the Council offices together with relevant evidence and a Statement of Representations. These documents should also be published on the Council's website.
- 2.2 The DCS is required by Regulation 12 of the CIL Regulations to contain information on (a) the name of the charging authority, (b) the rates (in pounds per square metre) at which CIL is to be charged, (c) the location and boundaries of the zones for differential rates, on an Ordnance Survey base showing grid lines and references, and (d) an explanation of how the charge will be calculated. A copy of the draft DCS is included in Appendix 1 to this report. Members are asked to support the publication of the DCS.

- 2.3 The DCS must undergo a minimum period of 4 weeks consultation, prior to its submission for examination, in accordance with the CIL Regulations 2010 (as amended). It has been proposed to extend this period to some 6 weeks under the DCLG CIL – Further Reforms. Although no formal statement has been made on the conclusions of this consultation, Officers are expecting this recommendation to be endorsed. It is intended to carry out consultation over a 6 week period commencing shortly after the Full Council meeting of the 15th January 2014. It is considered that 6 weeks would be a more appropriate consultation period in view of the number of supporting policy documents upon which comments will be sought.
- 2.4 The Council’s legal team has recommended that the DCS should be approved for consultation by Full Council to accord with the requirements of Section 212 of the Planning Act 2008 and as such it is not possible to carry out consultation on the DCS until January 2014. This change to the timetable for the adoption of CIL should not prevent the submission and examination of the Charging Schedule in accordance with the current timetable as it is considered that time savings will be gained in preparing the Charging Schedule. Members are asked to note this change to the timetable for the adoption of CIL.
- 2.5 The DCS would charge development as set out in Table 1 below. The Charging Schedule is largely as set out in the report to Cabinet of the 23rd July 2013 except for the inclusion of a new charging zone for residential development on Identified Sites.

Table 1: Draft CIL Charging Schedule rates for inclusion in the DCS (November 2013)

Development Type	CIL rate (per sq.m)			
	Zone 1: Berkhamsted and surrounding area	Zone 2: Elsewhere	Zone 3: Hemel Hempstead and Markyate	Zone 4: Identified Sites
Residential	£250	£150	£100	£0
Retirement Housing	£125	£0		
Convenience based supermarkets and superstores and retail warehousing (net retailing space of over 280 square metres)	£150			
Other	£0			
Retirement housing is housing which is purpose built or converted for sale to elderly people with a package of estate management services and which consists of grouped, self-contained accommodation with communal facilities amounting to less than 10% of the gross floor area These premises often have emergency alarm systems and/or wardens. These properties would not however be subject to significant levels of residential care (C2) as would be expected in care homes or extra care premises.				

Viability Evidence

- 2.6 The Council's CIL rates are set on the basis of viability evidence. The Council's viability evidence comprises a number of documents produced by the consultants BNP Paribas Real Estate. An initial viability study was undertaken prior to consultation on the PDCS and this work was updated following the feedback from the public consultation thereon.
- 2.7 The Council concluded at its Cabinet meeting of the 23rd July 2013 to amend the description of retail development which was subject to a CIL charge and remove charges for retirement housing in the lower value housing sub markets in accordance with the recommendations of this work.
- 2.8 The description of retirement housing has been updated in Table 1 to reflect the comments of consultants BNP Paribas Real Estate in relation to scheme viability. A critical issue in the determining the relative viability of these schemes, care homes and extra care housing is the provision of communal floor space. The proposals are less viable once more than 10% of the gross internal floor area is utilised for communal purposes.

Identified Sites

- 2.6 During the consultation on the PDCS concerns were raised by a number of landowners in the Borough regarding the impact of CIL upon the viability of large housing sites, particularly 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.
- 2.7 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.
- 2.8 The Council appointed 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 to the delivery of infrastructure using both planning obligations and CIL payments. This approach was encouraged by the DCLG CIL Guidance 2013.
- 2.9 The following sites were subject to additional viability testing:
 - Land at Durrants Lane and Shootersway (SS1)
 - Land at Hicks Road (SS2)
 - Marchmont Farm (LA1)
 - Old Town (LA2)
 - Land West of Hemel Hempstead (LA3)
 - Land at Hanbury's, Shootersway (LA4)
 - Land off Icknield Way (LA5)
 - Land at Chesham Road/Molyneaux Avenue (LA6)
 - Land at Spencers Park/East Hemel Hempstead

- Hemel Hempstead Town Centre.

- 2.10 A draft of the report looking at these identified sites has been received from BNP Paribas Real Estate. This report concludes that all of the sites identified would be capable of paying CIL in accordance with the rates identified in the PDCS. It has therefore been concluded that there are no viability grounds to justify the introduction of a new charging zone. This report is based on the current information available on the delivery of these sites and there may be changes in circumstances which could impact on scheme viability. The Council should however be reassured by estimates of proposed growth in the housing market which should make these schemes more viable come 2021 when the majority of the sites identified in the Core Strategy are due for delivery.
- 2.11 Notwithstanding the viability evidence, Officers consider that it is appropriate to introduce a new 'nil' charging area in order to secure the delivery of key items of infrastructure on a selective number of sites where there is a need for a significant S.106 contributions and higher levels of affordable housing. The viability report sets out that there are large S.106 bills associated with the developments of land at West Hemel Hempstead (LA3), Icknield Way (LA5) and Spencer's Park, Hemel Hempstead. These sites are likely to deliver key pieces of infrastructure (for example new education premises) which are likely to exceed the value of the CIL bill. The delivery of site specific infrastructure associated with these proposals is fundamental to the delivery of sustainable forms of development at these sites and it would be reasonable and fair to reflect such costs in the CIL Liability. These sites are considered appropriate for a 'nil' charge in the CIL Charging Schedule. The County Council is in favour of this approach to the sites identified as they consider the use of a S.106 agreement to be the most appropriate mechanism for delivery of infrastructure in these cases.

3.0 CIL Spending Plans – The Interaction of Regulation 123 and S.106

- 3.1 When setting the CIL charging rates it is important to understand the dynamics of CIL and S.106 and how they may be utilised once CIL has been introduced to deliver infrastructure works within the Borough.
- 3.2 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). 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 a CIL is adopted (or April 2014 whichever is earliest¹). Only five contributions under S.106 may be pooled to any one infrastructure project or type. S.106 agreements will however remain an important and appropriate mechanism to enable the expedient delivery of relevant on site infrastructure and affordable housing.
- 3.3 The Regulation 123 List does not form part of the DCS under Regulation 12 and there is no requirement under Regulations 15 and 16 of the CIL Regulations to publish the Regulation 123 list alongside the DCS for consultation. However, it is considered that DBC should publish the list at this stage to demonstrate that the Council has considered the mechanism for delivering infrastructure when setting the CIL charge. The publication of this list will provide an opportunity to seek

¹ This date is currently subject to consultation on CIL – Further Reforms. The Government are proposing to extend this deadline to April 2015.

feedback on our approach to delivering infrastructure and allow Officers to prepare for issues that are likely to be raised at examination.

- 3.4 Officers have therefore been set the challenging task of determining from the Infrastructure Delivery Plan (InDP) project schedule and the Infrastructure Funding Gap Assessment (IFGA) those items which will be funded by CIL and those which should or could be secured through S.106 agreement. Officers have been careful to avoid double charging developers when drafting the Regulation 123 list.
- 3.5 The draft Regulation 123 list sets out a number of exclusions (those items which will be secured through S.106) in order to provide the required clarification on how CIL may be spent and to address concerns that developers may be charged twice for the same item of infrastructure. Further clarification and certainty is provided by the removal of a CIL charge for those housing sites at west Hemel Hempstead (LA3), Icknield Way (LA5) and Spencers Park. The use of a S.106 agreement will inevitably be preferable where it would provide greater certainty over the delivery of the site specific infrastructure items for both the developer and infrastructure provider than may otherwise be provided under CIL, for example the County Council has a clear preference for the use of a S.106 agreement to deliver a new school at LA3 – Land to the west of Hemel Hempstead. The Council has a comprehensive list of infrastructure improvements associated with Strategic Sites, Local Allocations and key development sites which will be secured in this way.
- 3.6 It is important to note that CIL and S.106 may still be charged on the same site providing one is clear that the S.106 funds will not support the delivery of items on the Regulation 123 list and that appropriate monitoring of the CIL spending is undertaken. Indeed it may often be the case that CIL funds from other sites may be used to supplement S.106 projects on individual sites.
- 3.7 A draft Regulation 123 list is set out at Appendix 2 to this report. Members are asked to support the publication of this list alongside the DCS.
- 3.8 The draft Regulation 123 list has been subject to consultation with the CIL Task and Finish Group, members of the CIL Working Group and key officers at the County Council with the responsibility of delivering Children, Schools and Family services and Transport proposals.
- 3.9 Members of the CIL Task and Finish Group recognised the need to deliver site specific infrastructure through the use of S.106 agreements and the need therefore to provide two distinct lists as part of the Regulation 123 list (a CIL list with a number of exclusions under S.106) The group assisted in the construction of an early version of the list, agreeing to provide large items of infrastructure on the large housing sites in the Core Strategy through S.106, suggesting that CIL may be used to fund improvements on the hospital site and health services and excluding utilities infrastructure from CIL and S.106 funding.
- 3.10 The Borough Council is required to collaborate with the County Council on the formation of CIL policies and on the formulation of the Regulation 123 list in accordance with paragraph 48 of the DCLG CIL Guidance 2012. County Council officers have informally considered the content of the Regulation 123 list and made some adjustments to introduce thresholds for the provision of County services such as new school buildings and large items of highways infrastructure

which would be easier for them to ensure timely delivery through the use of S.106 agreements.

4.0 Supporting Policies

- 4.1 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. There was clear support during the consultation of the PDCS to the production of the following policies:

Discretionary Charitable Relief Policy

- 4.2 The scope for charitable relief from the payment of CIL may be extended only through the adoption of a Discretionary Charitable Relief policy for which formal notification must be given. 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. They would not qualify for relief were the development not explicitly for charitable purposes such as an investment by a charity from which profits may be used for charitable purposes. Cabinet has opted to offer Discretionary Charitable Relief under Regulations 44 and 45 of the CIL Regulations. This would allow charities to carry out enabling development without triggering a CIL payment. A Discretionary Charitable Relief policy has been drafted setting out to whom and how the rate will be applied. This is included at Appendix 3 to this report. Members are requested to support public consultation on this document.
- 4.3 The primary concern of the CIL Task and Finish Group was that charitable relief should not be open to abuse by developers. The policy has been drafted so that the charities that might benefit from Discretionary Charitable Relief will need to demonstrate that they provide a local service. The level of relief is set to account for the requirement to pass a proportion of CIL to the local community for infrastructure works and to limit cases where the offer of relief may raise issues regarding State Aid.

Exceptional Circumstances Relief Policy

- 4.4 Cabinet recommended the publication of a policy on Exceptional Circumstances Relief (ECR) under Regulation 56 of the CIL Regulations. The ECR policy would allow the Council to offer relief from the payment of CIL should there be exceptional development costs which would undermine the viability of a scheme. A draft ECR policy is included in Appendix 4. Members are asked to support public consultation on the ECR policy.
- 4.5 The use of an ECR policy has been limited at a national level with a number of authorities opting not to pursue its use. This has not been met favourably by the DCLG. The CIL Regulations currently make it a pre-requisite for ECR that the value of a S.106 agreement must exceed CIL before relief may be offered. However, the DCLG consultation on CIL - Further Reforms seeks to address the poor use of this policy by authorities which have already implemented CIL by proposing to alter the percentage of the CIL bill which would need to be exceeded by a S.106 agreement in order to qualify for ECR.

- 4.6 Those authorities that do offer ECR are in a minority and do not appear to provide any additional guidance on its application other than that set out within the CIL Regulations. The introduction of local criteria will need to be carefully considered and should aim to minimise the number of applications which may be deemed inappropriate. The proposed policy seeks to restrict applications for ECR to those applications with a significant scale of development or those delivering local infrastructure priorities.
- 4.7 The ECR has been drafted in consultation with the County Council. The County Council understands that the wording in this policy and the exceptions in the Regulation 123 list are designed to ensure that large items of infrastructure which may be necessary as a result of speculative developments (such as GUI) or large windfall proposals are still capable of being delivered via their preferred S.106 route without prejudicing the economic viability of proposals.

Instalments

- 4.8 Cabinet recommended that the Council facilitates the delivery of new residential and commercial developments by opting to introduce an Instalments policy for the payment of CIL. The Council is able to adopt an Instalments policy under Regulation 69B of the CIL Regulations. A draft CIL Instalments policy is included at Appendix 5 to this report. The Instalments policy does not form a formal part of the examination of the CIL Charging Schedule however it is considered an intrinsic part of the CIL “story” which will be presented to the examiner to demonstrate compliance with the requirements of the NPPF. Members are asked to support public consultation on the draft CIL Instalments policy.
- 4.9 The draft Instalments policy has been subject to consultation with members of the CIL Task and Finish Group and CIL Working Group. Members were broadly satisfied that the thresholds for instalments set out in this draft policy are appropriate and strike an appropriate balance between enabling development, administering the charge and funding the delivery of infrastructure. The basic principle within the instalments policy is that most small residential schemes should continue to pay for infrastructure at an early stage in construction in either one or two payments (payments are required prior to the commencement of development under the existing S.106 programme) with longer timescales and more complex arrangements for paying significant sums of money due from larger residential proposals.

Payments in Kind

- 4.10 Cabinet recommended the production of a Payment in Kind policy to highlight the provisions in Regulation 73 of the CIL Regulations which allow for such payments and to encourage the use of this mechanism where appropriate. The Council recognises that there are circumstances where it may be preferable to secure land for the delivery of Infrastructure (or indeed the infrastructure itself) needed to support the growth of the Borough. A draft policy has been written setting out the circumstances in which a land payment may be acceptable to the Council and is included in Appendix 6.
- 4.11 Under the terms of the draft policy, land will only be accepted where it is in an appropriate condition to enable infrastructure to be provided and will be transferred for an appropriate market value. This valuation will need to be undertaken by an independent person(s). The Council may identify suitable sites for transfer through the Site Allocations DPD or Supplementary Planning

Documents. Officers have also discussed the creation of a Register of Land of Interest whereby the Council would identify land upon which they would like to deliver new infrastructure. This could encourage the transfer of land as a CIL payment.

- 4.12 Members are requested to support public consultation on the draft Payment in Kind policy.

5.0 The CIL Timetable

- 5.1 The following timescales for the project are now envisaged:

- Consideration of DCS and related CIL policies: November 2013
- Consideration of DCS and related CIL policies: January 2014
- Public Consultation on the DCS: January 2014 – March 2014
- Prepare Charging Schedule for examination: February 2014 - April 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.

6.0 Recommendations

- 6.1 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 5.0 of this report.
- 6.2 The Committees are also asked to note the policies at Appendices 1-6 and support carrying out public consultation upon these documents.