

<b>Title of Report:</b>	<b>Community Infrastructure Levy - Adoption and Implementation of Charging Schedule</b>
<b>Report to be considered by:</b>	Council
<b>Date of Meeting:</b>	4th March 2014
<b>Forward Plan Ref:</b>	C2587

**Purpose of Report:**

**To:**

- (a) Consider the Examiner's report into West Berkshire's Draft Charging Schedule;
- (b) Seek approval for the adoption and implementation of a Community Infrastructure Levy.

**Recommended Action:**

**That the Council Resolves:**

1. To accept the Examiner's recommendations and adopt the Charging Schedule as attached at Appendix B;
2. That the Charging Schedule will take effect from 1st April 2015 unless the restrictions on the use of S106 agreements come into force before that date, in which case the Charging Schedule shall take effect from the date that those restrictions come into force;
3. To approve the Regulation 123 List as attached at Appendix C as supporting documentation to the Charging Schedule.

**Reason for decision to be taken:**

To enable the adoption of a Community Infrastructure Levy (CIL) for West Berkshire

**Other options considered:**

Not to adopt a CIL

**Key background documentation:**

C2585 - Report to Special Full Council on 6th June 2013 regarding the Draft Charging Schedule

The proposals contained in this report will help to achieve the following Council Strategy priorities:

- CSP1 – Caring for and protecting the vulnerable**
- CSP2 – Promoting a vibrant district**
- CSP3 – Improving education**
- CSP4 – Protecting the environment**

The proposals will also help achieve the following Council Strategy principles:

- CSP6 - Living within our means**
- CSP7 - Empowering people and communities**
- CSP9 - Doing what's important well**

The proposals contained in this report will help to achieve the above Council Strategy priorities and principles by:  
Ensuring the adoption of a Community Infrastructure Levy which will allow the Council to charge a levy on new development.

Portfolio Member Details	
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<b>Date Portfolio Member agreed report:</b>	31/01/14

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## Implications

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- Policy:** The adoption of a Community Infrastructure Levy allows a levy to be charged on development in West Berkshire. The process is detailed in the report
- Financial:** To not proceed with the adoption of a CIL levy for West Berkshire would have a significant financial impact as we will not be able to collect developer contributions on a formulaic basis towards infrastructure after 6<sup>th</sup> April 2015 (as per draft 2014 Amendment Regulations). CIL is likely to lead to a lower level of contributions received compared to S106 contributions and the impact of this change will be taken into account in developing the Council's capital strategy from 2015/16 onwards.  
The introduction of CIL reduces the number of S106 agreements required as a result of planning applications and the fee income will be affected.
- Personnel:** Scheme will be implemented using existing resources
- Legal/Procurement:** There is a risk of legal challenge if the Council adopts the Charging Schedule but delays implementation until April 2015.
- Property:** N/a
- Risk Management:** The CIL Regulations restrict the use of S106 agreements to secure developer contributions from the relevant date which is now proposed will be the 6th April 2015. If CIL is not adopted and implemented by that date there will be limited opportunities to seek contributions towards infrastructure from development.

Is this item relevant to equality?	Please tick relevant boxes	Yes	No
Does the policy affect service users, employees or the wider community and:			
• Is it likely to affect people with particular protected characteristics differently?		<input checked="" type="checkbox"/>	
• Is it a major policy, significantly affecting how functions are delivered?		<input checked="" type="checkbox"/>	
• Will the policy have a significant impact on how other organisations operate in terms of equality?		<input checked="" type="checkbox"/>	
• Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?		<input checked="" type="checkbox"/>	
• Does the policy relate to an area with known inequalities?		<input checked="" type="checkbox"/>	
<b>Outcome</b> (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)			
Relevant to equality - Complete an EIA available at <a href="http://www.westberks.gov.uk/eia">www.westberks.gov.uk/eia</a>			<input type="checkbox"/>
Not relevant to equality			<input checked="" type="checkbox"/>

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval	<input checked="" type="checkbox"/>	
Delays in implementation could have serious financial implications for the Council	<input type="checkbox"/>	
Delays in implementation could compromise the Council's position	<input type="checkbox"/>	
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months	<input type="checkbox"/>	
Item is Urgent Key Decision	<input type="checkbox"/>	
Report is to note only	<input type="checkbox"/>	

# Executive Summary

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## 1. Introduction

- 1.1 The Community Infrastructure Levy (CIL) Regulations 2010 (“the CIL Regulations”) came into force on 6th April 2010 and allow Councils to set a levy which will be charged on all new development resulting in the creation of one dwelling or any development over 100m<sup>2</sup> (excluding residential annexes and extensions).
- 1.2 Although the CIL Regulations do not require any council to adopt a CIL, the Regulations contain within them a restriction on the use of S106 agreements after the relevant date, which was the 6<sup>th</sup> April 2014 but draft CIL Regulations published in December 2013 propose that this be delayed until the 6th April 2015. For this reason it is necessary for the Council to adopt and implement a CIL by that date to avoid the loss of financial resources, currently collected using S106, to mitigate the impact of development.
- 1.3 The Council’s Draft CIL Charging Schedule was approved for public consultation and subsequent submission for examination at a meeting of Full Council in June 2013. The Council submitted the Draft Charging Schedule for Examination on 28th August, and the Examination hearing took place on Wednesday 23rd October. The Examiner’s report was received on 8th November 2013 and is attached at Appendix A to this report.
- 1.4 The Examiner has recommended that the Schedule should be approved in its published form with no changes to the rates proposed.

## 2. Proposals

- 2.1 Members of Full Council are asked to approve the CIL Charging Schedule, and in addition to approve an implementation date of 1st April 2015. This allows the current developer contributions SPD to remain in place for as long as possible before CIL is implemented thus ensuring the continued use of the section 106 regime for as long as possible.
- 2.2 During the period between adoption and implementation, it is proposed that the current SPD for developer contributions be updated so that it continues to be fit for purpose after CIL is implemented. This period will also assist to ensure that all systems and procedures are in place for CIL, and that adequate notice of the new levy is given to developers and the public.

## 3. Recommendations

- 3.1 The Council is asked to resolve:
  - (1) To accept the Examiners recommendation and adopt the Charging Schedule as attached at Appendix B
  - (2) That the Charging Schedule will take effect from 1st April 2015 unless the restrictions on the use of S106 agreements come into force before that date, in which case the Charging Schedule shall take effect from the date that those restrictions come into force.

(3) To approve the Regulation 123 list attached at Appendix C as supporting documentation to the Charging Schedule.

**4. Equalities Impact Assessment Outcomes**

4.1 This item is not relevant to equality.

# Executive Report

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## 1. Introduction

- 1.1 The purpose of the report is to provide members with an update on the Community Infrastructure Levy for West Berkshire. The report outlines progress made to date, including the outcome of the Public Examination of the Draft Charging Schedule which took place in October 2013. Members are asked to approve the Charging Schedule for Adoption as well as the date that the Charging Schedule will take effect (the implementation date).
- 1.2 For clarification, in December 2013 the Government published Draft CIL (Amendment) Regulations 2014 (“the Amendment Regulations”). The Amendment Regulations are expected to come into force in February 2014.

## 2. Background to the Levy

- 2.1 The Community Infrastructure Levy is intended as a tool to secure contributions from developers towards improvements and enhancements to infrastructure required as a result of development. The exception to this is the provision of affordable housing within the District, which the Government considers should remain within the S106 regime.
- 2.2 Local authorities can choose whether or not to adopt a CIL Charging Schedule. However the CIL Regulations 2010 (as amended) contain reforms which scale back the use of S106 planning obligations so that they can generally only be used in limited circumstances. The restrictions mean that this Council will no longer be able to collect standardised (tariff style) formulaic contributions (whether or not a CIL is adopted).
- 2.3 The draft CIL (Amendment) Regulations 2014 were published in December 2013. These proposed an amendment to the date when restrictions on the use of S106 planning obligations come into force. The ‘cut-off’ date is currently the 6<sup>th</sup> April 2014 but it is proposed that this now be delayed until 6th April 2015.
- 2.4 The level of CIL to be charged can only be set on the basis of evidence based site viability - i.e. what development in the local area can afford to pay. The level of CIL must not inhibit development; otherwise the level of CIL cannot be adopted.
- 2.5 Once adopted, a CIL charge will be levied at a rate per m<sup>2</sup> (based on Gross Internal Floorspace) on all new development resulting in the creation of one (or more) dwellings, or any new development of more than 100 m<sup>2</sup> of net floorspace (excluding residential annexes and extensions).
- 2.6 CIL will be payable within 60 days of commencement of development, although the Regulations allow for an instalment policy to be adopted alongside the CIL if the authority wishes. The Council's instalment policy is included in the Charging Schedule. The Levy is a charge on the land in the same way as a S106 agreement, and in addition the Regulations contain within them various robust enforcement measures available if payment is not received on time.
- 2.7 There will be no CIL charge for Change of Use applications unless additional floorspace is created, and no charge for the subdivision of existing dwellings. CIL is also not payable on:

- (a) Structures into which people do not normally go;
- (b) Structures which are not buildings (e.g. pylons / turbines);
- (c) Temporary structures;
- (d) All affordable housing;
- (e) Self-build housing (2014 Amendment);
- (f) Residential annexes and extensions (2014 Amendment);
- (g) Development for charitable purposes; and
- (h) Applications for development where no buildings are proposed (e.g. mineral extraction sites).

2.8 The CIL rate, once adopted, is non-negotiable, unlike the current method of securing contributions through a S106 agreement. It will be subject to index linking on an annual basis.

2.9 Members who attended the Member Development Session on CIL on 12<sup>th</sup> February requested clarification of the further exemption for self build housing, which is included as part of the CIL (Amendment) Regulations 2014. The exemption will apply to any dwellings built by a person (including where it is built following a commission by that person) and occupied by that person as their sole or main residence for a minimum of 3 years after completion. It cannot be rented out, or sold for those three years, or the exemption will be withdrawn and CIL will become payable. Any claim for an exemption must be submitted prior to commencement by the person (not the builder), and a further certificate must be submitted by the person after completion.

### **3. CIL Examination**

3.1 The CIL Examination took place on the morning of 23rd October 2013.

3.2 The Examiner's report was received on 8th November 2013. This is attached at Appendix A.

3.3 The Non Technical Summary of the Examiner's report states:

*"This report concludes that the West Berkshire Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. The Council has sufficient evidence to support the schedule and can show that the levy is set at a level that will not put the overall development of the area at risk.*

*I have recommended that the schedule should be approved in its published form.*

*Following submission the Council has proposed two minor changes for clarification purposes. Firstly the identification of the specific Use Classes within which the type of development listed in the schedule falls, and secondly the inclusion of a reference in paragraph 1.5 to the table of CIL rates. These changes are not required to meet the statutory requirements but nevertheless are supported in the interests of clarity."*

#### **4. CIL Charging Schedule**

- 4.1 The Charging Schedule is attached to this report at Appendix B and sets out the basis for the CIL charge, the rates adopted, and the instalment policy. It takes into account the two minor changes agreed by the Examiner for clarification purposes.
- 4.2 A number of changes have been made when producing the Charging Schedule, to reflect the fact that it will no longer be 'draft'. For clarity a further document is attached to the report at Appendix D, being a word version of the Draft Charging Schedule showing all changes made to the document.

#### **5. Regulation 123 List**

- 5.1 The Regulation 123 List is a key document that supports the Charging Schedule, and is attached at Appendix C. It formed part of the supporting documentation in the Examination of the Draft Charging Schedule. It sets out the infrastructure to be funded from CIL, and details where S106 Agreements requiring developer contributions may still be used. In the case of West Berkshire, the only instances where developer contributions using S106 agreements may be used are for development where infrastructure is required directly and solely as a result of that development. Examples of this infrastructure are shown on the Reg 123 list and currently represent the specific infrastructure projects required as a result of the development planned for Sandford Park.
- 5.2 In light of the changes proposed in the draft CIL (Amendment) Regulations 2014, further changes are required to the Regulation 123 list. These changes will be made to the document over the coming months, including appropriate local consultation as required in CIL Guidance. Provided the draft CIL (Amendment) Regulations 2014 come into force as anticipated on or before 5<sup>th</sup> April 2014, this work will be completed prior to the implementation of the Charging Schedule,
- 5.3 This list will also be updated once work on the Site Allocations and Delivery DPD is completed, which will result in further sites being allocated for development in the remaining plan period which may require specific mitigation measures.

#### **6. Delivering Investment from Sustainable Development SPD**

- 6.1 In June 2013 the Council adopted its Delivering Investment from Sustainable Development SPD. The SPD sets out the current policy with regard to securing developer contributions to mitigate the impact of development in West Berkshire. The current policy allows the Council to seek contributions from residential developments of one (net) dwelling or more, and from commercial development over varying thresholds. Contributions are agreed during the planning application process and are secured by a S106 Agreement.
- 6.2 West Berkshire Council operates a successful and robust system of seeking section 106 contributions to mitigate the impact of development within the District. This is supported by the formulaic approach set out fully in the SPD. It is considered that this tried and tested system should be utilised for as long as possible.
- 6.3 The current policy must be reviewed so that it continues to provide effective policy once the CIL Charging Schedule is implemented– ie to provide for infrastructure in



appropriate circumstances. The policy must reflect the intentions of the Regulation 123 list described in Part 6 above so that there is no possibility that the Council can 'double dip' – charge any developer twice for the same infrastructure through both mechanisms. Section 106 and CIL must be mutually exclusive. A revised policy will ensure greater clarity of what the Council will seek and the circumstances in which it will seek it for the benefit of all those concerned in the planning process.

- 6.4 A timetable has been drawn up in order to review the SPD. It allows for a 6 week public consultation period, as well as member approval before and afterwards. It is proposed to bring the revised SPD to the December 2014 meeting of Full Council for adoption.
- 6.5 Paragraph 87 of the April 2013 CIL Guidance states that “Relevant local policy changes should be implemented at the same time that the charging schedule is introduced, and integrated as soon as practical into the relevant Plan”.

## **7. CIL Charging Schedule Effective Date**

- 7.1 Members are asked to adopt the Charging Schedule as Appendix B, as recommended by the Examiner in his report.
- 7.2 The date that the Charging Schedule takes effect is the date that the restrictions on the use of S106 agreements come into force, unless this date is later than 6<sup>th</sup> April 2015 (as per draft CIL (Amendment) Regulations 2014).
- 7.3 Provided the draft CIL (Amendment) Regulations 2014 come into force as anticipated on or before 5<sup>th</sup> April 2014, officers recommend that a date of 1<sup>st</sup> April 2015 is approved for the following reasons;
- (1) It is anticipated that the level of income from CIL will be less than currently received under the S106 regime. It is therefore considered financially prudent to keep the S106 regime in place for as long as possible. However, see the further points made below.
  - (2) It is not recommended to implement CIL unless the revised SPD for developer contributions using S106 agreements (once CIL is implemented) is ready to be adopted at the same time.
  - (3) The time between adoption and implementation will assist officers in ensuring that the Council has the necessary procedures and processes in place for CIL and that adequate notice of the new levy is given to developers and the public.
- 7.4 However it must be noted that there are some potential drawbacks with not implementing CIL sooner than 1<sup>st</sup> April 2015:
- (1) There is some concern that a delay between the adoption of the charging schedule (March 2014) and the implementation (recommended for April 2015) may give rise to a legal challenge. It is considered that there are good grounds for defending any such claim as the Council has reasonable grounds for adopting and implementing in the manner proposed.
  - (2) Developers may delay putting in planning applications until after CIL is implemented if they see financial benefit in so doing, which may lead to the possible loss of planning application income.

- (3) The potential risk to the Five Year Land Supply position if developers delay submitting planning applications. If the Council is not able to demonstrate a five year supply of land, policies for the supply of housing are considered out-of-date and applications should be considered in the context of the presumption in favour of sustainable development.
- (4) Finally, it should be noted that the Planning Advisory Service have published a document entitled "CIL Frequently asked questions" which poses the question of whether there is any advantage to early implementing of CIL notwithstanding that the level of income is anticipated to be less than under the S106 regime. It advises consideration of these points: "You will get a CIL from most developments; even small amounts from each will add up" and "Even now, due to the changes to the legislation contained in s122 of the CIL Regulations, a s106 obligation cannot be a reason for granting permission unless the three legal tests are met. There have been cases where tariffs have failed at appeal as they do not comply with these tests."

## **8. Use of CIL Receipts**

- 8.1 The governance – the allocation and spend of CIL will be the subject of a separate report to the Council's Executive by the S151 Officer of the Council in due course. A meeting of the Developer Contributions Sub Group of Capital Group took place on 24<sup>th</sup> February 2014.

## **9. Recommendations**

- 9.1 The Council is asked to resolve:
  - (1) To accept the Examiners recommendation and adopt the Charging Schedule as attached at Appendix B
  - (2) That the Charging Schedule will take effect from 1st April 2015 unless the restrictions on the use of S106 agreements come into force before that date, in which case the Charging Schedule shall take effect from the date that those restrictions come into force.
  - (3) To approve the Regulation 123 list attached at Appendix C as supporting documentation to the Charging Schedule.

## **Appendices**

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Appendix A - Report on the Examination of the Draft CIL Charging Schedule

Appendix B - West Berkshire Council CIL Charging Schedule

Appendix C – West Berkshire Council CIL Regulation 123 List

Appendix D – West Berkshire Council Draft Charging Schedule with tracked changes

## **Consultees**

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**Local Stakeholders:** N/a

**Officers Consulted:** Sarah Clarke and Liz Patient from Legal Services, Corporate Board

**Trade Union:** N/a