

6 November 2012		ITEM: 5
Planning, Transport and Regeneration Overview and Scrutiny Committee		
THE COMMUNITY INFRASTRUCTURE LEVY		
Report of: Paul Clark, Principal Planner, Strategic Planning		
Wards and communities affected: All	Key Decision: Non-Key	
Accountable Head of Service: Andy Millard, Head of Planning and Transportation		
Accountable Director: David Bull, Director of Planning and Transportation		
This report is Public		
<i>If the report, or a part of this, has been classified as being either confidential or exempt by reference to the descriptions in Schedule 12A of the Local Government Act 1972, it is hereby marked as being not for publication. The press and public are likely to be excluded from the meeting during consideration of any confidential or exempt items of business to which the report relates.</i>		
Date of notice given of exempt or confidential report: Not applicable.		
Purpose of Report: To provide Members with a briefing on progress towards the Council's adoption of the Community Infrastructure Levy and seek input into the report which will be considered by Cabinet in December 2012.		

EXECUTIVE SUMMARY

The Community Infrastructure Levy (CIL) is a new charge which local authorities can choose to levy on most types of development in their areas subject to viability considerations. As a means to help fund the infrastructure needed to support the development of an area it is promoted as having benefits over the use of S106 obligations.

The Council is moving towards adoption of a Community Infrastructure Levy Charging Schedule, having consulted earlier this year on a Preliminary Draft Charging Schedule. Cabinet will need to agree a response to the resulting representations where they concern viability considerations before the Draft Charging Schedule is finalised and taken forward for independent examination. Others representations about matters which would not be examined will need to be addressed in due course.

A process will also need to be established for the allocation of CIL receipts. Council has recently resolved that a feasibility study be undertaken with a view to allowing schools to directly spend CIL money designated for educational provision.

1. RECOMMENDATIONS:

1.1 That the Planning, Transport and Regeneration Overview and Scrutiny Committee note the contents of this report.

2. INTRODUCTION AND BACKGROUND:

- 2.1 On 18 February 2011 Cabinet resolved that the Council should proceed to adopt the Community Infrastructure Levy (CIL) as the principal means by which developer contributions towards infrastructure will be collected in Thurrock, and that the necessary viability assessment be undertaken to inform the setting of a Charging Schedule. The officer report and minute are attached at Appendix 1.
- 2.2 The levy is promoted as being faster, fairer, more certain and transparent than the use of obligations under Section 106 of the Planning Act 1990 (S106). In addition, from 6 April 2014 (or upon adoption of the Council's Charging Schedule if sooner) it will only be possible for the Council to pool contributions from a maximum of 5 obligations towards any particular item of infrastructure. Thus, without the adoption of CIL in Thurrock, it is quite possible that the funding of some items of infrastructure would be prejudiced if Section S106 obligations were to be continued to be relied upon.
- 2.3 On 7 March 2012 Cabinet agreed the basis for the production of the Council's Preliminary Draft Charging Schedule, and that consultation on this Schedule be undertaken for a period of six weeks. The officer report and minute are attached at Appendix 2.
- 2.4 The consultation period ran from 16 March to 27th April 2012 and resulted in 18 representations being received - 7 in relation to residential development, 8 in relation to non-residential development and 3 of a general nature.
- 2.5 Cabinet will need to consider these representations before finalising the Draft Charging Schedule that will go forward for examination by an independent examiner who will either approve, modify or reject the Draft Charging Schedule.
- 2.6 At the meeting of Council on 26 September 2012 it was resolved in response to a motion submitted by Councillor Halden that a feasibility study be undertaken with a view to allowing schools to directly spend S106 or CIL money designated for educational provision. A copy of the motion and minute are attached at Appendix 3.

3. ISSUES, OPTIONS AND ANALYSIS OF OPTIONS:

The representations

3.1 The representations received in response to the consultation can be divided into two principal categories; firstly those challenging or querying the Council's viability assessment and the appropriateness of the proposed charging rates, sometimes by reference to particular sites, areas or types of development; secondly those which seek clarity on issues which, while important to the operation of CIL and thus the impact on development activity, are considered peripheral to consideration of what might be an appropriate Charging Schedule. These issues would not be scrutinised by the independent examiner but may be pertinent to the likelihood of any particular development scheme coming forward.

3.2 Representations of particular note in relation to the viability assessments are:-

- The rate proposed for the Riverside Estate/West Thurrock Marshes is too high because the viability assessment has not taken proper account of abnormal construction costs on this area of former marshes. The suggestion is that sites will be used for open storage, which will not be subject to CIL, rather than redeveloped with business premises.
- The rate proposed for the Lakeside basin is too high because the viability assessment has not taken proper account of the abnormal costs associated with decontamination and the higher standard of architecture and public realm works that would be expected by the Council in this area.
- There is a need for clarity as to how the introduction of CIL might affect the London Gateway project. A Local Development Order (LDO) is being considered for this project subject to Appropriate Assessment under the Habitats Directive.

It should be noted here that development the subject of a possible LDO, would be permitted development and would not need to be made the subject of planning applications. The London Gateway planning permission is already subject to a S106 obligation requiring certain payments and works. Development authorised by an LDO at a time when a CIL Charging Schedule has been adopted would incur a CIL liability. Based on the scale of development proposed at London Gateway the total CIL liability would be significantly higher than the cost of the S106 obligations. These issues are being investigated.

- The proposed rates should not apply to:- retail schemes on brownfield land; larger retail schemes and extensions to retail units; retirement homes, and any enabling development that might be necessary to help fund the provision of hospice accommodation which is supported in principal in policy CSTP11 of the Council's Adopted Core Strategy.

- 3.3 Various submissions have also been made that the wrong assumptions about such matters as development costs and timings have been factored into the viability assessments and the lack of clarity as to why the charging areas have been drawn as they have.
- 3.4 Representations of particular note in relation to other matters are:-
- The Council has not published the list of items it intends to fund by way of CIL receipts (the 'Regulation 123 list') so there is no certainty about the total developer liability that might arise if the Council continued to seek payments for some infrastructure items via S106 obligations in addition to CIL charges.
 - It is not clear whether the Council is prepared to offer exceptional circumstances relief in cases where the combination of S106 and CIL costs would prejudice the viability of development schemes.
 - Questions about liability to pay CIL when developers seek to vary permissions granted before the introduction of the Council's Charging Schedule. It can be noted here that this matter is soon to be resolved by new regulations which will mean developers will only be liable to pay CIL in respect of any additional floorspace arising from revised proposals.
 - The merits of adopting policies relating to the payment of CIL liabilities by instalments, and the transfer of land for infrastructure in lieu of CIL payments.
- 3.5 Cabinet will have to decide a way forward in response to the representations and to agree the Draft Charging Schedule for consultation and examination. In the light of some of these representations officers are presently reviewing the viability appraisals to see where they could be made more robust and where some change(s) to the Preliminary Draft Charging Schedule might be appropriate. The conclusions are to be reported to Cabinet on 12 December.
- 3.6 In considering a way forward the Council will need to be guided by the CIL regulations which require authorities in setting CIL rates to aim to strike a balance between the desirability of funding infrastructure from CIL and the potential effects taken as a whole of the imposition of CIL on the economic viability of development across its area. Consequently there is no requirement that CIL charging rates are set so that all development schemes are viable and thus no expectation that all adverse comments will have to be resolved to respondents satisfaction if they do not concern matters of broad viability.
- 3.7 In respect of those matters peripheral to the Charging Schedule it will not be necessary for Cabinet to respond to all of these before the Schedule is examined. The Council can then benefit from consideration of best practise and any case law – currently only a handful of authorities have a Charging Schedule in place. Conversely, the benefits of an early resolution to these matters would be more certainty for the development industry.

The allocation of CIL receipts

- 3.8 By way of background to the recent motion put to Council there is clearly a need for the Council to establish a process for allocating monies from the single CIL 'pot' to particular infrastructure items, of whatever type, appearing on its future infrastructure list. The allocation process could entail periodically inviting and considering bids for funding from spending departments and other bodies including academy schools on those occasions when the CIL 'pot' has reached a significant amount. Priorities could be set in advance to be fulfilled when there are sufficient receipts. However it would seem more sensible to target spending in the knowledge of how much there is in the pot rather than in the hope or expectation of receiving monies.
- 3.9 In respect of education, and assuming that most if not all developer contributions towards education projects will be secured by way of CIL rather than by S106 obligations, it might be possible to establish an advisory panel or sounding board where local schools could have an input into the prioritisation of funds. The deliberations of this group could either be before or after an overall allocation has been made towards education. The Council decision of 26 September suggests that it should be after. Depending on the process adopted, the merits of any particular education project would thus be assessed by reference to all other types of needed infrastructure. At the root of this will be a decision about the relative worth of education facilities – that is, whether education is considered of such importance that a proportion of CIL receipts should be set aside to be spent as subsequently considered appropriate. Based on the charges set out in the Preliminary Draft Charging Schedule, it is likely that the rate at which CIL receipts might accrue will be such that particular education projects may well have to be considered against other infrastructure requirements, not just other education projects.
- 3.10 The feasibility study can explore the practicalities of possible arrangements, but clearly a decision about the process by which funds are allocated to and between education projects will need to take into account Members views about where accountability should lie and who is best placed to make decisions about allocations.
- 3.11 A wider ranging report regarding governance arrangements for the allocation of CIL receipts and the future use of S106 obligations will be considered by Cabinet next year.

4. REASONS FOR RECOMMENDATION:

- 4.1 In order that the Committee may acknowledge the present position regarding the progress of CIL and input into the process moving forward.

5. CONSULTATION (including Overview and Scrutiny, if applicable)

5.1 Formal consultation on the Preliminary Draft Charging Schedule has taken place. Further consultation will take place when the Council publishes its final Draft Charging Schedule.

6. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT

6.1 Subject to decisions as to how the proceeds of the levy may be spent the provision of various types of infrastructure funded by the levy could:- assist with creating a great place for learning and opportunity; encouraging and promoting job creation and economic prosperity; and helping protect and promote our clean and green environment.

7. IMPLICATIONS

7.1 Financial

Implications verified by: **Frank Gardiner**
 Telephone and email: **01375 652147**
fgardiner@thurrock.gov.uk

The financial implications of CIL have been detailed in the appended Cabinet papers.

7.2 Legal

Implications verified by: **Alison Stuart – Principal Housing and Regeneration**
 Telephone and email: **01375 652040**
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The legal implications of CIL have been detailed in the appended Cabinet papers.

7.3 Diversity and Equality

Implications verified by: **Samson DeAlyn**
 Telephone and email: **01375 652472**
sdealyn@thurrock.gov.uk

The diversity and equality implications of CIL have been detailed in the appended Cabinet papers.

7.4 Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental

None

BACKGROUND PAPERS USED IN PREPARING THIS REPORT (include their location and identify whether any are exempt or protected by copyright):

- Thurrock Community Infrastructure Levy Preliminary Draft Charging Schedule.
- Representations received in response to Thurrock Community Infrastructure Levy Preliminary Draft Charging Schedule.

APPENDICES TO THIS REPORT:

- Appendix 1 – 18 February 2011 Cabinet report and minutes
- Appendix 2 – 7 March 2012 Cabinet report and minutes
- Appendix 3 – Motion 3 submitted to Council 26 September 2012 and minutes

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