

18 February 2011		ITEM 12 01109082
Cabinet		
THE COMMUNITY INFRASTRUCTURE LEVY		
Report of: Councillor A Smith, Portfolio Holder for Housing and Regeneration		
Wards and communities affected: All	Key Decision: Key	
Accountable Head of Service: Andrew Millard, Head of Planning and Transportation		
Accountable Director: Bill Newman, Director of Sustainable Communities		
This report is Public		
Purpose of Report: <ul style="list-style-type: none"> • To provide members with a briefing on the Community Infrastructure Levy. • To seek the agreement of Cabinet that the Council adopt the levy as the principal means by which developer contributions towards infrastructure should be collected within Thurrock. • To seek the agreement of Cabinet to initial work being undertaken to inform the setting of a levy charging schedule, and to further reporting stages. 		

EXECUTIVE SUMMARY

On the 18th November 2010 the Government confirmed that the Community Infrastructure Levy (CIL) introduced by the previous Government would be continued with changes because it is considered to provide a fairer system for funding new infrastructure than the current use of obligations under Section 106 of the Planning Act 1990. The use of the levy is at the discretion of local authorities. The view of officers is that adoption of the levy would be of benefit to Thurrock.

Adoption of the levy will have implications for the Council's intended Developer Contributions Supplementary Planning Document.

1. RECOMMENDATIONS:

- 1.1 **That Council be recommended to adopt the Community Infrastructure Levy, as the principal means by which developer contributions towards infrastructure be collected within Thurrock.**
- 1.2 **That the necessary viability assessment be undertaken to inform the setting of a Charging Schedule.**
- 1.3 **That further reports be taken to Cabinet, in due course, to agree a Provisional Draft Charging Schedule for consultation, to report on the outcome of that consultation, and to agree a resulting Draft Charging Schedule for consultation.**

2. INTRODUCTION AND BACKGROUND:

- 2.1 On the 18 November 2010 the Government confirmed that the Community Infrastructure Levy, introduced by the previous Government, would be continued, with some changes. The Government considers the levy would provide a fairer system to fund new infrastructure than the current use of obligations under Section 106 of the Planning Act 1990. The use of the levy is at the discretion of local authorities.
- 2.2 The Council's submitted Core Strategy identifies that, in order to deliver the regeneration agenda for Thurrock, it is necessary that the essential social and physical infrastructure be delivered by the public and private sectors. The means by which Council's have to date secured developer contributions towards infrastructure has been by way of the use of obligations under Section 106 of the Planning Act 1990. Use of the levy is encouraged instead because it would:-
 - Deliver additional funding for local authorities to carry out a wide range of infrastructure projects, that support growth and benefit the local community
 - Give local authorities the flexibility and freedom to set their own priorities for what money should be spent on; as well as a predictable funding stream that allows them to plan ahead more effectively
 - Provide developers with more certainty 'up front' about how much money they will be expected to contribute which, in turn, will encourage greater confidence and higher levels of inward investment.
 - Ensure greater transparency for local people, because they will be able to understand how new development is contributing to their community

In addition the Government intends, pursuant to its 'Localism' agenda, to make additional regulations that would enable local authorities to allocate a share of the levy raised in a neighbourhood to deliver infrastructure identified by the neighbourhood community itself.

- 2.3 The levy, expressed as a rate of pounds per square metre, is charged on most new developments that involve a net increase in floorspace. Although ultimate liability to pay the levy rests with the landowner, the regulations allow for other parties to come forward and assume liability. There is a discretionary power to grant relief from liability to pay the levy in exceptional circumstances, subject to a formal notification process by the charging authority. Social housing and developments for charitable purposes are exempt. Obligations remain the method for securing Affordable Housing.

There is the ability to charge variable levy rates depending on development type and locality. A local authority must aim to strike what appears to it to be an 'appropriate balance' between the desirability of funding infrastructure from the levy and the potential effects, taken as a whole of the imposition of the levy, on the economic viability of development across its area. The preparation of a charging schedule should be informed by appropriate evidence regarding the infrastructure funding gap and general development viability. The Charging Schedule must be increased, in line with inflation, by reference to an index of construction costs specified by the Government.

- 2.4 The formal process leading to adoption of the levy involves public consultation and consideration, by an independent examiner, by way of an Examination in Public (EIP). The Council would have to produce and consult on a Preliminary Draft Charging Schedule and its final Draft Charging Schedule. The Draft Charging Schedule should not be published until the Council's Core Strategy has been adopted. The Government expects the appropriate evidence base to include an up-to-date development strategy, which should normally be set out in an adopted Core Strategy. The possibility does exist for an authority to advance a Draft Charging Schedule, alongside a proposed Core Strategy. This is not a practicable option for the Council. It would not be possible to advance preparation of a Draft Charging Schedule to 'catch up' with the Submitted Core Strategy. However, the Council could undertake all that work necessary to prepare a Draft Charging Schedule, in expectation of the Core Strategy being adopted.
- 2.5 Following the EIP, the Examiner will either approve, modify or reject the Draft Charging Schedule. Rejection would occur if the Examiner considered the evidence base to be inadequate; the Draft Charging Schedule to be inconsistent with the evidence or would put the overall development of the area at serious risk. Under the current regulations any changes to a Council's levy rates, requested by the Examiner, are binding. However, the Government intends to include provisions, within the Localism bill, to give authorities more discretion about how unreasonable charges are corrected. Once any modifications recommended by the Examiner have been addressed, the charging schedule must be formally approved by a resolution of Full Council, in order to ensure democratic accountability.
- 2..6 On adoption of the levy, the regulations restrict the use of obligations to ensure that individual developments are not charged for the same infrastructure items through both obligations and levy. A charging authority should set out a list of the infrastructure items it intends to fund from levy

revenue. The authority cannot then seek a contribution towards those same items by way of obligations. If the authority does not publish such a list, then this would be taken to mean that the authority was intending to use levy revenue for any type of infrastructure (that could be funded by the levy) and thus could not seek an obligation contribution towards any such infrastructure.

- 2.7 The regulations permit up to 5% of the revenue arising from the levy to be used on administrative expenses.
- 2.8 The Council would be able to pass money to other bodies to help deliver infrastructure within Thurrock. For example, those delivering health facilities.
- 2.9 Authorities choosing to adopt CIL must produce an annual report detailing how much revenue has been raised in the previous financial year, how much has been spent, and what infrastructure has been funded.
- 2.8 Thurrock Thames Gateway Development Corporation cannot charge the levy. However it can, by agreement with the Council, collect the levy on behalf of the Council in relation to those developments for which the Corporation grants planning permission.

3. ISSUES AND/OR OPTIONS:

- 3.1 The Levy is promoted as being faster, fairer, more certain and transparent than the use of obligations. While these perceived benefits may be debatable in some respects, adoption of the levy should assist in the provision of infrastructure in Thurrock; not least because of the likely increase in total funding that would arise from application of the levy, to many more developments than are currently made the subject of obligations.
- 3.2 Although there is no compulsion on local authorities to adopt the levy, because it is the Government's preferred vehicle for the collection of pooled infrastructure contributions, the regulations introduce restrictions that will reduce the effectiveness of obligations as a means to secure infrastructure. From the 6 April 2014 (or upon local adoption of the levy) the pooling of contributions towards an item of infrastructure will effectively be limited to that arising from a maximum of five obligations. This will significantly prejudice the delivery of some infrastructure items in Thurrock, which would depend upon contributions from numerous developments.
- 3.3 Because developers and landowners would know with certainty what sums are liable to be paid under the levy, this could be factored into developer's financial appraisals and their discussions with landowners. This should reduce those instances of developers abandoning their proposals, because they have underestimated the cost of necessary contributions, or seeking to argue their way out of making contributions because they have committed themselves to 'paying over the odds' for sites in a competitive environment. The processing of planning applications should be more straightforward and thus swifter.
- 3.4 The ability to charge differential levy rates means that Councils are able to tailor the levy to reflect the economics of any low demand areas they have,

setting a lower charge so as not to generally frustrate development in those areas, while maintaining higher charges in those parts where demand is stronger. The viability assessment would show whether such an approach is justified.

- 3.5 The Localism Bill includes provisions which, if enacted, would enable levy revenues to be used in connection with the ongoing costs of providing infrastructure. This is distinct from current Circular advice relating to the use of obligations. The latter states that obligations should not be used to pay for the maintenance of what are intended to be public facilities beyond initial support (pump priming). Should these provisions be enacted, it would offer further flexibility to the Council in directing developer funding towards infrastructure.
- 3.6 The levy is intended to provide infrastructure to support the development of an area, rather than to make individual planning applications acceptable in all respects. As a result, there may still be some site specific mitigation measures, without which a development should not be granted planning permission. There would still be scope for obligations to address these mitigation requirements.
- 3.7 For these main reasons it is recommended that the levy be adopted by the Council.
- 3.8 The Council's Local Development Scheme identifies that a Developer Contributions Supplementary Planning Document (SPD) will be produced as part of the Local Development Framework. Preparatory work on this document has already commenced. Adoption of the levy would mean that many of the funding formulae, that would otherwise need to be included in the SPD to deal with specific types of infrastructure, can be dispensed with. However, the SPD would still be needed to deal with those matters that would not fall within the definition of 'infrastructure'.
- 3.9 It is envisaged that further reports be taken to Cabinet, in due course, to agree the Preliminary Draft Charging Schedule for consultation, to report on the outcome of that consultation, and to agree a resulting Draft Charging Schedule for consultation.
- 3.10 Consideration will also need to be given, at a later date, to the method by which spending priorities will be determined. This is because adoption of the levy would mean that specific infrastructure projects would no longer be generally identified and thus developer funding would be 'allocated' at the time individual planning applications are considered.

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

- 4.1 The matter was the subject of a report to Planning, Transport and Regeneration Overview and Scrutiny Committee on 1 February 2011.

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

- 5.1 The Council's priorities include; *'to encourage and promote job creation and economic prosperity, to ensure a safe, clean and green environment, and to improve the education and skills of local people'*. The provision of various types of infrastructure will assist with these priorities and any measures which improve infrastructure delivery will assist further.
- 5.2 The provision of necessary infrastructure will have a positive impact on the community. The detail of the proposed regulations relating to the allocation of a share of the levy, to priorities determined by neighbourhoods, has yet to be seen. However, it raises the possibility of communities always receiving some direct benefit, even if, from necessity, the greater proportion of the levy revenue might, on occasions, have to be utilized to address the cumulative impact on infrastructure, that may occur further away from the community in which development is located.

6. IMPLICATIONS

6.1 Financial

Implications verified by: **Meinir Hall**
 Telephone and email: **01375 652147**
mhall@thurrock.gov.uk

The ability to utilise a proportion of the revenue arising from the levy to cover administrative costs will be of benefit to the Council. The Council will have to consider funding plans for schemes as, in the future; only a maximum of 5 obligations can be used on the same scheme.

6.2 Legal

Implications verified by: **Remi Aremu**
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Raremu@thurrock.gov.uk

The power to charge CIL is contained within Part 11 (Section 205-225) of the Planning Act 2008 ("the Act") and the Community Infrastructure Levy Regulations 2010 ("the Regulation"). CIL is defined as an imposition of a charge; the purpose of which is to ensure costs incurred in providing infrastructure to support development of the area can be funded (wholly or partly) by owners or developers of land (Section 205(1) and (2) of the Act).

It should be noted that a charging authority cannot adopt CIL unless it has first produced a charging schedule and must only implement CIL in reliance on an up to date development plan. A charging authority must approve the charging schedule at a meeting of the authority and by a majority of votes of members present.

There are requirements in the CIL Regulation and the Act relating to appeals against the application of CIL and the enforcement of CIL.

It should be further noted that, on the 18 November 2010, the government announced that CIL will be retained. However, the Decentralisation Minister indicated that it would be reformed, so that neighbourhoods receive a proportion of funds raised by Councils from developers. This would enable money to be spent on local facilities. Careful monitoring of any such reform should be maintained by the Council.

6.3 **Diversity and Equality**

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

Adoption of the levy would allow the Council and potentially local neighbourhoods, to target the resulting revenue stream towards those types of infrastructure considered necessary to meet the needs of different areas. This is a key point in terms of delivering equality and diversity through the Council's services. Consequently, the levy is potentially a very positive development. An Equality Impact Assessment should be undertaken and all equality considerations taken into account, as part of the process leading to adoption.

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

The use of the levy will have beneficial effects as crime reduction, health, the pursuit of sustainable development and environmental improvement will be assisted by the provision of additional infrastructure.

7. **CONCLUSION**

7.1 Now that the Government has confirmed its intentions to continue with the Community Infrastructure Levy, this is a timely moment to consider the merits of adopting the levy in Thurrock. The view of officers is that adoption would be of benefit to Thurrock.

BACKGROUND PAPERS USED IN PREPARING THIS REPORT:

- The Community Infrastructure Levy Regulations 2010
- Planning Act 2008
- Localism Bill

APPENDICES TO THIS REPORT:

- None.

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DECISIONS TAKEN AT THE MEETING OF CABINET held on 18 February 2011 at 6.00pm

THE LAST DAY FOR CALL IN OF THE FOLLOWING DECISIONS IS 5pm ON 28 FEBRUARY 2011

Present: Councillors J Kent (Leader and Chair), V Morris-Cook (Deputy Leader), D Hale, C Curtis, G Rice, Y Gupta, T Fish, O Gerrish, L Worrall

Apologies: Councillor Smith
Councillor Gerrish (arrived 6.35)
Councillor Fish (arrived 6.50)
Councillor V Morris-Cook (arrived 6.50)

1. TO APPROVE THE MINUTES OF THE PREVIOUS MEETING OF CABINET

The Minutes of the Cabinet meeting held on 12 January 2011 were approved as a correct record.

2. DECLARATIONS OF INTEREST

Councillor Hale declared a personal interest in respect of Agenda Items 14 (Asset Management Strategy) as she is a member of the South Essex College Board.

7. COMMUNITY INFRASTRUCTURE LEVY – Decision No 01109082

RESOLVED

- 1. That Thurrock Council proceed to adopt the Community Infrastructure Levy, as the principal means by which developer contributions towards infrastructure will be collected in Thurrock.**
- 2. That the necessary viability assessment be undertaken to inform the setting of a Charging Schedule.**
- 3. That further reports be taken to Cabinet, in due course, to agree a Provisional Draft Charging Schedule for consultation; to report on the outcome of that consultation and agree a final Draft Charging Schedule for consultation.**

Reason for Decision: As set out in the report

Status: This decision may be subject to call in

