

Cabinet

14 August 2017

Present: N Redfearn (Elected Mayor) (in the Chair)
Councillors CA Burdis, EN Darke, R Glindon, IR Grayson,
JLL Harrison, CB Pickard and JJ Stirling

In Attendance: O Daniel (Young Mayor)
D Bavaird (Business Sector)
R Layton (North Tyneside JTUC)
P Wonders (Voluntary and Community Sector)

CAB32/08/17 Apologies

Apologies were received from Councillor M Hall, S Scott (Northumbria Police), A Caldwell (Age UK) and M Adams (North Tyneside Clinical Commissioning Group).

CAB33/08/17 Declarations of Interest and Dispensations

There were no declarations of interest or dispensations reported.

CAB34/08/17 Minutes

Resolved that the Minutes of the meeting held on 10 July 2017 be confirmed and signed by the Chair.

CAB35/08/17 Report of the Young Mayor

The Young Mayor reported on the following activities in which he, Young Cabinet Members and/or Youth Councillors had been involved:

- The Young Mayor had attended the Youth Select Committee meeting for Body Image at Portcullis House in Westminster on two occasions and had heard evidence. Witness testimony had been given by a variety of people including leading academics in the study of Appearance Research and Sociology of Gender Education. Oral evidence had been given by some civil society groups, social media bloggers and a representative from facebook and instagram. The Young Mayor would be meeting the group in November to finalise the report on the findings and recommendations which would be given to the Government.
- In preparation for the annual debate in October, several Youth Councillors and the Young Mayor had taken part in debate and speech training. They would be debating issues raised by North Tyneside young people who had taken part in the youth democracy sessions as part of their National Citizenship Service over the summer. They were using this method of selecting debate topics as these issues were concerns for local young people. In the past they had used Make Your Mark ballot topics but this year were looking for a broader variety of issues.

- A group of Youth Councillors was involved with the suffrage centenary planning group to commemorate the vote being given to women aged 30 years and over and men aged 21; this would take place early in 2018
- The Young Cabinet Member for Ready for Life and the Young Mayor had spent time with the design team who had helped them develop Exam revision guides which would be sent to students in schools once they were completed. They thanked John Haynes from Engie who had kindly agreed to fund the project.
- The Member of the United Kingdom Youth Parliament (UKYP) had attended the UKYP's Annual sitting in Liverpool; she had taken part in debates and supported important motions that would go forward to the Make Your Mark consultation. Preparation for the Make Your Mark consultation had already started in North Tyneside. The main business of carrying out the consultation would take place during September.
- The Deputy Young Mayor had taken part in judging this year's North Tyneside in Bloom. He had enjoyed visiting the schools and nurseries and had been impressed by the high standards and the massive participation of students.
- A table top sale of books and puzzles was planned to be held at the Council Offices to raise money for De Pauls 'Young People's Homeless Project based in Whitley Bay.

The Elected Mayor thanked the Young Mayor for the report and encouraged everyone to go along and support the table top sale.

CAB36/08/17 Article 4(1) Direction – Chirton Dene Quays (Previous Minute CAB 134/02/17) (Riverside Ward)

Cabinet considered a report outlining feedback received following consultation in respect of the Draft Article 4(1) Direction for Chirton Dene Quays.

The report outlined the planning background to the Chirton Dene Quays development, whereby the Tyne and Wear Development Corporation (TWDC) had attached a planning condition to the application which had removed certain permitted development rights from the properties, with the aim of preserving the design features of the development. However the permitted development rights were now in effect due to an error in the writing of the original planning condition attached to the planning permission 97/01540/FULUDC and the wording of the restrictive covenant in the Transfer of Sale. This had been compounded by legislative changes in 2015.

Following discovery of the newly acquired permitted development rights, a planning application had been made by the owner of one of the properties that had subsequently been approved, and construction had commenced on the single storey rear extension with balcony, two storey side extension and alterations to the rear fenestration of that property.

Residents at Chirton Dene Quays had been concerned and claimed considerable harm had been caused by the extension due to the visual effect it had on the

appearance of the Royal Quays Marina, and had campaigned through their ward Councillor to have the permitted development rights removed, in line with the original intentions of the UDC.

The only way the Authority could now remove those permitted development rights was by implementing an Article 4(1) Direction to remove the permitted development rights again.

The report set out the relevant legislative provisions in relation to this matter. In making a Direction the Authority had to be satisfied that it was expedient that the development that would normally benefit from permitted development rights should not be carried out unless permission was granted for it through a planning application.

Cabinet had resolved on 13 February 2017 that a draft Article 4(1) Direction for Chirton Dene Quays be prepared. In this case it was clear that the TWDC had intended to remove permitted development rights from the dwelling houses to preserve the uniformity and general appearance of the buildings at Chirton Dene Quays, which existed today except from one building. Whilst the buildings were of a design that was not uncommon, this part of the Quay was an attractive place that no doubt benefited from the uniformity brought about by the removal of the permitted development rights. There was considered sufficient planning merit to reinstate the removal of the permitted development rights at the site and in doing so, restore the legislative control that the LPA had until 2015.

The report outlined Government advice relating to the use of Article 4 directions and the statutory procedural requirements for making an Article 4 Direction.

As required, the Article 4(1) Direction had been published for consultation for over 21 days in the local press, on site and by notice to the owners and occupiers of the dwelling houses to which the draft Direction related. A plan of the properties that would be affected by the Direction and were consulted was attached as Appendix B to the report. Feedback received from the consultation was attached as Appendix D to the report.

When the Direction had been published for consultation, a copy had also been sent to the Secretary of State. The Secretary of State had the power to amend or revoke the Article 4(1) Direction. The Secretary of State had given thanks for the notification and asked to be informed of future decisions relating to this proposal.

If Cabinet was to resolve to bring into force an Article 4(1) Direction, the relevant landowners and the Secretary of State would be informed. Should the Secretary of State have no objections, the Article 4(1) Direction would come into effect from 14th August 2018. It was prudent to allow this 12 months as it would prevent owners and occupiers from being able to make a claim for compensation.

Within the 12 month period owners would benefit from their current permitted development rights and therefore the situation may arise where a majority invoked their right. This was not something the Authority could prevent and could obviously make the subsequent need for making the order redundant; however the Authority

could reasonably assume it had used best endeavours to invoke an Article 4(1) Direction in the most cost effective and reasonable way.

The Deputy Mayor welcomed the report and sought assurance that officers had looked to ensure that there were no other similar potential problems across the Borough.

Cabinet considered the following decision options:

Option 1 - Confirm that an Article 4(1) Direction to remove permitted development rights under Schedule 2, Part 1, Class A, B & E and Part 2, Class A & B of the Order, attached at Appendix C to the report, to household properties at Chirton Dene Quays identified on the map attached as Appendix A and B to the report should be brought into effect on 14th August 2018.

Option 2 - Confirm that it is not considered to be in the public interest to make an Article 4(1) Direction to remove those permitted development rights.

Resolved that (1) the consultation feedback received in respect of the draft Article 4(1) Direction be noted; and
(2) the Head of Environment, Housing and Leisure be authorised, in consultation with the Head of Law and Governance and following notification to the Secretary of State, to bring into force on 14 August 2018 an Article 4(1) Direction (made under Section 3 of the General Permitted Development Order 2015 (“the Order”) to remove some permitted development rights from household properties located at Chirton Dene Quays in North Shields as set out in the report.

(Reason for decision: It appears it was the genuine intention of the TWDC to remove permitted development rights from the dwelling houses at Chirton Dene Quays. The fact the permitted development rights are now in effect is due an error in the writing of the original planning condition attached to the planning permission 97/01540/FULUDC and the wording of the restrictive covenant in the Transfer of Sale.

There appears a majority local desire to see permitted development rights removed from households. Feedback received to the consultation on this matter can be viewed at Appendix D to the report).

CAB37/08/17 Publication of Draft Community Infrastructure Levy Charging Schedule and Draft Planning Obligations Supplementary Planning Document (Previous Minute CAB 133/02/17) (All Wards)

Cabinet received a report seeking approval to publish and formally consult on the Community Infrastructure Levy Draft Charging Schedule and Draft Planning Obligations Supplementary Planning Document.

The CIL was a charge which enabled funds to be raised from new developments to provide supporting infrastructure. Monies raised through CIL could help pay for strategic and local infrastructure such as highways improvements, schools, flood

mitigation, leisure facilities and other community facilities to ensure the Borough grew sustainably.

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

CIL and s106 would operate in parallel within the Borough, although there could be no 'double charging'.

The supporting evidence to the Local Plan included an Infrastructure Delivery Plan (IDP) for the Borough and proposed Strategic Allocations at Murton Gap and Killingworth Moor. The IDP Update 2017 considered the future infrastructure requirements arising from anticipated growth and proposed development and had informed the assessment of requirements in setting out the CIL.

Preparation of the IDP had included consultation with internal and external consultees involved in the delivery and management of local infrastructure. Potential infrastructure projects had been identified across a broad range of infrastructure / service areas, these were outlined in the report.

The IDP Update 2017 outlined further details of the Borough's infrastructure needs and categorised each project as either:

- Critical projects that must be delivered for development to avoid substantial harm.
- Important projects that would have a significant role in ensuring sustainability.
- Desirable projects that could benefit the Borough's overall resilience to growth.

The infrastructure proposed within the IDP may be delivered via CIL, site specific planning obligations or external public and private funding opportunities that may arise and deliver specific projects in full or supplement any developer contributions that were secured.

In accordance with Regulation 123 of the Community Infrastructure Levy Regulations 2010, Authorities must publish a list of the infrastructure to be funded through the CIL known as a "Regulation 123 List". Without such a list, the Regulations assumed that all infrastructure would be collected through CIL and the Authority would not be able to collect any s106 monies. The Regulation 123 list was determined by the Authority after consultation and it may be amended at any time following appropriate local consultation.

Appendix 1 to the report set out a Draft Regulation 123 List to be published alongside publication of the Draft CIL Charging Schedule. The Infrastructure identified in the draft 123 List had been identified based upon overall scale and strategic nature and capacity to support delivery of the Authority's key priorities around education, health and wellbeing, and sustainable travel.

The process for preparation and adoption of CIL was attached at Appendix 2 to the report. Cabinet at its meeting of 13 February 2017 had approved the first step by agreeing a Preliminary Draft Charging Schedule for consultation. This consultation

had concluded on 7 April 2017. A total of 9 responses had been received from a mixture of residents, house builders, business and stakeholders. A full schedule and officer response to all the comments received was attached at Appendix 3 to the report.

Once adopted the CIL imposed a flat rate and non-negotiable charge for all 'qualifying' developments. Developments exempt from the CIL included affordable housing relief and any schemes proposed by charitable institutions. For CIL purposes affordable housing did not include most forms of discounted market housing.

The CIL was a flat rate financial charge per square metre that Local Authorities may choose to levy on a range of developments that resulted in an internal gross floor area of over 100m² or the creation of a new home. The whole floor space was charged not just the area over 100 square metres.

The CIL monies could be spent on any infrastructure deemed necessary to support growth across the Borough, but the infrastructure priorities to be funded through the CIL must be set out in the "Regulation 123 List".

The CIL offered greater flexibility as to how, when, where and what monies could be spent by the Authority in contrast to s106s which were tied to mitigating the direct impacts of the specific development. In addition the Regulations prevented Local Authorities from pooling funds from more than five s106 agreements to support a single infrastructure project or type of infrastructure.

Landowners were ultimately responsible for paying the charge; developers could take on this liability, however the liability ran with the land which was why it was registered as a land charge. The charge was usually payable on commencement of development and this would be detailed in the payment schedule as part of the CIL documents.

The CIL Draft Charging Schedule and associated mapping identifying the variation in CIL rates across North Tyneside was attached at Appendix 4 to the report.

A review of the existing Local Development Document 8, the Planning Obligations SPD, was required to ensure the Authority's approach to seeking s106 was aligned with the North Tyneside Local Plan 2017. Publication of the Planning Obligations SPD alongside preparation of the CIL Draft Charging Schedule would ensure the Authority's approach to seeking s106 agreements was aligned to the use of the CIL and provided transparency for consultees on the overall approach to seeking developer contributions.

The Planning Obligations Supplementary Planning Documents (SPD) outlined the requirements and process for securing s106 agreements. In contrast to CIL, that could meet the Borough wide impacts of growth, s106 agreements must address specific planning impacts of a scheme.

The Planning Obligations SPD provided an important guide for applicants when submitting proposals for development and enabled the Authority to demonstrate a consistent approach to seeking such obligations.

The funding secured by s106 agreements would reflect the actual cost of infrastructure required due to the impact of the scheme, and the economic viability of development, including the cost to the scheme of any CIL payments.

The Draft Planning Obligations SPD proposed for publication and consultation was attached at Appendix 5 to the report.

Based upon analysis of the Local Plan housing trajectory to 2032 there were approximately 10,300 homes still requiring planning permission and therefore potentially subject to developer contributions. Having reviewed the nature and location of sites included within the housing trajectory it was projected that the total revenue secured through CIL and s106 would be approximately £78m.

Delivery of affordable housing was a key priority for the Authority that must be delivered by new development. As the Regulations specifically excluded affordable homes as a type of infrastructure that could be supported by CIL, the delivery of the Authority's requirement for 25% of new homes to be affordable must therefore be secured through s106 agreements and was addressed through the Planning Obligations SPD. The Local Plan sought affordable housing provision on the site of the application in all but exceptional circumstances. Given these specific factors relating to affordable housing the analysis of infrastructure costs and funding in the report did not include affordable homes.

An update to the Authority's Area Wide Viability Assessment had been undertaken to assess the impact of CIL and estimated s106 charges upon development. In addition the average contribution from potential developments had been tested to consider the impact of developer contributions upon the economic viability of development. The Authority could not impose a CIL charge that would render development in the Borough unviable, when all potential costs for development were taken into account.

The estimated pool of developer contributions from CIL and s106 agreements of £78m had been tested through a further update to the North Tyneside Area Wide Viability Assessment.

In addition to CIL and s106 agreements, planning applicants may also be required to undertake improvements to the Borough's highway through conditions attached to planning decisions. Such conditions were enabled through the use of s278 agreements, which enabled developers to undertake works to adopted highways. The value of such works could result in significant investments in the Borough's road infrastructure.

Meanwhile, beyond developer contributions, potential funding to deliver infrastructure would arise through a variety of sources in addition to developer contributions. This may include specific grants and support from regional and national funds through investment by organisations such as the Environment Agency or Highways England. Investment from private companies such as Northumbrian Water Ltd may also take

place. Meanwhile the North East Local Enterprise Partnership and North East Combined Authority would also provide opportunities for investment that would support the infrastructure needs of the Borough.

Statutory consultation on the Community Infrastructure Levy Draft Charging Schedule was proposed for a period of four weeks. Following conclusion of this consultation any responses received must be considered by the Authority and submitted, along with the Draft Charging Schedule, to the Secretary of State. The Secretary of State would then appoint an independent Inspector to carry out an examination in public upon the proposed CIL charge.

The report set out the anticipated key stages in preparation of the CIL.

When statutory engagement was undertaken on the CIL, the Planning Obligations SPD would also be published for consultation. As a supplementary planning document, the SPD would not be subject to the same formal process as CIL. This meant following consultation the SPD would not require submission to the Secretary of State for examination. However, it was probable that the draft SPD would be provided as a supporting document to inform consideration of the Authority's proposed CIL by a Planning Inspector.

The responses received during consultation would be considered and any further changes made before completing the final Planning Obligations SPD. This final Planning Obligations SPD would be presented to Cabinet for adoption.

Further consideration was needed to support the ongoing management of CIL and s106 funding to enable:

- Administration and management of the infrastructure projects on the Reg. 123 List and remaining critical, important and desirable infrastructure.
- Effective strategic co-ordination of developer contributions with potential additional sources of funding.

This may require a designated body to oversee developer contributions funding – either via existing management structures in the Authority or creation of a specific board. The specific arrangements for this would be presented to Cabinet when the final CIL Charging Schedule was proposed for adoption.

The Cabinet Member for Community Engagement welcomed the report and stressed the importance of continuing to engage with residents whilst taking this forward.

The Cabinet Member for Children, Young People and Learning welcomed the specific infrastructure types which had been prioritised on the 'Regulation 123 List' which included secondary school education.

Mr Bavaird, Business Representative highlighted the importance of training and employment to support local business and was pleased that this had been identified as an infrastructure/service area in the IDP.

Cabinet considered the following decision options:

Option 1 – To approve the recommendations as set out in section 1.2 of the report.

Option 2 – Not approve the recommendations as set out in section 1.2 of the report and request the Head of Environment, Housing and Leisure in consultation with the Cabinet Member for Housing and Transport and the Head of Law and Governance to review the proposed Regulation 123 List, Draft Charging Schedule, and / or Draft Planning Obligations SPD.

Resolved that (1) the responses received to the Community Infrastructure Levy Preliminary Draft Charging Schedule consultation be noted;
(2) publication of the Draft Infrastructure Schedule (Regulation 123 List) to be funded through the proposed Community Infrastructure Levy be approved;
(3) the Community Infrastructure Levy Draft Charging Schedule for publication and formal consultation be approved;
(4) the Head of Environment, Housing and Leisure be authorised, in consultation with the Cabinet Member for Housing and Transport, the Cabinet Member for Finance and Resources, the Deputy Mayor and the Head of Law and Governance to:
(i) make additional (minor) modifications to the Community Infrastructure Levy Draft Charging Schedule following formal consultation; (ii) submit the Community Infrastructure Levy Draft Charging Schedule with additional modifications to the Secretary of State; (iii) make any further additional and major modifications necessary to the Community Infrastructure Levy Draft Charging Schedule during its examination, and (iv) undertake required public engagement arising as a result of additional and major modifications if made to the Community Infrastructure Draft Charging Schedule as a result of ((4)iii above); and
(5) publication of the Draft Planning Obligations Supplementary Planning Document for public consultation be approved.

(Reason for decision: The development of a CIL Charging Schedule would enable the Authority to ensure that new development contributes proportionately to strategic infrastructure provision. The charging schedule set out is set at a level that reflects the priority infrastructure the Authority can best deliver via the mechanism of CIL payments and has been tested as economically viable.

Changes to the role of s106s now limit the pooling of contributions for the infrastructure needed to support new development making introduction of a suitable CIL Charging Schedule vital to infrastructure delivery.

Without the introduction of CIL it will only be possible to pool a maximum of five s106 planning contributions for an item or type of infrastructure, thus reducing the Authority's ability to ensure that new development contributes proportionately to infrastructure provision and would present a missed opportunity to collect contributions and provide benefits to these areas.)

CAB37/08/17 Date and Time of Next Meeting

6.00pm on Monday 11 September 2017.

Minutes published on 16 August 2017.

The decisions contained within these Minutes may be implemented (unless called in by 3 Non-Executive Members for consideration by the Overview, Scrutiny and Policy Development Committee) immediately following the expiry of the call-in period; i.e. 5.00pm on 23 August 2017.