

Report to: **Council**

Date: **17 December 2019**

Title: **COMMUNITY INFRASTRUCTURE LEVY**

Portfolio Area: **Cllr Caroline Mott**
Strategic Planning

Wards Affected: **all**

Urgent Decision: **Y** Approval and clearance obtained: **Y**

Date next steps can be taken: Immediately following this meeting.

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RECOMMENDATION:

That Council be RECOMMENDED:

- 1. to approve consultation on the Community Infrastructure Levy; and**
- 2. to convene Internal and External Workshops to discuss the evidence base prior to consultation.**

1. Executive summary

- 1.1 This report sets out the purpose, timetable and key issues with respect to the proposal to introduce the Community Infrastructure Levy (CIL) in West Devon Borough and South Hams District in collaboration with Plymouth City Council.
- 1.2 If introduced, CIL would be a means to collect contributions towards infrastructure. CIL would operate in a manner complementary to the existing s106 regime.
- 1.3 A draft Viability Study has been prepared and shared with Councillors. The Study considers the costs of development and likely returns from development. Comparison of the two gives an

indication of the headroom (profit) that is potentially available to fund infrastructure that is needed to support development.

- 1.4 The draft Study, the objectives of CIL, the process and timetable that are set out in this report have been endorsed by the Joint Local Plan Partnership Board.
- 1.5 Council approval is required to proceed to Stage 2 of the Viability Study, which would include stakeholder workshops and preparation of the Final Viability Study. The Viability Study would then be the subject of formal consultation alongside a draft CIL Charging Schedule.

2. Background

What is the Community Infrastructure Levy?

- 2.1 The Community Infrastructure Levy (CIL) is a planning charge, introduced by the Planning Act 2008, as a tool for local authorities to help deliver infrastructure to support the development of their area. It came into force through the Community Infrastructure Levy Regulations 2010.
- 2.2 Development may be liable for a charge under CIL if the Local Planning Authority has formally adopted a Charging Schedule. A Charging Schedule sets out how much money is payable per square metre of qualifying development.
- 2.3 New development that creates net additional gross internal area of 100 square metres or more, or create new dwellings, is potentially liable for this levy.
- 2.4 Some developments may be eligible for relief or exemption from CIL. Strict requirements apply with regard to the timing of the exemption process.
- 2.5 CIL can operate alongside a s106 regime as a means to secure the necessary infrastructure to deliver sustainable development. S106 Agreements are negotiated, under Section 106 of the Town and Country Planning Act 1990, on a site by site basis to secure the delivery of infrastructure, other contributions and Affordable Housing to make that specific development acceptable.
- 2.6 In areas where CIL and s106 operate CIL is used for a wider scope of infrastructure delivery whereas s106 is typically used to address and mitigate the specific impacts of the development being considered.

3. Outcomes / outputs

What is the process of adopting CIL?

- 3.1 CIL becomes a formal means to secure funding for infrastructure after a Charging Schedule has been adopted by the Council. A Charging Schedule is prepared and adopted through the process described below. We are currently at Step 1.
1. Council Officers prepare an evidence base (consideration of the impact of CIL on development viability) to inform levy rates, which is expressed in £s per meter squared of development;
 2. Following consultation with neighbouring / overlapping authorities and other stakeholders, the Council prepares and publishes a draft charging schedule for formal consultation;
 3. Representations are sought through a formal six week consultation on the draft Charging Schedule;
 4. The Council considers representations made and addresses each, making amendments to the draft Charging Schedule before submitting it for examination;
 5. An independent person, the Examiner, reviews the Charging Schedule and evidence base and convenes an Examination in Public;
 6. The examiner's recommendations are published;
 7. The charging authority (the Council) has regard to the Examiner's recommendations and reasons for them; and
 8. The charging authority approves the charging schedule.

What is the timetable for adopting CIL in South Hams / West Devon?

- 3.2 Plymouth City Council currently operates a hybrid system of CIL and s106. With the Joint Local Plan (JLP) adopted we are synchronising a review of Plymouth CIL and the potential introduction of CIL in South Hams and West Devon.
- 3.3 A Stage 1 Viability Report has been prepared by a consultant in collaboration with Officers. This report is currently in draft form and its findings have been shared with Councillors at the three Planning Authorities.
- 3.4 The next step will be to hold stakeholder workshops. The workshops would be run by the Viability Study consultant with invitations being extended to developers, house builders, neighbouring Councils, Neighbourhood Planning Groups and other interested parties. A separate workshop would be held for South Hams Councillors and for West Devon Councillors as well as Town / Parish Councillors. The workshops will review the evidence base (the draft Viability Study) and will consider how CIL could operate throughout the JLP area and in the respective Council

areas. The workshops will focus on each of the component development costs and income lines that are used to model the potential CIL charges. The workshop for 'external' parties won't directly address the setting of the CIL charges.

- 3.5 It is proposed that two workshops for external parties would be held on a single day in January 2020 with one session for Plymouth and a second for West Devon and South Hams (the Thriving Towns and Villages Area of the JLP and the Urban Fringe part of the Plymouth Policy Area). This reflects the fact that there will be separate Viability Study findings; that Plymouth already has CIL in place; that the geographies are different; and that many of the stakeholders are likely to want to attend both sessions and would prefer to do so on a single day. Additionally, this would retain the option for one or more of the Councils not to proceed beyond step 1.

3.6 The projected timetable:

Step	Action	Projected dates
1	Councillor Workshop(s) External stakeholder workshops Consider findings or workshops Stage 2 'Final Viability Study' reports completed Councils agree CIL levy rates Draft Charging Schedules wording and supporting materials (maps) prepared Prior to Step 2 supporting evidence would be updated, including reviewing infrastructure needs assessments and indicative uses for CIL levy receipts.	Jan 2020 Feb 2020 March 2020 April 2020 May / June 2020
2	draft Charging Schedules published	July 2020
3	Representations sought during 6-8 weeks consultation	July 2020
4	Consideration of representations Councils agree submission of draft Charging Schedule for examination Further updates of supporting evidence and documentation (not the Viability Studies)	Sept 2020 Oct / Nov 2020
5	Joint* Examination takes place	February 2021
6	Examiner's recommendations	April / May 2021
7	Councils consider Examiner's recommendations	June 2021
8	Councils approve charging schedules	Summer 2021

*Joint examinations are optional. Two or more charging schedules can be examined together if each of the charging authorities that prepared a draft agree to this approach.

Key issues

- 3.7 West Devon Borough Council considered the introduction of CIL in 2011. At the time it was concluded that the potential benefits of CIL were not sufficiently strong in that there was limited headroom (profit) from which to seek developer contributions. The s106 regime was considered to be working sufficiently well and concern existed that the introduction to CIL might compromise the effectiveness of s106.
- 3.8 CIL is now a more attractive prospect in West Devon (and South Hams) since the Government has relaxed Regulation 123 of the CIL Regulations. Previously Regulation 123 required a Local Planning Authority to provide a prescriptive list of what CIL and s106 can be used for. The relaxation allows a more flexible approach, making it much easier to run CIL alongside s106.
- 3.9 In addition, the 2018 NPPF seeks to restrict the use of inflated land values in viability assessment, resulting in greater headroom being available.
- 3.10 Initial assessment, as set out in the Stage 1 draft Viability Study, provides evidence that CIL could be introduced to the TTV and Urban Fringe areas alongside and without compromising the ability to secure appropriate infrastructure requirements through s106 obligations. Doing so would also represent a consistent approach across the JLP area since CIL already operates in Plymouth.
- 3.11 Consideration is needed, however, to avoid setting the rate too high such that there would be an adverse effect on the likelihood of development happening or limiting the ability to deliver Affordable Housing.
- 3.12 A key objective of CIL is likely to be securing financial contributions from large properties built in areas with high headroom. In areas such as the South Hams coast and the Tavistock hinterland development can result in significant profits. Currently there is no mechanism to secure funding for infrastructure from such development where it is less than five houses.
- 3.13 CIL would be applicable in a wider area. It allows contributions to be taken from all developments, not just the larger (over 10 dwellings) sites and allows offsite contributions to be secured from development of 6 to 10 dwellings in the AONB.
- 3.14 CIL must be paid, whereas s106 requirements and payments are negotiated. If the Charging Schedule includes levies that are too high it could prevent development from coming forward or compromise the ability to deliver Affordable Housing.

- 3.15 The relationship between different charging areas and between Urban Fringe and Plymouth will need careful consideration such that arbitrary borders are not created that lead to significant disparities between development costs within a locality.
- 3.16 Appropriate rates and boundaries will be considered through the Councillor workshops.
- 3.17 If CIL were introduced the levy receipts can be spent on infrastructure that will support development. It will be at the discretion of the Borough Council and Town and Parish Councils to direct where a proportion of the money is spent.
- 3.18 A Town / Parish with an adopted (made) Neighbourhood Plan would benefit from a 25% share of levy receipts. The money would need to be spent on things associated with supporting the delivery of development or addressing its impacts. A Town / Parish Council can also use their CIL receipts to support the delivery of Affordable Housing, something the District is not allowed to do. Where there is no made NP the proportion of CIL receipts payable to a Town / Parish is 15%.
- 3.19 CIL cannot be imposed retrospectively on any sites that already have any form of planning permission. It can't and won't, therefore, apply to the majority of the allocated sites in the Thriving Towns and Villages Area of the JLP (West Devon and South Hams).
- 3.20 It is appropriate to ensure that a headroom buffer is included so that the levy rate is able to support development when economic circumstances adjust. Generally buffers range from 25 to 50% below the level that the Viability Study indicates is viable.
- 3.21 In South Hams and West Devon headroom (available profit) exists in many areas that would allow a rate as high as £300 with a reasonable buffer. The greatest headroom has been identified in an area that approximately equates to land south of the A38 in South Hams and land at and south of Tavistock in West Devon. Slightly higher headroom has also been identified in an area centred around Okehampton.
- 3.22 Viability assessment indicates that there are no distinct hot spots. This is a key finding that corrects an intuitive belief that the high value sales areas would stand out. This is not the case, however, since the obvious areas (Salcombe and Newton Ferrers) typically have high build costs that in many cases limits profits.
- 3.23 The introduction of CIL so soon after the adoption of the JLP may necessitate a greater buffer than is typical when setting CIL rates. The reason for this is that the majority of sites that have been allocated and many smaller sites that are in the system will have been commercialised in the absence of CIL. To avoid a

shock to the house builders / landowners who might be deterred from developing sites in the short term (due to lower profit), it is considered appropriate to set the highest rate lower than £300. Similarly, to avoid having disparities across the area, it is suggested that the whole area could be set at a minimum of £50 per square metre, with allocated sites zero rated where they have planning permission or are well advanced in the process.

- 3.24 It is suggested that a 'soft' introduction of CIL at this time would result in limited but important benefits. The impact would then inform the role of CIL when the JLP is reviewed.

4. Options available and consideration of risk

- 4.1 The principle decision is whether or not to make further progress in introducing CIL to South Hams / West Devon.
- 4.2 Option 1 is to make no further progress. In this case Plymouth would publish the Viability Study without the South Hams and / or West Devon sections; and would proceed to review their CIL regime and adopt an updated Charging Schedule for the Plymouth City area only.
- 4.3 If neither South Hams nor West Devon make further progress the current s106 regime would be the only means to require contributions towards infrastructure and other measures to support development in the area.
- 4.4 A potentially beneficial effect is that this would avoid a period of uncertainty in the development industry that would otherwise occur during the process of adopting CIL. Uncertainty can lead to delay. Delays in bringing forward development would mean that much needed housing and Affordable Housing might be delayed in the short term. It is considered that this impact would not be significant since the Councils are able to demonstrate a strong supply trajectory. Furthermore, the industry would be aware of the possible implications of the introduction of CIL from the first day of the consultation, which is anticipated to be early Spring 2020.
- 4.5 The disadvantage of not proceeding is that the potential to secure money from smaller developments would be missed.
- 4.6 This stage is the most appropriate opportunity to discontinue the process since the publication of the Viability Study is a key step.
- 4.7 In the interests of clarity it is not necessary for South Hams and West Devon to both adopt CIL in order for the other Council to do so. The potential exists, however, for some impact on development trajectories if CIL is introduced in one area and not the other. This might occur if the rates in the adopting area

where so high that they diverted commercial interest to the other area. It is not likely that this would be significant and there is no evidence that this has happened elsewhere in the country where neighbouring authorities have different regimes. This is a matter that would need to be considered should the situation arise.

- 4.8 The benefit of introducing CIL are those identified earlier in the report (paragraphs 3.8 to 3.13, 3.17 and 3.18)
- 4.9 Option 2 is the recommended course of action, which is to publish the Viability Study and engage stakeholders through informal consultation. The related issues are described earlier in this report and summarised below.
- 4.10 A further important point is that the Government has, through the revision of the NPPF and Planning Policy Guidance, given a clear indication that CIL is an important means to secure funding from development for wider infrastructure needs whereas the s106 regime is the appropriate means to secure funding and measures that are directly related to a proposed development
- 4.11 Following consultation Councillors will have the opportunity to continue or not. Again, it is not a significant factor if not all three authorities continue the process.

5. Proposed Way Forward

- 5.1 Officers seek approval to publish the Viability Study and engage in a series of workshops followed by formal consultation on a CIL Charging Schedule. The process is set out in detail in Section 3.1 of this report.
- 5.2 The implications are set out in Section 3. The key issue is that CIL will allow the Council to secure contributions towards infrastructure from all but the smallest development; and the Viability Study confirms that this can be achieved without having an adverse impact on the development trajectory. Town and Parish Councils with made Neighbourhood Plans will receive 25% of receipts and will be able to use the money toward Affordable Housing.
- 5.3 Introducing CIL is consistent with the objectives of the Joint Local Plan and with the objective to deliver Affordable Housing. CIL receipts can also be used to support the agenda of the imminent Climate Action Plan and the biodiversity emergency.
- 5.4 Risks have been identified in Section 3 and Section 4 of this Report. It is considered that the consultation process provides an opportunity to further consider and address risks.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal / Governance	Y	The process is set out in Section 3.1 of this Report. Following adoption of CIL the Council would need to consolidate the process of managing and monitoring s106 (Town and Country Planning Act 1990) and CIL (The Community Infrastructure Levy Regulations 2010).
Financial implications to include reference to value for money	Y	<p>The cost to the three Councils of the process of adopting CIL is likely to be around £100k as a one off. The main cost would be a hearing with a Government Inspector. The costs would need to be paid at the time they are incurred, but can be recouped using the subsequent CIL receipts.</p> <p>Officers at Cornwall Council (CC), which introduced CIL in January 2019 have advised that they experienced a sharp rise in planning applications prior to CIL being adopted as developers sought to avoid CIL applying to their development proposals. Immediately after adoption of CIL Development Management fee income dropped by 5%. CC advises that this impact was temporary.</p>
Risk	Y	Risks and the means to avoid and reduce these risks have been identified in this Report.
Supporting Corporate Strategy	Y	The funds raised through CIL would support all Corporate Strategies.
Climate Change - Carbon / Biodiversity Impact	Y	The funds raised through CIL would support delivery of measures to address climate change and biodiversity.
Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	The funds raised through CIL would support measures to address equality, for example by funding the delivery of Affordable Housing and public transport.
Safeguarding	N	none
Community Safety, Crime and Disorder	Y	The funds raised through CIL would support opportunities to improve the public realm in a manner in keeping with safety and reducing crime.
Health, Safety and Wellbeing	Y	As above and equality

Other implications	N	none
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Supporting Information

Appendices:

None

Background Papers:

Planning Advisory Service – all you need to know in detail here:

<https://www.local.gov.uk/pas/pas-topics/infrastructure/what-cil>

Example of timetable / process:

https://www.swindon.gov.uk/info/20112/community_infrastructure_levy_cil/627/the_process_to_adopt_cil

Example of Charging Schedule (Cornwall Council)

<https://www.cornwall.gov.uk/media/26578094/cil-draft-charging-schedule-final.pdf>