

BABERGH DISTRICT COUNCIL

From: Head of Economy	Report Number: R85
To: Council	Date of meeting: 20 January 2016

ADOPTION OF COMMUNITY INFRASTRUCTURE LEVY

1. Purpose of Report

- 1.1 To provide the Council with an update on the Community Infrastructure Levy (CIL) following Examination and to seek approval for the Babergh Community Infrastructure Levy Charging Schedule in accordance with Section 213(3B) of the Planning Act 2008 (as amended). Also to seek approval of supporting documentation in order to facilitate the implementation of CIL on all planning applications determined from 11th April 2016.

2. Recommendations

- 2.1 That the Charging Schedule (as detailed in Appendix B), which includes the modifications proposed by the Examiner, as summarised at paragraph 10.11, be adopted for implementation on 11th April 2016.
- 2.2 That the Instalments Policy (as detailed in Appendix F) and Regulation 123 List (as detailed in Appendix E) be adopted and implemented alongside the Charging Schedule on 11th April 2016.
- 2.3 That delegated authority be given to the Strategic Director to make changes to the Instalment Policy when necessary to ensure that it can respond to changing circumstances and remain relevant to the types of scheme coming forward in the district.
- 2.4 That delegated authority be given to the Strategic Director to make changes to the Regulation 123 List when necessary to ensure the continued effective operation of the CIL and the Section 106 planning obligations regime.

3. Financial Implications

- 3.1 There are financial implications to consider for the Council, in the adoption and running of a CIL charging framework.
- 3.2 The CIL is intended to ensure that owners and developers of land make a contribution towards the delivery of infrastructure required as the CIL rates are considered an up-front cost to be deducted from the value of the land itself (i.e. not added on to the price of a house at the end).

- 3.3 Current estimates of S106 funding generated (prior to the legislative pooling restrictions) amount to approximately £0.8m/yr for the Council. If a CIL is adopted, it is currently estimated that it could generate approximately £1m/yr of funding for the Council to spend on infrastructure over the next 15 years (in accordance with the CIL infrastructure list).
- 3.4 In accordance with the CIL Regulations, upon CIL implementation there is a requirement that a 'Neighbourhood Portion' of the Council CIL funding generated must be passed on directly to local communities where CIL liable development takes place. This is at least 15% in all parishes (subject to capping restrictions), and is increased to 25% for those areas which have an adopted Neighbourhood Plan.
- 3.5 If a CIL is adopted, within the Community Infrastructure Levy Regulations the Council can reclaim the administrative costs of both the development and implementation of the Community Infrastructure Levy. Up to 5% of the total CIL collected can be reclaimed to cover these costs within the first three years.
- 3.6 Currently the development and first three years of the implementation costs of CIL has been funded through the Transformation Fund. The Fund will be reimbursed as income is collected from CIL. The predicted CIL fund levels indicate that implementation costs will be less than the 5% threshold and therefore self-financing.
- 3.7 Conversely, if the Council does not adopt CIL, the significant restrictions imposed on Section 106 planning obligations are likely to seriously disadvantage the Council in collecting funds for infrastructure provision, as the Council is now restricted to a maximum of 5 individual agreements per infrastructure item. This limit means that no tariffs can be applied or 'pots' built up to fund infrastructure.

4. Legal Implications

- 4.1 The CIL Charging Schedule has been developed in line with the requirements of the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 ("CIL Regulations") as amended.
- 4.2 The proposed Regulation 123 List is made pursuant to the CIL Regulations 2010 as amended.
- 4.3 The Charging Schedule has been found to be in compliance with the relevant legislation and statutory guidance by an independent Examiner. In accordance with the Planning Act 2008 (as amended) the Council has had regard to the Examiner's recommendations and the reasons for them and has incorporated her recommendations within the Charging Schedule.
- 4.4 The CIL Regulations and Planning Practice Guidance state that the Charging Schedule must be formally approved by a resolution of full Council. The resolution should include an appropriate commencement date. Under the Regulations, this is noted as the beginning of the day on which it takes effect. The recommended commencement date is **11th April 2016**.

5. Risk Management

5.1 Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
Legal challenge to CIL adoption	Unlikely	Severe	The CIL has been rigorously tested at Examination for legal compliance and has been recommended for adoption by the Examiner, subject to modifications.
Incomplete operational preparation	Unlikely	Noticeable	An Infrastructure Team has been established and has progressed tasks with high priority to ensure that CIL implementation date is achievable.
Viability issues	Unlikely	Noticeable	The CIL has been tested at Examination with a robust evidence base that factors in appropriate viability testing of development with full policy compliance.

5.2 Not utilising developer contributions in a timely and effective manner represents a lost opportunity to provide sustainable community benefits and mitigate the impact of development. The significant tightening of Section 106 rules means that funding for infrastructure is significantly limited if the Council relies solely on S106 (and does not adopt CIL).

5.3 The CIL Charging Schedule has now undergone scrutiny, and has been recommended for adoption by the independent Examiner, subject to modification. However, there is a risk of legal challenge to the adoption of CIL, and aggrieved parties have a period of 6 weeks to lodge any such challenge. No such challenge is anticipated at this time, based on the nature of the objections heard at the Examination. Should the Council vote to adopt CIL, an implementation date should be set at least 6 weeks after the decision date to allow for the statutory challenge period to expire. In addition, the Council must be mindful of the required preparatory tasks in order to successfully implement the CIL. The relevant work is well advanced on these matters and it is fully anticipated that the proposed date of effect is achievable.

6. Consultations

6.1 A comprehensive programme of statutory and non-statutory consultation and engagement has been undertaken for CIL. The key stages and milestones in the programme are set out in Appendix A.

7. Equality Analysis

- 7.1 An Equality Impact Assessment has been carried out and is attached to this report at Appendix G. The adoption of CIL is not considered to have any negative impact on key protected characteristic groups across the district. When assessed, it has an overall positive impact, particularly relating to the potential for CIL-funded infrastructure schemes.

8. Shared Service / Partnership Implications

- 8.1 There are no shared service or partnership implications. However, Members should note that the Infrastructure Team will be shared officer resource to both Babergh District Council and Mid Suffolk District Council.

9. Links to Joint Strategic Plan

- 9.1 Adoption of the CIL will enable to the Council to realise objectives of the Joint Strategic Plan 2014-2019, primarily based around Economy and Environment and Housing. Funding will be secured which will help to support sustainable economic and housing growth in the district, through appropriate infrastructure and environmental improvements. A proportion of CIL funding (15/25%) will also be directly available to local communities for them to spend on their specific local priorities.

10. Key Information

- 10.1 The Community Infrastructure Levy (CIL) was created under the Planning Act 2008. It is a levy which local authorities across the country can choose to charge on new development within their area.
- 10.2 Funds collected through the CIL can typically be used to support the delivery of off-site infrastructure (and not on site services and facilities) which the local authority, local communities and stakeholders consider necessary to support the future growth of an area.
- 10.3 CIL is a charge that is placed on most new developments to contribute towards the provision of adequate infrastructure. The Government is clear that most new development has an impact on the need for infrastructure, services and facilities.
- 10.4 Currently, the Council collects development contributions through Section 106 planning obligations to deliver infrastructure and facilities. Historically these have been pooled to deliver larger contributions, but national Regulation changes have now constrained the use of these. Instead, the CIL Regulations establish the introduction of CIL as the primary means which Councils can choose to collect funds to deliver the infrastructure and facilities required to support future growth and development across the district.
- 10.5 The landscape for Section 106 agreements has changed significantly. The pooling restrictions deadline came into force in April 2015 meaning that the standardised tariff based approaches are no longer possible. As a result, without the introduction of CIL, the Council is facing an uncertain time in respect of the funding and delivery of key infrastructure and facilities across the district.

- 10.6 Many local authorities across the country have already implemented CIL. It is estimated that around half of the country has a CIL in place, and the majority of the remainder are working towards their own CIL Charging Schedule. (Locally for example Huntingdon, South Norfolk, Suffolk Coastal, Waveney, Chelmsford, Southend have all adopted CIL).
- 10.7 Councillors are referred to the previous Strategy Committee reports, [P91](#) (January 2015) [P67](#) (October 2014) and [P14](#) (May 2014) and Full Council paper [P116](#) (March 2015) for further background information on the CIL adoption programme. Appendix A sets out the key stages and milestones for the CIL Consultation and Engagement programme. There has been continuous and on-going dialogue with Councillors, key stakeholders (agents, infrastructure providers etc.) and local communities throughout the process.
- 10.8 The Council's Core Strategy, sets out the future growth proposals for the district and formed the basis for preparing the evidence required for CIL. An Infrastructure Delivery Plan (IDP) was commissioned and concluded that an estimated total of £76m was required for infrastructure investment in the district. The rationale for introducing the CIL charge is to make a meaningful contribution towards funding infrastructure requirements, although the regulations acknowledge that CIL cannot be the only means to fund new infrastructure.
- 10.9 The Council commissioned expert consultants, Peter Brett Associates (PBA), to undertake a CIL Viability Report to determine what level of CIL charge might be appropriate across the district. The regulations require that the level of CIL charges strike an appropriate balance between the desirability of funding infrastructure from the levy, and ensuring that the charges do not have a detrimental impact upon the economic viability of development in the area.
- 10.10 A statutory process of consultation has been followed in the development of the CIL. The CIL Charging Schedule has been examined by Mrs Yvonne Wright BSc (Hons) Dip TP MSc DMS MRTPI from the Planning Inspectorate. The Examination process has provided a full opportunity for the CIL Charging Schedule to be tested with objectors making their case to the Examiner and the Council defending its position and evidence.
- 10.11 The CIL Examination has now finished and the Council is in receipt of the Examiner's Report dated 15th December 2015. The Report concludes that the statutory tests have been met, subject to a number of modifications to the CIL Charging Schedule. These modifications are summarised as:
- EM1 – recommending the appropriate rates upon which to charge CIL
 - EM2, EM3 and EM4 – amendments to ensure consistency with national policy and clarity of understanding.
- 10.12 Officers consider these modifications to be reasonable and justified. They also ensure that the Council can move towards the introduction of CIL charges across the district without delay. The Examiner's recommended charges are not considered to put the overall development of the area at risk and therefore, strike the appropriate balance as required by the CIL Regulations.

- 10.13 The Examiner's Report has been made available for inspection on the Council's website and in the locations where previous documents were made available, in accordance with Regulation 23 of the CIL regulations 2010 (as amended).
- 10.14 The final CIL Charging Schedule following Examination is found in Appendix B of this report. A summary of the charges is set out in the table below.

Residential development	<u>High zone – all developments</u> £115 <u>Low zone</u> 1-2 dwellings - £90 3 + dwellings - £50
Strategic sites (as defined in the Core Strategy: Chilton Woods – Sudbury, strategic broad location for growth – East of Sudbury/ Gt Cornard, Lady Lane – Hadleigh, Babergh Ipswich Fringe, Brantham Regeneration Area)	£0/sqm
Convenience retail (supermarkets etc.)	£100/sqm

- 10.15 It is proposed that the Charging Schedule comes into effect on **11th April 2016**. Any planning applications for full planning permission of chargeable development (see table above) determined from that date onwards will be liable to pay CIL according to the rates in the Charging Schedule. Applications for Reserved Matters planning applications determined from the date of effect will also be liable for CIL except where they relate to outline planning permissions that were determined prior to the date of effect.
- 10.16 CIL charges will be applied to all new residential uses (subject to the statutory exemptions such as Affordable Housing relief and Self Build relief). It will also be applied to convenience retail uses where the floorspace is greater than 100sqm. The identified strategic sites will charged at a zero CIL rate, but will pay S106 contributions towards their necessary infrastructure requirements. All other uses will not be charged CIL. Local Town and Parish Councils will not qualify for the receipt of the Neighbourhood Portion of CIL funding from development, until the implementation date for the Charging Schedule.
- 10.17 Upon CIL adoption, the CIL infrastructure list (known as the 'Regulation 123 list') becomes an essential supporting document to the Charging Schedule. It sets out infrastructure projects or types of infrastructure that the Council intends will be, or may be, wholly or partly funded by CIL funds. From the date of CIL implementation, the Council cannot also collect S106 funding for items stated on the CIL infrastructure list. The Council may amend the CIL infrastructure list without revising its charging schedule, subject to appropriate consultation. However, where a change to the CIL infrastructure list would have a very significant impact on the viability evidence that supported the Examination of the charging schedule, this should be made as part of a review of the Charging Schedule.

- 10.18 As a further supporting document to the charging schedule, the Council is also proposing to operate an Instalments Policy, in order to assist with delivery and in recognition of development economics and cash flow over time.
- 10.19 Should the Council resolve to adopt the Charging Schedule, officers will then publicise the decision and the Charging Schedule in accordance with the Regulations (see draft statutory notice in Appendix D). The newly appointed Infrastructure Team are responsible for the implementation of CIL collection, administration, monitoring, and enforcement and spending.
- 10.20 From the date CIL is agreed for adoption, the Council will need to address a number of key matters ahead of the CIL date of implementation, including:
- i. **Residual S106 matters** – Council officers are continuing to process S106 agreements, including any ‘locked’ historic matters and getting them signed will enable planning permissions to be formally issued on these sites. Awareness raising has taken place and will be ongoing with the development sector to advise on where sites are likely to become CIL liable. In addition, the Council notes the advice of the CIL Examiner to produce a Planning Obligations Supplementary Planning Document to clarify the role of CIL and S106 collection in accordance with the Regulations.
 - ii. **Back office systems and processes** – Specialist software is available to ensure that efficient and detailed information on S106 and CIL funding is recorded and monitored accurately. The Infrastructure Team are currently finalising and testing the software and procedures for collection as well as communicating with all stakeholders in readiness for implementation. Upon adoption, officers will populate the software with relevant forms and letter templates etc. to facilitate the smooth administration and reporting of developer contributions.
- 10.21 The matters above have been identified as high priority and are being addressed by Council officers to ensure the Charging Schedule can take effect from the proposed implementation date.

11. Appendices

Title	Location
A CIL Consultation and engagement programme	Attached
B Babergh Charging Schedule	Attached
C Examiner’s Final Report	Attached
D CIL Approval Notice [draft]	Attached
E CIL Regulation 123 Infrastructure List	Attached
F CIL Instalments Policy	Attached
G Equality impact assessment	Attached

12. Background Documents

12.1 There are three background documents: Babergh Core Strategy & Policies (February 2014) and Babergh Infrastructure Delivery Plan (February 2013), Peter Brett Associates – Babergh and Mid Suffolk Community Infrastructure Levy Viability Study (October 2014).

Authorship

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Appendix A

CIL Consultation and Engagement programme

Date	Stage
Winter 2013 / 2014	Evidence gathering for development viability and future infrastructure requirements
Spring 2014	Creation of a CIL Member Reference Group and Member briefings
May 2014	CIL Preliminary Draft Charging Schedule formal consultation
Summer / Autumn 2014	CIL Member Reference Group, Member briefings, town/parish council workshops, developer workshops
November 2014	CIL Draft Charging Schedule formal consultation
Winter 2014 / 2015	CIL Member Reference Group, Member training, town/parish council workshops
January 2015	Revised CIL Draft Charging Schedule formal consultation
March 2015	Submission of CIL Revised Draft Charging Schedule for Examination
June 2015	CIL Member training and CIL Examination Hearing sessions. CIL Stakeholder and parish liaison workshops
November 2015	CIL Member training
December 2015	Publication of CIL Examiner's Final Report CIL Stakeholder workshops and Portfolio Holder briefings
January 2016	Open sessions on CIL for Members