

CHESHIRE EAST COUNCIL

Strategic Planning Board

Date of Meeting: 2 May 2012
Report of: Strategic Planning & Housing Manager
Subject/Title: Notice of Motion – Community Infrastructure Levy

1.0 Report Summary

- 1.1 This report responds to a Notice of Motion put to the Full Council on 23 February regarding the operation of the Community Infrastructure Levy.

2.0 Recommendation(s)

- 2.1 That the Board notes that the operation of the Community Infrastructure Levy will be considered alongside the preparation of the Local Plan.
- 2.2 That the Board notes that the Infrastructure Plan, Charging Schedule and other matters related to the operation of the Levy will be subject to full consultation and Independent Examination, as prescribed by the Community Infrastructure Regulations.
- 2.3 That the Board notes that the CIL Charging schedule must be approved by a full meeting of the Council
- 2.4 That any decision on the operation of the Levy in Cheshire East is premature at the present time and therefore no further action is necessary at this juncture.

3.0 Reasons for Recommendation(s)

- 3.1 The Community Infrastructure Levy (CIL) is prepared according to a process governed by regulation. It is also directly linked to the preparation of the Local Plan. It would not be appropriate to pre-judge this process in advance

4.0 Wards Affected

- 4.1 All wards will be affected by the operation of CIL

5.0 Local Ward Members

- 5.1 All members

6.0 Policy Implications

- 6.1 The report clarifies how the Council's policy on CIL will be developed alongside the Local Plan.

7.0 Financial Implications

- 7.1 None directly from this report. However CIL will be an important mechanism for ensuring that all new development pays its fair share in meeting the costs of necessary new infrastructure.

8.0 Legal Implications

- 8.1 The Community Infrastructure Levy was brought in by Part 11 of the Planning Act 2008. The Community Infrastructure Levy Regulations 2010, which govern the charge, came into force on 6th May 2010 (now amended by the CIL Amendment Regulations 2011). Further changes and clarifications are proposed in the CIL Amendment Regulations 2012. The CIL regulations serve to limit the scope of current Planning Obligations (s.106 agreements) and will severely restrict their use after April 2014.

9.0 Risk Management Implications

- 9.1 The Council needs to ensure that the impacts of new development are properly reflected within the Infrastructure Plan and Charging schedule. Details of the operation of CIL need to be considered systematically as part of the statutory process – and not in isolation

10.0 The Community Infrastructure Levy

- 10.1 The Community Infrastructure Levy (CIL) is a system of planning charges that the Council will be able to levy on developers undertaking most new building projects in the Borough. The money raised can be used to fund a wide range of infrastructure that is needed to support new development in the area. 'Infrastructure' has a broad definition in the Planning Act and can apply to many projects including new road schemes, schools, community services, sports and leisure facilities and green infrastructure necessary to support development.
- 10.2 The Levy differs from S.106 agreements in that it is applied more widely and consistently; most forms of development will attract the charge which is levied by floor area. Currently it is estimated that across the country only about 6% of new developments contribute to S.106 agreements. In Contrast CIL will be applied universally (with a few notable exceptions) with the potential for different rates to apply in different areas and to different types of development.
- 10.3 The Levy and the types of development liable to pay will be set out in an adopted Charging Schedule. The Charging Schedule must specify the Charging Authority (Cheshire East); the Levy rate (pounds per square metre); an Ordnance Survey map for differential rates (if they differ geographically) and an overall explanation of the proposed Levy.

- 10.4 Before adoption of the Charging Schedule, the Council must consult on a Preliminary Draft Charging Schedule. All comments from interested parties will then be taken into account before a Draft Charging Schedule is produced for a final round of consultation and independent examination.
- 10.5 In setting a Levy for the Borough, the Council must aim to strike what appears to be an appropriate balance between funding the total cost of infrastructure required to support development of its area, and the potential effects (taken as a whole) of the imposition of the Levy on the economic viability of development: Two key pieces of evidence are required to inform the production of this Charging Schedule.
- **Viability Assessment:** This document will assess the viability of the local development industry and market in Cheshire East and is required to ensure that the introduction of a levy charge does not put at risk the overall development of the Borough. It will provide information about differences in economic viability across different geographical areas and different uses of development in the Borough. It will provide advice on the rates that could be set and the potential for 'differential rates' as a result of differences in economic viability.
 - **Infrastructure Development Plan:** This document sits alongside the new Local Plan and will support its implementation. It will identify the new infrastructure items or general types of infrastructure required to support new development during the plan period. This will include a sum total cost of necessary infrastructure and will assist in setting the Levy amount, having regard to other sources of available funding. The Infrastructure Development Plan can be amended over time as new projects arise and more is known about the likely location of future development. This document does not prioritise infrastructure projects but instead provides evidence of the overall cost.
- 10.6 The Council must appoint an independent examiner to assess the Draft Charging Schedule. The Council must demonstrate that the Draft Charging Schedule complies with the Planning Act and CIL Regulations; the proposed Levy rate(s) are informed by and consistent with appropriate available evidence; and an appropriate balance has been struck in the funding of infrastructure without putting at risk the overall development of the area. The examiner can approve, modify or reject the Draft Charging Schedule. Whilst the examiner's recommendations are no longer binding, the Council will need strong and cogent reasons not to adopt them.
- 10.7 Local authorities are required to spend the levy's funds on the infrastructure needed to support the development of their area and it is our role to decide what infrastructure is needed. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development. The levy can be used to increase the capacity of existing

infrastructure or to repair failing existing infrastructure, if that is necessary to support development.

- 10.8 Using new powers introduced in the Localism Act the Government will require charging authorities to allocate a “meaningful proportion” of levy revenues raised in each neighbourhood back to that local area. This is intended to ensure that where a neighbourhood bears the brunt of a new development, it receives sufficient money to help it manage those impacts. More detail will be set out in Regulations.
- 10.9 The Levy is imposed at the time planning permission is granted and is paid on commencement of development, or by instalments (at the Council’s discretion). The Levy will be index linked to account for inflation over time. Liability to pay the Levy is the responsibility of the landowner at the time of the planning permission. If the land is sold after planning permission is granted, the liability is transferred to the new owner(s). Other parties can voluntarily assume liability – such as developers or agents
- 10.10 After April 2014 CIL will replace s.106 agreements as a means of paying for strategic infrastructure, especially from more than one development. Section 106 Obligations may still be used to deliver necessary on-site infrastructure needs and mitigation measures. Section 278 agreements will continue to be used to secure necessary highway improvements to make developments acceptable in planning terms. In addition, for the present time, affordable housing will continue to be delivered via s.106 agreements
- 10.11 To ensure that the levy is open and transparent Councils are obliged to report on the use of CIL funding over time. Charging Authorities must prepare short reports on the levy for the previous financial year which must be placed on their websites by 31 December each year. They may prepare a bespoke report or utilise an existing reporting mechanism, such as the annual monitoring report which reports on their development plan. The Council must report on how much monies they received from the levy in the last financial year and on how much was unspent at the end of the financial year. The Council must also report total expenditure from the levy in the preceding financial year, with summary details of what infrastructure the levy funded, how much of the levy was ‘spent’ on each item of infrastructure and how much on administrative expenses.

11.0 The Notice of Motion.

- 11.1 At its meeting on 23 February the Council received the following notice of Motion submitted by Councillor D Brickhill:
 1. *“At least 80% of all money raised by community levy payments by Developers must be spent in the same town or parish council area as the actual development.*

2. *The remaining 20%, if any, must be spent in the same district as the actual development, where 'district' means the appropriate area of one of the three previous district councils that made up Cheshire East.*
3. *The planning department shall consult the parish or town council on how the money should be spent and, if necessary, fully explain at a planning Committee meeting why the parish's recommendations cannot be implemented.*
4. *The planning department shall provide to the parish or town council full accounts on how the money was spent."*

11.2 This motion anticipates much that will be central to the preparation and operation of CIL when it is applied in Cheshire East. It addresses key questions such as the distribution of infrastructure, how much will be spent locally, the process of consultation and public accountability.

11.3 These matters are covered in large degree by both statute and the CIL regulations. As set out in section 10 above, the new Levy in Cheshire East will have to be prepared in accordance with a prescribed process. This needs to be informed by both the Local Plan (and the Infrastructure needs arising from it) and other evidence (notably on viability). There will follow a formal process of consultation and examination. Once adopted the Council is obliged to report on the use of CIL funding.

11.4 Consequently whilst the notion is prescient and properly looks ahead to the process of CIL preparation, it would not be appropriate to prescribe or constrain the scope of this in advance. The matters referred to need to be addressed, but at the proper time and when the full evidence is before the Council. Ultimately the way CIL works in Cheshire East will be influenced by independent examination and decided upon by full Council. Consequently it is recommended that no further action be taken at the present time, but that a Cheshire East CIL continues to be developed as part of the Local Plan process.

12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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