

**Cabinet , 20<sup>th</sup> January 2016**

**Community Infrastructure Levy – Current Position**

**Submitted by: Executive Director of Regeneration and Development**

**Portfolio: Planning and Housing**

**Ward(s) affected: All**

**Purpose of the Report**

*To receive further guidance on the prospects of pursuing at an early stage the bringing in of a Community Infrastructure Levy*

**Recommendations**

- 1) That Members note again that the advice received by the City Council that it would be inappropriate to proceed at this point in time with progressing a Community Infrastructure Levy is considered still to apply**
- 2) That officers continue to consider and advise the Planning Committee in specific cases whether particular obligations, following the coming into force of the provisions of Regulation 123 on 5<sup>th</sup> April 2015, are lawful**
- 3) That officers bring forward a timetable, with resource implications, detailing how it is proposed to develop proposals for a Community Infrastructure Levy Draft Preliminary Charging Schedule for consultation purposes, the approval of a Draft Charging Schedule and its submission for examination, and its examination following or at the same time as the Examination of the Joint Local Plan in 2018**

**Reasons**

To make clear the Council's position

To start the process of considering what resources are required and what timetable needs to be adopted so as to be able to submit a Draft Charging Schedule for examination following or at the same time as the Examination of the Joint Local Plan in 2018,.

**1.0 Introduction**

- 1.1 The Community Infrastructure Levy (CIL) is a charge which local authorities in England and Wales can choose to apply to all new dwellings and any other qualifying development over 100 sq metres gross internal floor area (subject to some minor exceptions). It is designed to be a predictable charge, levied on all development where viable, which will not (except in exceptional circumstances) be subject to negotiation.
- 1.2 The money raised is intended to contribute to the infrastructure required to support new development as part of the Authority's development strategy.

The intention is to mitigate against the cumulative impacts of development rather than to address the site specific impacts of a development. Relevant infrastructure might include:-

- Highways and Transport Improvements;
- Educational Facilities;
- Health Centres;
- Community Facilities & Libraries;
- Sports and Recreation Facilities; and
- Green Infrastructure

- 1.3 This is not a comprehensive list and it should be noted that there will not necessarily be sufficient funding from CIL to finance all infrastructure required to support new development. Furthermore the infrastructure identified as being funded by CIL can be updated on an annual basis.
- 1.4 Setting CIL  
The CIL Regulations and Guidance have given local authorities flexibility in their approach to setting CIL. The Levy can be a fixed rate for development across the entire area, or can be set at a variable rate, e.g. different levy rates between the rural and urban areas where there is evidence of different levels of economic viability. Irrespective of how the rates are set, the Government makes it clear that the rates must appear to strike an appropriate balance between the desirability of raising money towards the cost of infrastructure and the economic viability of development.
- 1.5 Authorities wishing to charge CIL are required to produce a CIL charging schedule to set out the rates that will be applied to new development and this must be subject to several rounds of consultation prior to being tested at an 'examination in public' by an independent person.
- 1.6 The Charging Schedule must be founded on a robust evidence base which works to demonstrate that the CIL rates are sufficiently sensitive to different economic circumstances and likely development costs.
- 1.7 In July 2011 Cabinet agreed to the Council taking the necessary steps to become a 'charging authority' under the Community Infrastructure Levy Regulations, 2011.
- 1.8 In March 2013 the Planning Committee received a report on the findings and recommendations of a joint Viability Study commissioned in partnership with the City of Stoke-on-Trent with a view to identifying appropriate CIL rates to apply across both local authority areas. The intention was that the Study would form a key part of the evidence at the eventual examination of the Charging Schedule. The report also set out draft proposals in respect of a statutory consultation on a Preliminary draft Charging Schedule, based on the rates recommended in the Viability Study Report.
- 1.9 The consultation was then undertaken.
- 1.10 At its meeting on the 11<sup>th</sup> December 2013 Cabinet received a report on the then proposed Joint Local Plan. Cabinet in addition to agreeing to the formal withdrawal of the Site Allocations and Policies Local Plan, agreed to proceed with the preparation of a new Joint Full Local Plan in partnership with the City Council and to note the implications arising from the need to re-appraise the

adopted Core Spatial Strategy for the Council's CIL process and to seek a further report.

- 1.11 With respect to the Council's CIL process the report to that Cabinet advised as follows

*"In response to questions raised by your officers and Stoke-on-Trent City Council officers, Stoke-on-Trent City Council has obtained Counsel opinion on the possible impact on CIL which would be created by a decision to re-appraise the Core Strategy and have shared this legal advice with your officers. Sections... summarise the legal advice received. It should be noted that because the Borough Council was not the client the advice cannot be relied upon in a legal sense. However your officer agrees with the advice.*

*Any decision to re-appraise the Core Spatial Strategy will impact on the Council's decision to implement a charging schedule under the CIL regulations. Paragraph 4 of the CIL Guidance provides that "charging schedules should be consistent with and support the implementation of up-to-date Local Plans in England."*

*The Core Spatial Strategy is a Local Plan for the purposes of paragraph 4 of the CIL Guidance. Your officers consider that the Core Spatial Strategy is broadly in conformity with the National Planning Policy Framework and therefore remains valid for development management purposes. However, a question arises as to whether the Plan can be considered 'up to date' for the purposes, of CIL. Members are reminded that the preliminary draft charging schedule, which the Council consulted on earlier this year, makes clear that the Council is promoting a charging schedule which levies funds on residential and retail development only. The evidence in respect of housing land supply is now pointing to the need to re-appraise the Core Spatial Strategy. In addition the Council's policies relating to housing land supply are not considered up-to-date because the Council does not currently have a five year land supply. The implications of this are that there is a significant risk that the Core Spatial Strategy would no longer be considered up-to-date at the examination of the Council's Charging Schedule under the CIL Regulations 2011 (as amended).*

*In such circumstances it is recommended that at this point in time no further action is taken to progress the current work on implementing a CIL charging Schedule.*

*The correct way forward, in order to ensure appropriate coordination of processes, would be to develop the CIL charges and test them alongside the emerging Local Plan as envisaged in paragraph 11 of the CIL Guidance and paragraph 175 of the National Planning Policy Framework."*

- 1.12 In terms of the consequences of postponing the introduction of a Community Infrastructure Levy the report indicated as follows

*"If the Council is unable to carry on with the current work on the Community Infrastructure Levy Charging Schedule (because we are considered to not have an up-to-date Local Plan for the purposes of the CIL guidance and regulations) it ultimately means that it will not be possible to fund infrastructure from the levy in advance of a new Local Plan. However it should be noted that the Community Infrastructure Levy represents an alternative method of funding infrastructure to the existing method of Section 106*

*obligations alone and essentially draws on a similar pool of funds as through the use of Section 106 obligations. However there are some important differences and issues to consider.*

*The Council, as Local Planning Authority, will only be able to fund very limited site specific infrastructure through Section 106 contributions until a Community Infrastructure Levy Charging Schedule is adopted at a later stage. From 6th April 2015, the Council will be restricted in its use of planning obligations for pooled contributions (back dated to 2010). Pooled contributions may be sought from up to five separate planning obligations for an item of infrastructure. Critically the Government's latest CIL consultation makes it clear that the limit of five applies to types of general infrastructure contributions, such as education, transport and open space. This is to incentivise places to adopt the levy (as the Government's preferred vehicle for developer contributions). As a consequence there could be significant financial implications although the Council has no alternative due to the Regulations. The extent of these implications will require further consideration and reporting back to members at the earliest opportunity."*

- 1.13 No report was subsequently provided. The Planning Peer Review Team, being aware of the decision of Council to suspend all work on the CIL, suggested that the decision should be reviewed. They stated

*"The Council has decided to suspend work on CIL mainly as a result of the decision not to proceed with the site allocations and policies local plan although it should be noted that there are impending changes to the rules on pooled section 106 contributions that would be pertinent. CIL provides the opportunity for substantial funds from development to provide improved local infrastructure to mitigate development. We recommend that the Council re-examine this decision by firstly investigating whether the benefits of introducing CIL are sufficiently high and, if so, to formally review the decision not to proceed. The Council is likely to want to take its own legal advice if it considers that there are clear benefits to proceeding."*

This view was reported to Cabinet in November 2014 when it considered the report of the Planning Peer Review Team. The report (to Cabinet) indicated that it would be appropriate to review the decision made by Cabinet to cease work on CIL (and for any reconsideration to be informed by legal advice) but also that it would be appropriate to work towards adoption of the Levy after the adoption of the Local Plan. The approved Action Plan referred to the obtaining of legal advice on the issue of pooling post April 2015 (i.e. post the coming into force of Regulation 123 - an entirely different issue)

Officers have again reviewed the Counsel's opinion that the City Council obtained. No fault can be found with it and officers have no reason to consider that another Barrister would provide a different opinion.

- 1.14 Officers have since obtained legal advice on the immediate issue of the transition on the 5<sup>th</sup> April 2015, at which date the provisions of Regulation 123 of the CIL Regulations (as amended) came into force. The relevant section of Regulation 123 states as follows:-

*A planning obligation ("Obligation A") may not constitute a reason for granting planning permission to the extent that*  
*(a) Obligation A provides for the funding or provision of an infrastructure project or type of infrastructure, and*

- (b) Five or more separate planning obligations that*
- (i) Relate to planning permissions granted for development within the area of the charging authority; and*
  - (ii) Which provide for the funding or provision of that project, or type of infrastructure,*
- have been entered into before the date that obligation A was entered into*

- 1.15 With respect to Regulation 123, or the “pooling” issue the general view within the Planning and legal professions is that until there are some legal cases any advice, on the interpretation of the new restrictions that came into force on the 5<sup>th</sup> April 2015 is going to be so hedged and qualified as to frankly be of limited use or unhelpful – i.e. it will say that a Council cannot take into account planning obligations in situations where most LPAs will continue to do so. Officers have had detailed discussions with the County Council to ascertain their position, and certain steps have been taken to reduce the risk of challenge to the Authority’s planning decisions. There is therefore no purpose in seeking such advice at this point in time.

## **2.0 Future Next Steps**

- 2.1 Although work on CIL has been suspended there would it is considered be merit in drawing up a new timetable and to consider what further work would need now to be done to get the Council in a position where by it could, in conjunction with the City Council or if necessary on its own, submit for examination a draft Charging Schedule. Given the time that has passed it would be very likely that a new Viability study would need to be undertaken, or the previous work extensively reassessed, and a new consultation undertaken on a Preliminary Draft Charging Schedule. There would be benefits in securing an early mandate to proceed with CIL so that the SHLAA viability work being undertaken for the Local Plan could inform such a Study. Following review of representations submitted on the Preliminary Draft Charging Schedule, a Draft Charging Schedule would then be completed and submitted to the Planning Committee for their views prior to being considered by Cabinet. The Draft Charging Schedule will need to be published so that representations can be made and taken into account before it is formally submitted for examination. Following the examination the Borough Council should be able to adopt the final CIL Charging Schedule.

- 2.2 Prior to examination a further report will be brought to Members on the administration of the levy and the preparation of the Regulation 123 list which sets out the draft list of infrastructure to be funded by CIL. It is only at this stage that it will be necessary for the Council to agree an approach to the spending of CIL monies.

## **3.0 Outcomes Linked to Corporate Priorities**

- 3.1 Taking steps to collect CIL revenue in the Borough will have a potential impact on the priorities of creating a “clean, safe and sustainable borough”, a “borough of opportunity”. and a “healthy and active community”

## **4.0 Legal and Statutory Implications**

- 4.1 Part 11 of the Planning Act 2008 and the Regulations referred to in this report provides for introduction of the CIL. In general terms, CIL is intended to be

used for general infrastructure contributions whilst Section 106 obligations will be for site-specific mitigation.

## **5.0 Financial and Resource Implications**

5.1 The scope of the Section 106 planning obligations process was reduced after 5 April 2015. To date there have not been significant implications from that but by their nature the restrictions are progressive or incremental in their effect.. Without the financial provision of a CIL Charging Schedule the Council and the County Council will eventually find itself in a more challenging financial climate when meeting the infrastructure needs of the borough. There is no existing specific budgetary provision to pay for any required studies that might be required to support the calculation of what might be an appropriate CIL Charging Schedule

## **6.0 Equality Impact Assessment (EIA)**

6.1 Not applicable.

## **7.0 Earlier Cabinet/Committee Resolutions**

7.1 July 2011 Cabinet agreed to the Council taking the necessary steps to become a 'charging authority' under the Community Infrastructure Levy Regulations, 2011

March 2013 Planning Committee resolve to recommend that the recommended CIL rates arising from a Viability Assessment be accepted for consultation purposes, that joint consultation proposals be approved and that a report be submitted to a subsequent meeting on the results of the consultation

11<sup>th</sup> December 2013 Cabinet – see above

## **8.0 Background Papers**

- Stoke-on-Trent City Council & Newcastle-under-Lyme Borough Council Community Infrastructure Levy Viability Assessment February 2013
- The Community Infrastructure Levy Regulations 2010, as amended
- Cabinet report on Community Infrastructure Levy 20th July 2011