

Scrutiny Committee Report

Report of Head of Planning

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To: Planning SCRUTINY COMMITTEE

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Community Infrastructure Levy Draft Charging Schedule

RECOMMENDATION

To consider this report and the Community Infrastructure Levy Draft Charging Schedule, and make any recommendations to the Cabinet Member for Planning.

PURPOSE OF REPORT

1. To present to Scrutiny Committee an overview of the responses received on the Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule following public consultation and to seek views on the subsequent changes to the Charging Schedule.
2. As part of the formal process to adopt a CIL Charging Schedule, Council will consider the CIL Draft Charging Schedule together with associated documents and, if agreed, publish them for public consultation (CIL Regulation 16) and thereafter submit them to the Secretary of State for independent examination.

BACKGROUND

Community Infrastructure Levy

3. Community Infrastructure Levy (CIL) is a charge that councils can introduce to fund a wide range of infrastructure to support new development.
4. The levy will apply to all new development delivering 100 m² or more of additional gross internal floorspace or the creation of one additional dwelling even if the gross

internal floorspace is less than 100 m² (affordable housing and self-build housing is exempt).

5. Levy rates are expressed as pounds per square metre and should be set at a level which does not threaten the ability to develop viable sites and scale of development identified in the Core Strategy.
6. CIL is the government's preferred mechanism for pooling contributions from numerous development sites. From 6 April 2015 the council will not be able to pool more than five obligations in respect of a specific infrastructure project or a type of infrastructure entered into on or after 6 April 2010. Once the levy has been adopted the contributions required by CIL from developers will be mandatory.

Section 106 obligations

7. Planning obligations, commonly known as S106 agreements, are legally binding and are intended to make a development proposal acceptable in planning terms.
8. Planning obligations need to satisfy the following legal tests:
 - They are necessary to make a development acceptable in planning terms;
 - They are directly related to a development;
 - They are fairly and reasonably related in scale and kind to the development
9. With the introduction of a CIL charge, Section 106 obligations can still be used on individual sites to mitigate the direct impact of a proposed development and will be the primary mechanism for securing affordable housing (which is outside the remit of CIL). In the main, a S106 will only be sought for infrastructure provided on site. A developer cannot be asked to pay CIL and Section 106 for the same piece of infrastructure required by the same development.
10. A draft S106 Planning Obligations Supplementary Planning Document is being prepared to identify the type of infrastructure to be secured by S106 when CIL is in place. A draft for consultation will be presented to councillors and the Cabinet portfolio holders later this year.

Preliminary Draft Charging Schedule - setting CIL rates

11. In setting the levy rates the CIL Regulations¹ require the council to strike an appropriate balance between the desirability of funding infrastructure to support development and the potential effects of imposing a charge on the economic viability of development as a whole. Therefore, a charge must not be imposed which prevents the delivery of the planned growth, as set out in our Core Strategy.
12. The council has commissioned consultants to carry out a viability study to inform the charging schedule. This assessment has been based on policies and development growth set out in the adopted Core Strategy (December 2012).
13. It should be noted that the council is currently preparing a new South Oxfordshire Local Plan, which will look ahead to 2031 and consider, among other things, how best to plan for the additional housing need identified in the Oxfordshire Strategic Housing Market

¹ The Community Infrastructure Levy Regulations 2010 (as amended) Regulation 14

Assessment, which was published in April 2014. The new local plan is expected to be adopted during 2017. Following this, the council will review the CIL charging schedule and S106 Supplementary Planning Document accordingly.

14. Due to the limitation on pooling of planning obligations, which will apply from 6 April 2015, it is important to progress with the CIL Charging Schedule to ensure funding of the necessary infrastructure to support planned growth.

Preliminary Draft Charging Schedule consultation

15. The stages for preparation of a Charging Schedule are set out in statute, and include two stages of public consultation and an independent examination. The first public consultation of the CIL Preliminary Draft Charging Schedule including supporting evidence was carried out between 20 October and 17 November 2014. The council received 34 representations from a variety of different interests including town and parish councils, landowners and commercial agents, the development industry, government agencies and Oxfordshire County Council (OCC). The main issues are summarised below, but a full analysis of the consultation responses is presented in Appendix 1.

16. Assumptions in the viability study

Comment: Profit level - Gladman Developments supported the level of profit, whilst Savills consider the level of profit to be too low.

Council response: The 20% (on GDV)² profit on private housing and 6% on the affordable housing is widely accepted as the industry standard and has been agreed at CIL examinations. Officers consider there is no justification to change the profit level assumption.

17. Housing Mix Assumptions

Comment: Savills query the housing mix assumptions associated with the range of housing developments tested.

Council response: The viability study (Appendix 2) tested housing mixes appropriate to the range of housing sites expected to come forward in the local plan period and are therefore appropriate for this district.

18. Benchmark Land Values

Comment: Savills and Gladman Development Ltd queried the assumed Benchmark Land Values. Savills recommended an uplift of Benchmark Land Values and to include site promotion costs.

² Gross Development Value is the total value of the development and includes all development costs including 20% profit for the developer plus the income.

Council response: The site promotion cost is a deduction from market value and is not a cost in the developer's appraisal. The Benchmark Land Values are appropriate for this area.

19. Density

Comment: Some concerns were received in relation to density assumption used in the viability study.

Council response: The viability study tested densities appropriate to the range of housing sites expected to come forward in the plan period. They were the same assumptions used in the local plan process and it is not appropriate to change densities that have been assessed.

20. Challenge the CIL rate for office development

Comment: Four respondents endorsed the proposed CIL rates for commercial development however three respondents objected to the proposed CIL rate for office development including Culham Science Centre (CSC), who sought a nil CIL rate.

Council response: The viability study found that office developments are marginally viable and the maximum CIL rate for office is £50 per square metre. A viability buffer of 30% was applied as this will allow for variations in viability between sites across the district yet maximise possible income for infrastructure. A rate of £35 per square metre has been proposed which equates to less than 1% of GDV² (CIL as a percentage of scheme value). This is considered by officers to be viable and reasonable.

In respect of Culham Science Centre it should be noted that only the increase in floorspace (over existing) will be liable for CIL. Existing floorspace that has been occupied for six months during the last three years will be deducted from the proposed floorspace for the purpose of calculating the CIL liability. Therefore officers consider the proposed CIL rate is a nominal rate and whilst additional floor space will impact on local infrastructure, the rate will not have a material impact on the viability of office development on this site. In officer's view the proposed CIL rate for offices is viable and will not prevent development coming forward.

21. CIL rates would discourage larger retail developments

Comment: ASDA has objected as it believes the proposed rate for large retail could reduce the range, variety and choice of retail shopping and, if no redevelopment or regeneration schemes are put forward, the existing buildings are unlikely to be refurbished and re-used.

Council response: The viability study shows that the development of large retail stores is viable with the proposed CIL charge (which equates to 1.7% of GDV). It should also be noted that existing floorspace will be deducted from the proposed floorspace for the purpose of calculating the CIL liability. Therefore officers consider the proposed CIL rate will not have a material impact on the viability of large retail development and propose no change.

22. Older person's accommodation:

Comment: We received representations from Oxfordshire County Council, Retirement Housing Group, McCarthy & Stone and Blue Cedar Homes objecting to extra care (use class C3) being CIL liable – indicating it should be nil rate.

Council response: Extra care development incorporates independent living and is considered nationally to be the same use as residential (C3). The council seeks 40% affordable housing on residential development under Policy CSH3. It is accepted that extra care development provides greater communal areas which increase build costs and generally having a more specialised market takes longer to sell. This makes retirement housing less viable than new homes in general. The viability study concludes that extra care housing is unlikely to be able to absorb CIL contributions alongside 40% affordable housing in all areas, except in the Henley/Goring area. For the majority of the district therefore, CIL is not viable for extra care development incorporating affordable housing. Although we could create a further charging zone for Henley / Goring this was explored in during the preliminary draft charging stages and concluded that the potential income was limited compared to the additional cost of administrating another zone; this is discussed further below.

Residential care homes (C2): The Preliminary Draft Charging Schedule assumed that if affordable housing was to be provided it could not sustain a CIL rate. However, we do not normally seek affordable housing on residential care homes as from experience they are not deliverable. Although we received no objections to our proposed nil rate in the Preliminary Draft Charging Schedule, as we do not seek affordable housing, land values are sufficiently viable to afford CIL contributions. The value of residential care homes is based on weekly charges rather than sales values (unlike extra care) therefore the viability is unlikely to vary widely across the district. The maximum rate that residential care homes could sustain is £150 per square metre. We receive limited applications for this type of development and conclude that the administrative charge would become a burden against potential captured revenue. Therefore we recommend a nil rate

23. Challenge the CIL rate on all strategic sites (200+units):

Comment: Two developers consider the 'strategic' sites, as set out in the Core Strategy should be nil rated.

Council response: Large strategic development sites will normally have to deliver some on site infrastructure (e.g. open space, schools, highways, community facilities) and affordable housing (40%). Experience shows that sites in excess of 500 units may need to provide a primary school. In such cases the on-site provision would not be able to sustain CIL in addition to infrastructure and affordable housing requirements, unless they are situated within the Henley/ Goring area. Therefore it is recommended that the Core Strategy strategic sites in Didcot and Wallingford, which will incorporate such on site infrastructure, be excluded from CIL. Sites of approximately 200 dwellings do not normally have significant on site infrastructure requirements and officers consider can accommodate both CIL and S106. Under the Core Strategy only three sites (North East site in Didcot, Ladygrove East site in Didcot, Site B in Wallingford) will be delivering significant on site infrastructure. Officers consider there is no justification to exempt other sites from paying CIL as they can sustain this charge and remain viable developments.

24. Didcot Power Station A:

Comment: Graftongate and Glowes Developments consider that the power station site should be exempt from CIL as it is likely that the development will have to deliver significant transport infrastructure under S106. The future applicant's state that CIL and S106 is not viable. .

Council response: This site straddles Vale of White Horse District Council and South Oxfordshire District Council. The respective CIL preliminary draft charging schedules vary: £85/sqm for residential development in the South and £120/sqm in the Vale; £35/sqm for office in the South and £0 in the Vale. The difference in the proposed CIL rate for residential development is due to the different affordable housing requirements (40% in the South, 35% in the Vale) or in the case of offices, the value of available office floor space; lower in vale (more of it). The impact on viability is comparable and does not adversely affect overall viability. To assess this objection more fully, officers have requested viability evidence from the applicants. To date the applicants have not provided any further information and thus, for office development in South Oxfordshire, there is no evidence to demonstrate that CIL is not viable on this site. Officers suggest that this site should remain liable to CIL in South.

25. Higher housing figure in Strategic Housing Market Assessment

Comment: Concern has been raised from four developers that CIL is being brought forward at a time when the council is considering new strategic allocations and that there does not appear to be any linkage between the new Local Plan 2013 and the CIL process.

Council response: The proposed CIL rates have been based on findings in the viability study, which considered policies and development growth set out in the adopted Core Strategy. The council is currently preparing a new South Oxfordshire Local Plan, which will look ahead to 2031 and consider how best to plan for the additional housing need identified in the Oxfordshire Strategic Housing Market Assessment, which was published in April 2014. The new local plan is expected to be adopted during 2017. Following this, the council will review the CIL charging schedule. Although the Charging Schedule is going to have a short life span we need to ensure that we have mechanisms in place to secure funding for strategic infrastructure, which is subject to pooling restrictions from April this year onwards.

26. Proposed charging zones

Comment: Four respondents agree with the charging zones and others (Wates Development, Oxfordshire County Council and Wheatley Parish Council) want to see the reasoning behind 2 charging zones. Barton Wilmore would like to see more charging zones and query why three charging zones with differential CIL levels are not proposed as suggested by the viability study.

Council response: This was previously examined by officers and councillors in the stages leading to the Preliminary Draft Charging schedule. At that time it was considered that the benefits and simplicity of administering two charging zones outweighed the possibility of a slightly higher income if three zones were introduced. This is discussed further below under Viability Buffer and Charging Zones.

27. Funding gap

Comment: Oxfordshire County Council expressed concerned that the residual funding gap was high.

Council response: The residual funding gap was based on the council's Infrastructure Delivery Plan (IDP). This included all the transport requirements in Science Vale. However, a large proportion will be met by Vale/LEP and therefore the funding gap for South will be been reduced. Also no financial contributions for education have been included in the IDP to take account of the on-site infrastructure for the three strategic sites. Therefore the residual funding gap for the council is lower than initially reported and the accompanying report has been updated accordingly.

28. Instalment policy

Comment: The PCDS consultation sought views on the principle of an instalment policy which was generally supported.

Council response: Under the CIL Regulations, the levy is payable by the developer within 60 days of commencement of the development, however the levy can be paid in instalments provided the council have adopted an instalment policy. An instalment policy spreads the cost of CIL over a number of months or years (depending on the size of development scheme proposed) and recognises the variations and demands on cash flow for developers, to assist with viability. Officers consider, based on experience of S106s, that an instalment policy is necessary on very large sites. The draft instalment policy is attached (Appendix 5) for consultation alongside the Draft Charging Schedule (Appendix 3).

29. Town/parish council revenue

Comment: Concern was raised that town/parish councils without a neighbourhood plan will have less CIL revenue.

Council response: The CIL Regulations set out the percentage that town and parishes will received for development in their area. Officers will continue to work with town and parish councils and support them in developing their neighbourhood plans.

Viability of buffer and charging zones

30. The CIL Guidance highlights the importance for an appropriate balance between the need to fund infrastructure and the potential implication for the economic viability of development across the district.

31. Paragraph 30 of the April 2013 Statutory Guidance advises that councils should "avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area". Although there is no guidance on the 'buffer' that should be allowed below the margin of viability, 30% has been widely accepted at CIL examinations to minimise risk to the housing supply, particularly given the nature of the land supply coming forward.

32. The viability evidence indicates that were a lesser buffer adopted, the risk to

sites coming forward could be high. The viability of sites varies widely across the district and even with a 30% buffer some types of developments in some areas could be marginal e.g. flats or some brownfield sites. Land values are sensitive and so a 5% change in cost or income can result in a 15% change in the residual land value. Therefore to reduce the buffer from 30% to 25% could result in a significant impact in viability of schemes in the lower value areas which are our growth areas and this would reduce the potential for housing delivery. Where development is marginal, the ability to evaluate the provision of affordable housing (under S106 negotiations) allows the flexibility to ensure that development remains viable.

33. To maximise CIL income the council do have the opportunity to create separate geographical charging zones however the increase in income needs to be balanced against the complexity of administering CIL. For instance, the higher land values (where a higher CIL rate could be set) do not readily align with parish boundaries. When considered previously (councillor workshops), the amount of development planned for these areas (Henley / Goring) was not considered to be so material as to warrant a separate charging zone. Based on a CIL rate of £245 per sqm (in the Henley / Goring areas), calculations showed an increased income of £2 million over the plan period. This must be seen in the context of the total expected CIL income over the plan period of £29 million compared to an overall funding gap of £200 million.
34. Councillors concluded that on the basis of the above the preliminary draft charging schedule should include two charging zones for residential development. There is no justification to change (excluding older persons' accommodation) this view in the draft schedule.

Rural exception sites

35. Local Plan saved policy H10 (Rural Exception Sites) identifies the circumstances in which affordable housing can be provided on 'exception sites' in the rural areas, where residential development would not normally be permitted. In certain cases, where robust evidence establishes that viability issues would prevent the delivery of an exception site, the minimum level of market housing required to make the development viable would be permitted. As this element of market housing is only required to enable the delivery of the affordable housing, viability evidence has shown that these schemes cannot sustain a CIL and it is proposed that within the Draft Charging Schedule that all homes on rural exception sites are exempted from CIL.

Draft Charging Schedule

36. Officers have considered the representations received and propose a change to the Draft Charging Schedule in respect of older person's accommodation. At the preliminary draft stage, extra care (retirement housing with independent living) was included within the proposed rate for residential development (C3). Following further investigation into viability it is concluded that extra care facilities (C3) and residential care homes (C2) are unlikely to be viable with CIL. The reasons for this relate to the provision of affordable housing on extra care and a varying method of calculating value (sales for extra care and weekly charges for residential care). It is also proposed to exempt rural exception schemes from CIL as explained above (para.35).

In all other respects officers do not consider there is any justification to revise the proposed CIL rates. The draft charging schedule is set out below (and Appendix 3).

Table 1 – Proposed CIL rates (per square metre)

Development	Zone 1 District	Zone 2 Didcot and Berinsfield
Residential development	£150	£85
Residential development – strategic sites Didcot North-East and Ladygrove East site Wallingford site B	Nil	Nil
Residential extra care incorporating independent living (C3)	Nil	
Residential care home (C2)	Nil	
Residential rural exception sites	Nil	
Offices (incl. research and development)	£35	
Supermarkets, superstores and retail warehouses ³	£70	
Small retail	Nil	
Hotels	Nil	
Other uses	Nil	

FINANCIAL IMPLICATIONS

Regulation 123 list

37. The council must produce a Regulation 123 list showing the infrastructure types and/or projects that may wholly or partly be funded by CIL money. CIL is to address the broader impacts of development, whilst S106 agreements should focus on addressing the site specific mitigation required by new development. A draft Regulation 123 list was published alongside the Preliminary Draft Charging Schedule consultation and a revised list has been produced to accompany the Draft Charging Schedule (Appendix 4). This list derives from the Infrastructure Delivery Plan and we cannot ask a developer to contribute towards CIL and S106 for the same infrastructure in relation to the same development.
38. We will need to prioritise the spending of CIL income against items on the Regulation 123 list, taking account of other available funding sources, e.g. LEP, New Homes Bonus, because CIL income will not be sufficient to fill the funding gap. Governance arrangements, administration and enforcement of CIL will be subject to a separate report in due course.

Financial implications

39. CIL will be a flat rate charge based on different rates proposed for development across the district. This differs from S106 which is negotiated on a case by case basis to mitigate the impact of the proposed development.

³ Retail warehouses exceeding 280sqm: are large stores specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers.
Superstores and supermarkets: are shopping destinations in their own right, selling mainly food or non-food goods, which normally have a dedicated car park.

40. Parishes with a Neighbourhood Plan will receive 25% of the revenues from the CIL chargeable development that take place in their area (and parishes without a neighbourhood plan will receive 15% subject to a cap of £100 per existing council tax dwelling per year).
41. The funds passed on to parishes can be spent on the provision, improvement, replacement, operation or maintenance of infrastructure; or anything else that is concerned with addressing the demands that development places on an area⁴. The parishes must spend monies within five years of receipt. The CIL guidance (Feb. 2014) states that parishes should discuss their priorities with the district council and once the levy is in place, agree on infrastructure spending priorities. They may also agree that the council should retain the neighbourhood funding to spend on infrastructure (e.g. school) which will support the development of the area.
42. Once CIL receipts start to be generated up to 5% of the income can be used to support the cost of setting up CIL and administering the scheme (Monitoring Officer).

Legal Implications

43. Once adopted CIL is a mandatory cost of development. Proposed collection and governance arrangements including the administration and enforcement of CIL will be subject to a separate report. It is considered that the legal requirements, as set out in the CIL Regulations 2010 (as amended) for the preparation and examination of a Charging Schedule have been met, allowing for pre-submission public consultation and submission for examination.

Risks

44. There is no statutory duty placed on the council to prepare a CIL Charging Schedule. However, restrictions on the future use of S106 agreements post April 2015 will reduce the council's ability to pool and secure developer funding towards essential infrastructure.
45. The council and Oxfordshire County Council are undertaking a review of secured S106 since 6 April 2010 to ensure that S106 agreements entered into post this date are compliant with the regulations. The ability to collect monies through S106 obligations will be severely limited and it will be necessary in many situations to refer to particular projects more specifically than may be the case at present.

Other implications

46. In line with our public sector equality duties of the Equality Act 2010, we have reviewed the preliminary draft charging schedule documents of CIL. Officers do not believe the charging schedule discriminates against any groups of people by the virtue of their protected characteristic. Following consultation and concerns expressed, officers propose to exclude extra care (C3) developments from CIL. Therefore increasing the viability of such developments which will help to meet the needs of our ageing population.
47. Officers recognise that it is important to ensure any infrastructure provided through CIL is accessible to meet the needs of all groups. We will work to ensure that the S106

⁴ CIL Regulation 59C

SPD and Local plan encourages infrastructure to be built to best practice guidance and British Standards.

CONCLUSIONS

48. Following feedback from recent consultation, sensitivity testing of our viability report, the suggested CIL rates in the proposed Draft Charging Schedule as amended are believed to be an appropriate balance between securing funding for infrastructure and the potential effects of imposing a charge on the economic viability of development as a whole.
49. Scrutiny is requested to consider this report and the Community Infrastructure Levy Draft Charging Schedule and make any comments to the Cabinet Member for Planning.

Background Papers

- Appendix 1 – Comments and response to CIL Preliminary Draft Charging Schedule consultation
- Appendix 2 – Viability Study (December 2014)
- Appendix 3 – CIL Draft Charging Schedule
- Appendix 4 – Draft Regulation 123 List
- Appendix 5 – Draft Instalment Policy