



**AGENDA ITEM:  
SUMMARY**

<b>Report for:</b>	<b>Finance and Resources Overview and Scrutiny</b>
<b>Date of meeting:</b>	<b>4<sup>th</sup> June 2014</b>
<b>PART:</b>	<b>1</b>
If Part II, reason:	

<b>Title of report:</b>	<b>Community Infrastructure Levy (CIL) – The Merits of CIL</b>
<b>Contact:</b>	<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>
<b>Purpose of report:</b>	To explain to members the advantages and disadvantages of Charging the CIL and provide additional information about the Council's progress on CIL.
<b>Recommendations:</b>	1. That Members note the content of this report.
<b>Corporate objectives:</b>	<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</p>

	<p>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 aid 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 in cases where liable parties do not pay CIL.</p> <p><u>Human Resources</u> An officer has been seconded to the Strategic Planning and Regeneration team to taken on the role of leading CIL development and associated infrastructure planning work. The secondment has been extended to cover the submission of CIL and its examination.</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 (InDP)
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:	None
Background papers:	<ul style="list-style-type: none"> <li>• Cabinet reports – 26<sup>th</sup> November 2013 and 29<sup>th</sup> April 2014</li> <li>• CIL Guidance Notes 2014 (Department for Communities and Local Government)</li> <li>• CIL Regulations 2010 (amended 2011, 2012 and 2013, 2014)</li> <li>• Community Infrastructure Levy Viability Study (BNP Paribas Real Estate) (December 2012)</li> <li>• Community Infrastructure Levy Viability Study Update (BNP Paribas Real Estate) (June 2013)</li> <li>• Dacorum Infrastructure Delivery Plan (June 2012)</li> <li>• Dacorum Infrastructure Delivery Plan Update (January 2014)</li> <li>• Dacorum Strategic Site Testing (October 2013)</li> <li>• Draft Regulation 123 List.</li> <li>• Finance and Resources Overview and Scrutiny Report – 5<sup>th</sup> November 2013</li> <li>• Infrastructure Funding Gap Assessment (December 2012)</li> <li>• Infrastructure Funding Gap Assessment Update (January 2014)</li> <li>• Project Initiation Document</li> <li>• Strategic Planning and Environment Overview and Scrutiny report – 12<sup>th</sup> November 2013</li> </ul>
Glossary of acronyms and any other abbreviations used in this report:	<p>CIL – Community Infrastructure Levy  InDP – Infrastructure Delivery Plan  LDF – Local Development Framework  NPPF – National Planning Policy Framework  PID – Project Initiation Document  SPD – Supplementary Planning Document</p>

## **BACKGROUND**

### **1.0 Introduction**

- 1.1 This report focuses on the advantages and disadvantages of introducing a Community Infrastructure Levy (CIL) for Dacorum.
- 1.2 The Council has now reached a critical stage in the introduction of CIL. Cabinet resolved at their meeting of the 29<sup>th</sup> April 2014 to recommend that we submit a CIL Charging Schedule, associated policies and evidence to the Inspectorate for examination. This report will be considered by Council on the 9<sup>th</sup> July 2014 with a view to a CIL submission on the 16<sup>th</sup> July 2014.
- 1.3 The introduction of a CIL supports the delivery of infrastructure required to sustain the growth identified within the Council's Core Strategy. Policy CS35 requires developers to make contributions towards infrastructure works either through Section 106 or CIL. Officers have sought to maximise the funding of infrastructure improvements through these mechanisms.

### **2.0 CIL and Section 106**

- 2.1 The Community Infrastructure Levy (CIL) is a new way of collecting contributions from developments towards providing the infrastructure needed to support growth within the Borough. It is a tariff that will be applied per square metre of new development which would vary by scale, use and geography. Its intention is to enable development to contribute to the cumulative impact on infrastructure, whereas Section 106 (S.106) aims to mitigate the direct impacts of individual developments.
- 2.3 S.106 agreements will continue to be used but their use will be scaled back as a result of CIL. Affordable housing and site specific requirements for new infrastructure will still be secured via S106 agreements.
- 2.4 The CIL Regulations 2010 (as amended) and the National Planning Policy Framework (2012) have tightened up the application of S106 Agreements so that they can only be used to levy financial contributions where they are:
  - Necessary to make a development acceptable in planning terms,
  - Directly related to the development; and
  - Fairly and reasonably related in scale and Kind to the development.
- 2.5 The more general nature of CIL allows for the funds to be used more flexibly towards the implementation of infrastructure projects thus facilitating the delivery of a range of infrastructure items.
- 2.6 In April 2011, the Council introduced a Planning Obligations Supplementary Planning Document (SPD). This applied S106 using a formulaic approach, similar to CIL based on the number of bedrooms within the property. This increased the number of development proposals entering into S106 agreements with an associated increase in income for both the Borough Council and County Council from around £260,000 in 09/10 to over a million pounds in 11/12 (£1,106,297) and 12/13 (£1,023,615.13)

- 2.7 The CIL Regulations 2010 (as amended) effectively remove the ability of local authorities adopt a tariff style approach to S.106 contributions like that of the Planning Obligations SPD post April 2015. Local authorities will no longer be able to pool more than five S.106 contributions towards a particular item or type of infrastructure from the 6<sup>th</sup> April 2015 or the introduction of CIL (whichever is the earlier). Nor will the Council be able to collect money under S.106 towards those items/types of infrastructure for which five contributions have already been sought.
- 2.8 It is therefore fundamental that the Council adopts a CIL in order to continue to secure appropriate funding for infrastructure improvements with a view to supporting and encouraging the levels of development set out within the Borough's Core Strategy. It is only through the introduction of CIL that such sums may be pooled towards infrastructure projects.
- 2.9 Although Section 106 agreements will have a reduced role following the adoption of CIL they will continue to be important to secure site specific infrastructure items and to secure undertakings which are not purely financial in nature (for example the transfer and management of open space).
- 2.10 The main advantage of using a Section 106 agreement is that it allows for the delivery of specific infrastructure projects and contributions towards infrastructure items to be agreed in advance with the developer. This will be beneficial in securing site specific improvements in a timely manner where the infrastructure is required on site and as a direct result of the quantum of development (inevitably larger infrastructure items). Section 106 agreements provide greater certainty over the timely delivery of infrastructure for both the developer and the Council and will therefore be the preference on large scale developments.
- 2.11 A combination of CIL and Section 106 agreements will be appropriate for the scale and nature of development that would typically come forward within Dacorum with the exception of sites at LA3 and Spencer's Park. It will often be appropriate for CIL and S.106 arrangements to work in tandem to secure the Council's planning requirements over the majority of sites.

### **3.0 Pros of Adopting CIL**

- 3.1 Officers have recently produced the document '*Community Infrastructure Levy (CIL) – Bridging the Infrastructure Funding Gap (April 2014)*' which sets out the potential income to be secured through CIL. It is estimated that a total of £23.47m will be raised from the residential components of CIL over the remaining plan period<sup>1</sup> (2015-2031) with some additional funding being secured from new retail developments within the Borough. The annual income is estimated to be £2m, but both these figures should be treated with caution as they may vary significantly.
- 3.2 This funding is crucial to the delivery of the programme of infrastructure improvements set out in the Infrastructure Delivery Plan (InDP), particularly given a decline in income under the existing Section 106 route. The Council will still be reliant on developers to implement large scale infrastructure works which are tied to the implementation of Strategic Sites and Local Allocations. Such improvements will remain tied to Section 106 agreements.

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<sup>1</sup> Depending on changes in assumed dwelling sizes, the quantum of affordable homes and floor space deductions.

- 3.3 Under CIL, the Council will be the Charging Authority and as such will be solely responsible for the collection and spend of CIL income. The adoption of CIL therefore brings with it greater responsibility for the provision of appropriate infrastructure and an increased say over the prioritisation of infrastructure projects.
- 3.4 This increased involvement in determining infrastructure needs and priorities will be extended to local communities through the transfer of a meaningful proportion of CIL. The Council is required to pass 15%<sup>2</sup> of the CIL receipts received within each administrative area to the Town or Parish Council or local community<sup>3</sup>. These funds may be used to address any demands that development places upon the local community. CIL therefore empowers local communities to carry out improvements to the neighbourhoods in which they live.

#### **4.0 Cons of Adopting CIL**

- 4.1 There are some disadvantages to adopting a CIL, however, these are largely due to details of the CIL Regulations and do not outweigh the advantages.
- 4.2 There are concerns that CIL will not be a cost effective mechanism under which to secure contributions towards infrastructure due to the likely costs of implementation and administration. The Council has already invested significant time and resources to the implementation of the CIL project and it is likely to be resource intensive to set up and administer in its initial stages. However, once in place, the Council is able to use up to 5% of its CIL receipts towards these costs each year. In the longer term the CIL project is expected to be cost neutral as CIL income covers cost.
- 4.3 CIL is expected to provide a significant income for the Council as set out in paragraph 3.1 however such forecasts should be treated with caution. The CIL Regulations 2014 have exempted a number of developments from the payment of CIL. The following types of development are exempt from payment of CIL:
- affordable housing;
  - development which replaces or reuses existing floorspace<sup>4</sup>;
  - domestic extensions;
  - granny or domestic annexes;
  - self-build schemes; and
  - Development to be used for charitable purposes.

These exemptions mean that a significant proportion of development may not contribute towards the cost of infrastructure provision, where they currently do so under the existing Planning Obligations SPD.

- 4.4 CIL is effectively a tax and as such payment is compulsory for developers. It comprises a set rate and unlike S.106 does not allow the flexibility of site specific negotiations. CIL has to be taken into account before any other further requirements are placed upon a developer (for example Affordable Housing).
- 4.5 It is therefore crucial that CIL is set at an appropriate level to ensure that the development of sites remains viable under a range of circumstances and reflects

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<sup>2</sup> This increases to 25% with the approval of a Neighbourhood Plan

<sup>3</sup> In un-parished areas, it is envisaged that the ward councillors will allocate the expenditure of the neighbourhood proportion

<sup>4</sup>Subject to vacancy tests.

the policy requirements within the Core Strategy. A failure to do so could jeopardise the delivery of other planning objectives could potentially undermine the delivery of housing and other development necessary to sustain growth.

- 4.6 The Council has clearly reflected the requirements of the Core Strategy within its Viability Assessments<sup>5</sup> and is confident that its assumptions over CIL rates are robust. Appropriate CIL buffers have been provided to ensure that the CIL rates have no detrimental impact on other planning requirements; these will be monitored over time to ensure that any negative consequences of CIL are quickly addressed.
- 4.7 There are some concerns that the CIL raised within a neighbourhood will not be directly applied to the provision of new infrastructure within the area from which it is secured. Whilst this is true to an extent, the neighbourhood proportion discussed in paragraph 3.5 means that the local community can influence how a significant proportion of developer contributions are used.

## **5.0 Funding infrastructure via CIL and S106**

- 5.1 The Council is required to clearly demonstrate that in charging a CIL and continuing to use Section 106 agreements they are not double charging developers for the same piece or type of infrastructure project.
- 5.2 The Council has therefore produced a Regulation 123 list which sets out the infrastructure items or projects which it would like to fund through CIL and crucially those items which it would like to fund through the use of a Section 106 agreement. A copy of our Draft Regulation 123 list is included at Appendix 1 of the report.
- 5.3 In the cases of land to the west of Hemel Hempstead (LA3) and Spencer's Park, there are long lists of infrastructure items which will need to be secured alongside these developments. A full list of site specific requirements and assumptions for Strategic Sites and Local Allocations is set out Appendix 2 to this report. It will be more expedient to deliver these items through the use of a Section 106 agreement and the use of this mechanism will allow the phased delivery of these improvements alongside these developments. As a result of developers providing such items directly under a S.106 agreement the Council would be prohibited from charging CIL for these items of infrastructure from these sites. The need and ability to levy a CIL would be reduced and in the cases of LA3 and Spencer's Park would be removed entirely in view of the scale and comprehensive nature of the infrastructure works proposed.
- 5.4 A failure to charge a CIL on sites at LA3 and Spencer's Park will mean that local residents will not receive the neighbourhood proportion of CIL. This would not disadvantage those local communities as money would be spent on infrastructure improvements directly related to the development of the site and necessary as a result of the development. The issues are therefore not so much about the amount of money that would be spent within any given neighbourhood more about the control over the money and the role of the community in how it is used.
- 5.5 The Council is committed to and has a proven record in involving local communities in the preparation of Development Briefs for Strategic Sites and

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<sup>5</sup> Viability reports for CIL have been prepared by BNP Paribas Real Estate for the Borough generally and for specific sites within the Core Strategy. Separate notes on the viability of retail development have also been prepared.

Local Allocations. This process provides adequate opportunity for the community to inform discussions over contributions towards infrastructure works within their neighbourhood and to provide appropriate evidence as required under the CIL Regulations. It is clear from the workshops held so far, in relation to Development Briefs for Strategic sites and Local Allocations, that the Council's assessment of infrastructure needs arising from these sites closely aligns with those priorities of the local community; namely transport, education, health and sewerage infrastructure<sup>6</sup>. Officers are mindful of the need to ensure that any infrastructure benefits secured are necessary and reasonable and in all circumstances schemes remain viable.

## **6.0 Conclusion**

- 6.1 The restrictions over the use of Section 106 agreements and the associated loss of funding for infrastructure improvements mean that it is imperative that the Council proceeds with the introduction of CIL. It is necessary in order to maximise the funding available for infrastructure improvements and to support the growth outlined in the Core Strategy. .
- 6.2 Critical to the success of the CIL is the availability of sufficient resources to implement and operate the CIL project, which may be considerable. It is also essential that the CIL has corporate support from across the Council as it will require input from a number of departments, and its benefits will be increased by a joined up approach.
- 6.3 The intention is to submit the CIL Charging Schedule to the Planning Inspectorate in July 2014 with the aim of CIL being operational by the 1<sup>st</sup> April 2015.

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<sup>6</sup> The Council's Infrastructure Delivery Plan does not identify any significant deficiencies in sewerage infrastructure within the Borough. Local connections are required and there are other more appropriate legislative frameworks to deal with these issues than CIL. The Council has not committed to funding improvements to utilities infrastructure under its Regulation 123 list.