

DECISION ITEM



| REPORT OF | MEETING | DATE | ITEM |
|----------------------|----------------------------------|----------------|------|
| DEVELOPMENT SERVICES | DEVELOPMENT MANAGEMENT COMMITTEE | 20 AUGUST 2015 | 6 |

COMMUNITY INFRASTRUCTURE LEVY (CIL); THE PREPARATION OF A DRAFT CHARGING SCHEDULE AND A REGULATION 123 (INFRASTRUCTURE) LIST

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

To inform the Committee of the Community Infrastructure Levy (CIL), the preparation of a Charging Schedule and the drafting of a Regulation 123 (Infrastructure) List for Fylde.

RECOMMENDATIONS

1. That Committee approves the preparation and progression of a Community Infrastructure Levy (CIL) through the prescribed consultation stages to adoption.
2. That Committee approves the preparation of a Charging Schedule, which will set out the charging rates. The proposed charging rates will be subject to an independent examination, by an examiner from the Planning Inspectorate.
3. That Committee approves the drafting of a Regulation 123 list of all of the infrastructure types and projects that it is intended will be or may be, wholly or partly funded by CIL.
4. That a further report is prepared and presented to members once the above recommendations are achieved to approve the final proposals.

CORPORATE PRIORITIES

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|--|---|--|---|
| To Promote the Enhancement of The Natural & Built Environment (Place) | √ | To Encourage Cohesive Communities (People) | √ |
| To Promote a Thriving Economy (Prosperity) | √ | To Meet Expectations of our Customers (Performance) | √ |

SUMMARY OF PREVIOUS DECISIONS

There have been no previous decisions on this item. This report on CIL was presented to the Cabinet on 11th February 2015.

COMMUNITY INFRASTRUCTURE LEVY

1. The Community Infrastructure Levy (CIL) is a new charge on some forms of built development; it allows the Charging Authority (i.e. Fylde Council) to levy a charge on owners or developers carrying out built development so that they contribute to the costs of providing the infrastructure needed to support development of the area. It will fund infrastructure projects such as transport, education, leisure and health which will need to be set out in a list known as a Regulation 123 list.
2. The levy will be charged at a rate of pounds per square metre, based on the net additional internal floor-space of any given development for uses identified in a charging schedule.
3. Although CIL will replace Section 106 (S106) in terms of 'off site matters' associated with new built developments, S106 will still apply particularly in relation to larger schemes to mitigate the impacts of that specific development subject to the following tests:
 - a) Necessary to make the development acceptable
 - b) Directly related to the development
 - c) Fairly and reasonably related in scale and kind to the development

Section 106 will continue to apply to the securing of Affordable Housing.

4. In order to progress the CIL rates to adoption the Council will be required to follow a prescribed process. Two stages of consultation will need to take place, commencing with consultation on a Preliminary Draft Charging Schedule; followed by a further consultation in respect of the Draft Charging Schedule. The schedule will then need to be submitted to the Planning Inspectorate for an independent examination of the proposed charging rates. The examiner may make recommendations to modify the charging schedule, which the Council will be bound to act upon to allow adoption of the charging rates. It is a requirement, as set out in DCLG Guidance issued in April 2013, that the decision to adopt the charging schedule is made by the full council of the Charging Authority (i.e. Fylde Council).
5. By way of example, the charging rates that have been introduced by the Central Lancashire Authorities (comprising Preston City Council, South Ribble Borough Council and Chorley Council), following an independent examination and modifications recommended by the examiner are set out in the following box. The Charging Schedule was adopted by the Central Lancashire Authorities, with charging commencing from 1st September 2013.

| Central Lancashire Authorities Adopted Charging Schedule | |
|---|-------------------|
| Development | CIL Charge |
| Dwelling houses (excluding apartments) | £65 per sq. m |
| Apartments | £0 per sq. m |
| Convenience retail (excluding neighbourhood convenience stores) | £160 per sq. m |
| Retail warehouse, retail parks and neighbourhood convenience stores | £40 per sq. m |
| Community uses | £0 per sq. m |
| All other uses | £0 per sq. m |

6. The adoption of the Charging Schedule by Fylde Council would essentially just be the beginning of the process as the governance arrangements, in terms of collecting and spending CIL would have to be put in place along with such matters as an 'instalments policy'. This is particularly relevant given the introduction of legislation on 25th April 2013 by the Government, which requires 25% of CIL generated in their area to be given over to Parish and Town Councils where a neighbourhood plan is in place and 15% where such a plan is not in existence. The CIL guidance recommends a review of the rates.

SECTION 106 PLANNING OBLIGATIONS ALONGSIDE A CIL REGIME

7. The use of Section 106 Planning Obligations alongside a CIL regime, which will become the primary mechanism for securing infrastructure contributions following its adoption are set out below.
8. Two of the regulations within the Community Infrastructure Levy Regulations, 2010 are of significant relevance:
- I. Regulation 122 sets out three statutory tests which all planning obligations under Section 106 must meet if they have been determining factors in the granting of planning permission. The regulation states the obligation must be:
 - a) Necessary to make the development acceptable in planning terms.
 - b) Directly related to the development.
 - c) Fairly and reasonably related in scale and kind to the development.

- II. As from April 2015, Regulation 123 imposed substantial restrictions on a local planning authority's ability to secure developer contributions for mitigating infrastructure impacts through planning obligations. It is now only possible for a maximum of five planning obligations to be pooled to contribute to any one infrastructure item or infrastructure type.
9. Revenue from CIL is intended to provide infrastructure to support the development of an area, rather than making individual planning applications acceptable in planning terms. CIL revenue can be spent by the Council to support any community infrastructure to promote growth, it is not tied to a particular project. Infrastructure is widely defined by Section 216 of the Planning Act, 2008 including:
 - Roads and other transport facilities.
 - Flood defences
 - Schools and other educational facilities
 - Medical facilities
 - Sporting and recreational facilities
 - Open Spaces
10. The Planning Practice Guidance states that:

“Local authorities must spend the levy on infrastructure needed to support the development of their area, and they will decide what infrastructure is needed.”
11. Some developments will be liable to both pay CIL and enter into S106 agreement. The CIL payment and S106 obligations, as prescribed above will cover different things, and development will not be charged for the same items of infrastructure through obligations and levy. In order to clarify what types of infrastructure will in future no longer fall under S106, a list under Regulation 123 of the CIL Regulations will need to be compiled by Fylde Council. This is a list of infrastructure types and projects that it is intended will be, or may be wholly or partly funded by CIL. It will be kept up to date and take into account any changes in circumstances and / or infrastructure need identified in the future.

REGULATION 123 LIST

12. Following adoption of the Charging Schedule, CIL will become the primary source of infrastructure funding available through development management decisions for the majority of developments.
13. Following the adoption of the CIL Charging Schedule, the Council will then need to formally publish on the website, in accordance with Regulation 123, a list of infrastructure projects that it is intended will be, or may be wholly or partly funded by CIL. Regulation 123 prevents the use of planning obligations to fund infrastructure projects or types of infrastructure that will be wholly or partly funded by CIL. The Regulation 123 list is expected to address non site specific infrastructure, including generic transport, highway and cycle schemes; health; education; green infrastructure; and public realm improvements. These infrastructure projects would not, therefore, be funded through S106 Planning Obligations.

PLANNING OBLIGATIONS / SECTION 106 AGREEMENTS

14. In circumstances where the Council wants to control the impact of a development, but the desired restrictions go beyond the scope of conditions, it is possible to enter into a legal agreement with the applicant and anyone else who has a legal interest in the land, to secure planning obligations under Section 106 of the Town and Country Planning Act. Section 106 Planning Obligations will only be used in the future in accordance with Regulation 122 of the CIL Regulations in the circumstances set out above.
15. Therefore, the types of infrastructure for which planning obligations may typically be sought on sites, will be in accordance with the policies set out in the emerging Single Local Plan for Fylde and will potentially include:
 - Affordable housing
 - On site open space
 - Transport / highways (in a limited set of circumstances)
 - Off site works specifically required to make the development acceptable.

OFF-SITE SECTION 106 AGREEMENTS

16. Larger scale major developments typically have larger and more concentrated impacts and so may necessitate site specific infrastructure such as schools, community facilities and junction improvements. In securing such planning obligations on larger sites, the Council will apply the statutory tests and avoid duplication with the CIL.
17. There will be the need for access roads to service the individual housing areas / parcels. These access roads will be subject to S106 contributions, as they will be “necessary to make the development acceptable in planning terms”. Development of the Strategic Locations for Development, identified in the emerging Single Local Plan for Fylde, will be co-ordinated via masterplans which will establish access roads necessary to make the development acceptable.
18. The Council strongly encourages pre-application discussions with regard to planning obligations. This provides an opportunity to discuss and agree how relevant policies may be applied to a particular development and provides the opportunity for early resolution of outstanding issues. Furthermore, as is the case with CIL, this will provide the developer with greater certainty earlier on in the development process regarding the costs that they will have to bear.
19. Planning Agreements will normally be drafted by the Council based upon the use of standard agreements, where appropriate, to speed up the preparation of the agreement. Applicants will be required to meet their own and the Council’s costs of preparing planning obligation agreements, whether the agreement is subsequently signed or not, including associated legal costs.
20. Financial contributions will normally be expected to be paid upon commencement of development as defined in Section 56 of the Town and Country Planning Act, 1990. It is recognised that to support development viability it will not always be practical to do this. In these circumstances, the Council will accept payments by arrangement and at specific stages during the development process, for example upon occupation of an agreed percentage of the dwellings, or other agreed milestone. Trigger dates for the payment of financial contributions will be included in the S106 Agreement, as will any time periods by which the contribution is to be spent or repaid to the applicant.

CONCLUSION

21. The benefits of adopting CIL is set out above, together with the need for a Charging Schedule and a list of the infrastructure requirements (the Regulation 123 List), that are needed over the lifetime of the emerging Local Plan, to the year 2032.

| IMPLICATIONS | |
|---|---|
| Finance | <p>The Community Infrastructure Levy (CIL) will be a new charge and the income generated will be used to contribute to the costs of providing the infrastructure to support development of the area.</p> <p>If approved, the rates charged will be set out in a Charging Schedule. A proportion of the income generated is required to be given over to Parish and Town Councils. The systems to ensure that this obligation is fulfilled will be put in place as part of the adoption process.</p> |
| Legal | The Council has taken into account all relevant legislation and guidance in proposing to adopt the provisions and charging requirements of CIL. This shall reduce the possibility of legal challenge. |
| Community Safety | None arising directly from the report. |
| Human Rights and Equalities | None arising directly from the report. |
| Sustainability and Environmental Impact | None arising directly from the report. |
| Health & Safety and Risk Management | None arising directly from the report. |

| LEAD AUTHOR | TEL | DATE | DOC ID |
|-----------------|----------------|-------------|--------|
| Michael Eastham | (01253) 658695 | August 2015 | |

| LIST OF BACKGROUND PAPERS | | |
|---------------------------|------|--------------------------------|
| Name of document | Date | Where available for inspection |
| none | | |