

North Tyneside Council Report to Cabinet Date: 13 February 2017

ITEM 6(e)
Title: Community
Infrastructure Levy:
Preliminary Draft Charging
Schedule

Portfolio(s): Housing and Transport

Cabinet Member(s): Cllr. John Harrison

Report from Service

Area: Environment, Housing and Leisure

Responsible Officer: Phil Scott – Head of Environment,
Housing and Leisure Tel: (0191) 643 7295

Wards affected: All

PART 1

1.1 Executive Summary:

The Community Infrastructure Levy (CIL) is a development contribution in the form of a charge on new buildings above a certain size that local planning authorities may choose to set and which is designed to help fund local and sub-regional infrastructure identified in the Authority's development plan.

It is a legally enforceable levy which is shown as a land charge on the local land charges register.

The Authority will require the introduction of a CIL to help fund the infrastructure required to support development identified within the emerging North Tyneside Local Plan. A proposed CIL charge will sit alongside continued use of Section 106 contributions for specific development proposals.

The rate of the CIL will be set out within the charging schedule and the Authority must prepare a charging schedule that sets out the rates in our area.

This report seeks Cabinet approval for the Preliminary Draft Charging Schedule, which is the first stage of public consultation in preparation for the introduction of CIL.

1.2 Recommendation(s):

It is recommended that Cabinet:

- (1) Approves the Community Infrastructure Levy Preliminary Draft Charging Schedule as set out in Appendix 2, Table 2, for public consultation;
- (2) Authorises the Head of Environment, Housing and Leisure in consultation with the Cabinet Member for Housing and Transport, the Deputy Mayor, the Head of Finance and the Head of Law and Governance to undertake public consultation in relation to the Community Infrastructure Levy Preliminary Draft Charging Schedule; and

(3) Authorises the Head of Environment, Housing and Leisure in consultation with the Cabinet Member for Housing and Transport, the Deputy Mayor, the Cabinet Member for Finance, the Head of Finance and the Head of Law and Governance (through the Local Plan Steering Group) to agree any final amendments as necessary to the consultation documentation in relation to the Preliminary Draft Charging Schedule.

1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 16 January 2017.

1.4 Council Plan and Policy Framework

The Local Development Scheme sets out the timetable for the production of the Authority's Local Plan and its other supporting documents. Collectively, these are key mechanisms to delivering a number of the objectives of the Council Plan "Our North Tyneside Plan 2016-19", including:

- Our people will be listened to, and involved by responsive, enabling services;
- Our places will be great places to live, and attract others to visit or work here;
- Our economy will grow by building on our strengths and having the right skills and conditions to support investment; and
- Our partners include police, fire and rescue, NHS, the voluntary sector, schools and businesses.

1.5 Information:

1.5.1 Background to the North Tyneside Community Infrastructure Levy

In October 2016 Cabinet approved an update to the Local Development Scheme 2016 (LDS). The LDS identifies that consultation on the Preliminary Draft Charging Schedule (CIL Regulation 15) will commence in January/February 2017.

The Community Infrastructure Levy (CIL) was introduced by the Planning Act 2008. It is a charge which enables funds to be raised from new developments to provide supporting infrastructure. Monies raised through CIL can help pay for strategic and local infrastructure such as highways improvements, schools, flood mitigation, leisure facilities and other community facilities to ensure the Borough grows sustainably.

Presently, the Authority seeks infrastructure contributions via Section 106 agreements (s106s) set out within the Planning Obligations Supplementary Planning Document (SPD) (LDD8, 2009).

CIL and s106 will operate in parallel within the Borough. There can be no 'double charging'; in other words, a s106 agreement could not be used to secure the same infrastructure items that the Authority has agreed would be funded by the CIL.

A review of LDD8 Planning Obligations SPD will be required alongside preparation of the CIL. This will ensure alignment between the use of the CIL and s106 agreements. An update to LDD8 would also reflect the new policy provisions of the emerging Local Plan. As set out within the LDS 2016, a revised LDD8 will be prepared between May and June 2017.

1.5.2 Community Infrastructure Levy – Key Points

The CIL is a financial charge per square metre that Local Authorities may choose to levy on a range of developments that result in an internal gross floor area of over 100 square metres. The whole floor space is charged not just the area over 100 square metres. For the creation of a new home, CIL is chargeable regardless of the floor area.

Once adopted the CIL imposes a flat rate and non-negotiable charge for all ‘qualifying’ developments. Developments exempt from the CIL include social housing relief (where the housing is rented or shared ownership) and any schemes proposed by charitable institutions. For CIL purposes social housing does not include most forms of discounted market housing.

The CIL monies can be spent on any infrastructure deemed necessary to support growth across the Borough. The infrastructure priorities to be funded through the CIL must be set out in a list, known as a “Regulation 123 List” in accordance with Regulation 123 of the Community Infrastructure Levy Regulations 2010 (‘The Regulations’). This list is determined by the Authority after consultation. Once the CIL is introduced a Regulation 123 List may only be amended following appropriate local consultation.

The CIL offers greater flexibility as to how, when, where and what monies can be spent by the Authority in contrast to s106s which are tied to mitigating the direct impacts of the specific development and must be:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

In addition the Regulations’ prevent Local Authorities from pooling funds from more than five s106 agreements upon the adoption of the CIL to support a single infrastructure project or type of infrastructure.

The Regulations restrict the use of s106 planning obligations, in terms of their role and collection, they have the effect of constraining the ability of the Authority to secure sufficient funding for infrastructure that may be Borough wide or strategic in nature through a s106 agreement.

The role of the CIL is to provide a route for an Authority to collect funding to deliver the infrastructure that it determines is required to help deliver development in the Borough in general, providing a more flexible fund to identify and support appropriate infrastructure projects.

Landowners are ultimately responsible for paying the charge, developers can take on this liability however the liability runs with the land that is why it is registered as a land charge. The charge is usually payable on commencement of development and this will be detailed in the payment schedule as part of the CIL documents.

The levy will provide certainty for developers as they will be able to calculate the amount payable once the charging schedule is published in accordance with the Regulations.

1.5.3 Developing the Community Infrastructure Levy Charging Schedule

Appendix 1 summarises the prescribed legislative stages required to prepare and adopt the CIL. This includes two formal consultation stages followed by its testing before an independent Inspector.

Three key pieces of evidence are required to prepare and adopt the CIL:

- i. **An up-to-date Development Plan:** The emerging North Tyneside Local Plan is anticipated to be adopted by the Summer of 2017. The CIL is intended to be spent on infrastructure to support the growth requirements of the Local Plan.
- ii. **An Infrastructure Delivery Plan (IDP):** To demonstrate the need to put in place the CIL, the Authority needs to evidence an aggregate funding gap for additional infrastructure in the area to support growth. The North Tyneside IDP (2016) identifies the infrastructure needs over the Local Plan period and identifies a funding gap between what is needed and the funding currently secured.
- iii. **Viability Assessment Evidence:** The CIL charging schedule must be supported by evidence of its impact upon the economic viability of development in general. The North Tyneside Area Wide Viability Assessment 2015 and 2016 will be further updated to provide further evidence to support potential CIL Charging Rates for North Tyneside.

The CIL Regulations allow local authorities to make choices when preparing a Charging Schedule e.g. about exemptions and instalments. The consultation document will seek views on whether the Authority should have policies on exemptions and instalments policies. Such policies could form part of the Draft Charging Schedule consultation.

1.5.4 The Preliminary Draft Charging Schedule CIL Charging Rates

The Preliminary Draft Charging Schedule (Appendix 2) is the document which sets out the **initial** proposals for the CIL, for public consultation. It outlines possible charging rates for the CIL.

This does not commit the Authority to having a CIL or a particular rate at this stage, but allows the Authority to collect views of the community and development professionals operating in the Borough. The Authority must take into account the comments it receives in response to the Preliminary Draft Charging Schedule to inform its Draft Charging Schedule.

It is not proposed that all current Section 106 contributions are replaced by a CIL charge. Section 106 provides a vital tool to ensure the planning impacts of specific developments have been properly identified and sufficient funding will be available at the right time to address those impacts. Meanwhile the CIL provides a valuable alternative method of achieving funding where more flexibility is required or sufficient funds could not be secured from developments via s106 to deliver an identified infrastructure need.

1.5.5 The Infrastructure List (Regulation 123)

It should be noted that the CIL would not be able to fund all of the Borough's infrastructure requirements. National research suggests that the CIL could contribute to between 5-10% of the total funding required. This would suggest the need for a focussed approach to the use of monies accrued through the CIL. This could be used to:

- Fund specific infrastructure projects;
- Used to secure match funding as part of a wider capital investment strategy that brings together amongst other things monies secured via Section 278 agreements, capital receipts from the sale of assets, monies secured from business rate retention and grants and prudential borrowing.

However, in order to continue to secure s106 Agreements, the Authority must have published an Infrastructure List (or Regulation 123 List). The Regulation 123 List establishes infrastructure projects that the Authority intends to be funded by the CIL. Infrastructure included in the Regulation 123 List cannot also be funded by s106 contributions. If the Authority adopts the CIL and does not publish a Regulation 123 List it cannot secure additional planning contributions via s106 agreements.

The Authority is not required to identify its Regulation 123 List to accompany consultation on the Draft Preliminary Charging Schedule but Planning Guidance requires that the Authority's Regulation 123 List is based upon the draft list that the Authority prepared for the examination of the Draft Charging Schedule. Identification of a draft list of infrastructure to be funded through the CIL would consequently require agreement by Cabinet during 2017 when it agrees the Draft Charging Schedule.

1.5.6 Next Steps

Subject to Cabinet approval, the Preliminary Draft Charging Schedule will be published for public consultation for six weeks. Any comments received will be taken into account when preparing the Draft Charging Schedule for consideration by Cabinet.

The LDS 2016 identifies that the next formal stage in preparation of the CIL, the Draft Charging Schedule (CIL Regulation 16 and 17), will follow in June 2017.

1.5.7 Governance

Prior to adoption of the CIL an agreed governance procedure will be necessary as part of the administration of the CIL itself and its subsequent spending. Through 2017 consideration of the appropriate mechanisms for administering the CIL will be made by the Authority's Senior Leadership Team in consultation with the Mayor and Deputy Mayor, Cabinet Member for Housing and Transport and Cabinet Member for Finance and Resources.

1.6 Decision options:

The following decision options are available for consideration by Cabinet:

Option 1

- Agree with the recommendations as set out at paragraph 1.2 of this report.

Option 2

- Agree with the recommendations set out at paragraph 1.2 but request officers consider alternative proposals for taking CIL forward.

Option 3

- Decline to approve the recommendations in paragraph 1.2 of this Report.

Option 1 is the recommended option.

1.7 Reasons for recommended option:

Option 1 is recommended for the following reasons:

The development of a CIL Charging Schedule would enable the Authority to ensure that new development contributes proportionately to strategic infrastructure provision.

Changes to the role of s106s now limit the pooling of contributions for the infrastructure needed to support new development.

Failure to develop a CIL Charging Schedule would reduce the Authority's ability to ensure that new development contributes proportionately to infrastructure provision. Failure to adopt a CIL would mean that the Authority would be missing the opportunity to collect contributions and provide benefits to these areas. This would be further curtailed by the limitations associated with the pooling of s106s for the infrastructure needed to support new development.

1.8 Appendices:

Appendix 1 - The Process for Introducing Community Infrastructure Levy
Appendix 2 – Proposed Preliminary Draft Charging Schedule

1.9 Contact officers:

Jackie Palmer, Planning Manager (0191 643 6336)
Neil Cole, Planning Policy Manager (0191 643 6326)
Martin Craddock, Senior Planning Officer (0191 643 6329)
Catherine Lyons, Regulatory Services Manager (0191 643 7780)
Alison Campbell, Senior Business Partner (0191 643 7038)

1.10 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

- 1 [Planning and Compulsory Purchase Act 2004.](#)
- 2 [Planning Act 2008.](#)
- 3 [Localism Act 2011](#)
- 4 [Town & Country Planning \(Local Planning\)\(England\) Regulations 2012.](#)
- 5 [The Community Infrastructure Levy Regulations 2010 \(as amended\)](#)
- 6 [The North Tyneside Local Development Scheme Cabinet Report \(October 2016\)](#)
- 7 [North Tyneside Local Plan Pre-Submission Draft \(2015\)](#)
- 8 [Impact upon Education Provision of New Home Building 2015 to 2032 \(2016\)](#)
- 9 [North Tyneside Infrastructure Delivery Plan \(June 2016\)](#)
- 10 [Murton Gap and Killingworth Moor Site Specific Infrastructure Delivery Plan, 2016](#)
- 11 [Area Wide Viability Assessment 2015, Residential Update 2016, Commercial Update 2016](#)

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The staff, printing and other costs to consult on the Preliminary Draft Charging Schedule for CIL will be met from within the existing Authority budgets.

Introduction of CIL is not expected to have an impact upon the overall financial position of the Authority as the primary outcome is expected to be an adjustment in the collection of planning gain in terms of use of s106 and CIL in parallel. Upon final adoption of the CIL when the charging rates are set the potential financial implications will be considered.

2.2 Legal

The power to charge the CIL is contained within Part 11 (Section 205-225) of the Planning Act 2008 (“the Act”) and the Community Infrastructure Levy Regulations 2010 (as amended) (“the CIL Regulations”). The CIL is defined as an imposition of a charge, with the aim that the CIL is to ensure costs incurred supporting the development of an area can be funded (wholly or partly) by owners or developers of land in a way that does not make development of the area economically unviable (Section 205(1) and (2) of the Act). Subject to certain exceptions, the CIL must be applied to supporting the development of the Authority’s area by funding the provision, improvement, replacement, operation or maintenance of infrastructure (which may include infrastructure outside its area).

The Local Plan and its supporting documents forms part of the Authority’s Policy Framework and is required to be formulated and progressed in compliance with the requirements of the Policy Framework Procedure Rules at section 4.7 of the Authority’s Constitution. The CIL does not form part of the Local Plan and therefore does not require approval in accordance with the Policy Framework Procedure and can be agreed by Cabinet.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

Engagement has been undertaken with the Local Plan Steering Group (which includes the Deputy Mayor and Cabinet Member for Housing and Transport) for both the need for the CIL and the proposed timetable for taking it forward. The Planning Team have also held internal consultation with a range of officers currently engaged in collecting and spending s106 monies within the Authority such as in the Education and Highways teams to obtain views on the impact of collecting funds via s106 and the CIL.

2.3.2 External Consultation/Engagement

To date only Newcastle City Council and Gateshead Council have an adopted CIL (November 2016) within the North East. Through the on-going duty to cooperate requirements, this Authority has and will continue to liaise with these authorities to ensure consistency in approach and implementation.

Regulation 15 of the CIL Regulations 2010 provides that the first stage towards the adoption of the CIL is the preparation of a Preliminary Draft Charging Schedule (“PDCS”) for consultation. Under that Regulation, the Authority must send a copy of the PDCS and invite representations from each of the consultation bodies (local planning authorities whose area is in or adjoins the Authority area and Parish Councils in the Authority’s area).

The Authority must also invite representations on the PDCS from persons who are resident or carrying on business in its area and as the Authority considers appropriate from voluntary bodies (some or all of whose activities benefit the Authority’s area) and bodies which represent the interests of persons carrying on business in the Authority’s area. The Authority must make such arrangements as it considers appropriate in respect of obtaining these representations.

2.4 Human rights

There are no human rights implications directly arising from this report.

2.5 Equalities and diversity

There are no direct implications directly arising from this report

2.6 Risk management

The risks associated with the preparation and engagement on the Local Plan have previously been assessed. The risks identified have been added to the relevant risk register. They are being managed using the Authority's risk management process.

Failure to develop a CIL Charging Schedule would reduce the Authority's ability to ensure that new development contributes proportionately to infrastructure provision. Failure to adopt a CIL would mean that the Borough would be missing the opportunity to collect contributions and provide benefits to these areas. This would be further curtailed by the limitations associated with the pooling of s106s for the infrastructure needed to support new development.

2.7 Crime and disorder

There are no crime and disorder implications directly arising from this report.

2.8 Environment and sustainability

There are no environment and sustainability implications directly arising from this report.

PART 3 - SIGN OFF

- Deputy Chief Executive
- Head(s) of Service
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Head of Corporate Strategy

Appendix 1 – The Process for Introducing Community Infrastructure Levy

Step 1 – Preliminary Draft Charging Schedule (PDCS)

Publish for consultation its PDCS taking into account viability evidence. The PDCS will set out how much developments will be expected to pay and potential differential rates.



Step 2 – Draft Charging Schedule (DCS)

To publish the DCS together with relevant evidence, a statement of the representations procedure and confirmation that the DCS and relevant evidence are available for inspection and where they can be inspected over a minimum of 4 weeks.



Step 3 – Submission and Examination

Submission of DCS with copies of all representations received and any other background information for examination before an independent Planning Inspector (the Examiner). The Examiner's recommendations will be based on legal compliance, economic viability of the DCS along with its consistency with national guidance and how reasonable and realistic it is.



Step 4 - Adoption

Following receipt of the Examiner's report the charging schedule is adopted following the approval of Cabinet (including any recommended modifications).



Step 5 – Applying the Adopted Charging Schedule

From adoption, CIL is applied.



Step 6 – Monitoring & Reporting

Annual reports detailing the collection and application of CIL funds, the total amount of receipts retained and spent in that year by the end of December each year will be published on the Authority's website.