

Cabinet	FP/818/04/12
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**COMMUNITY INFRASTRUCTURE LEVY (CIL): DRAFT CHARGING SCHEDULE
AND GOVERNANCE PROPOSALS WITH CHELMSFORD CC**

Report by Cllr John Jowers, Cabinet Member for Communities and Planning

Enquiries to Officer Keith Lawson, Head of Strategic Development

Purpose of report

To approve the Preliminary Draft Charging Schedule (PDCS) proposed by Chelmsford City Council for the Community Infrastructure Levy (CIL) and the outline proposals for the governance mechanisms to oversee CIL discussions and decisions.

A copy of the PDCS and supporting documents are attached to this document.

If approved by the ECC Cabinet, the PDCS will be submitted by Chelmsford CC to an examination in public (EIP) after a final further consultation period, which is likely to be towards the end of this calendar year, with CIL to be introduced in early 2013.

While the PDCS will be of especial interest to Members representing Divisions in Chelmsford, it will also be of interest to other Members as this is likely to be the second Draft Charging Schedule to be adopted in Essex.

Decision Areas and Recommendations

Cabinet is recommended to approve the Preliminary Draft Charging Schedule (PDCS) including suggested comments for Chelmsford CC to consider together with an outline proposal included in this document on the governance of CIL in Chelmsford.

Background

In late 2010, the Coalition Government decided, after a review, to continue to implement the Community Infrastructure Levy (CIL) which had originally been proposed by the previous Government, subject to some detailed changes.

CIL is designed to help ensure that development contributes reasonably to the cost of the infrastructure required to support that development. CIL will be expressed as a charge of £x per square metre of development. There are a number of exemptions from CIL (social housing, charities and charitable investment) and a District can set their own criteria for further exemptions. It is possible for a District to impose multiple rates of CIL (in certain parts of the District or for different types of development) but the District would have to demonstrate that these differential rates are justified by viability differences only.

To charge a CIL, a Charging Authority (i.e. a District Borough or City) has to produce a Preliminary Draft Charging Schedule. The PDCS has to set out an Infrastructure Delivery Plan, similar to that in the Core Strategy or Local Plan, involving local infrastructure providers, which includes the County Council. A very wide definition of infrastructure is included. ECC has been involved in updating the infrastructure 'trajectory' which was provided for the Core Strategy EIP to form the base for the PDCS. To start on a CIL, a District will either have to have had a Core Strategy/Local Plan approved after an EIP, or it can have the Local Plan and PDCS examined at the same time.

Only infrastructure required for development can be included and all other sources of funding for infrastructure have to be taken into account. e.g New Homes Bonus, forward funding etc. Therefore, CIL will represent the 'gap' between the amount of infrastructure required and the funding available from all other sources.

A viability assessment has then to be undertaken to establish that the emerging CIL charge will not render all development in the District unviable. After this assessment the PDCS has to be consulted on publicly and then submitted to an EIP. A 'meaningful proportion' of CIL – which is yet to be decided on by the Government - will be made available to the neighbourhood in which development takes place. The accountable body for this 'meaningful proportion' is expected to be the Parish Council where they exist. Elsewhere it could be the District itself or a neighbourhood forum.

Preliminary Draft Charging Schedule (PDCS)

Chelmsford CC was selected, with ECC support, by DCLG as one of a second group of CIL 'front runners' in England. Chelmsford, following the viability assessment carried out on their proposed CIL rates has decided to create two Charging Zones. Zone 1 will cover the North Chelmsford Area whilst Zone 2 will cover the rest of the City's authority.

The rationale for the North Chelmsford charging zone (Zone 1) is that there will be a very considerable amount of infrastructure investment required by the development in that area which will be financed through Section 106 contributions. From the

viability assessment it has been concluded that residential development in that area will not be able to sustain a CIL charge as well as the S106 contributions. Hence the residential CIL rate in the North Chelmsford zone is proposed at zero.

The PDCS and evidence base attached indicate that Chelmsford CC believes that the following CIL rates do not threaten development viability across the City:

- (i) A rate of £125 per square metre for residential development in Zone 2;
- (ii) A rate of £87 per square metre for comparison retail throughout;
- (iii) A rate of £225 per square metre for convenience retail throughout;
- (iv) A zero rate on all other development uses

A basic tenet of CIL is that CIL and Section 106 cannot be used together to finance the same piece of infrastructure. The Charging Authority has to produce a Regulation 123 list, named after the relevant section of the CIL Regulations, setting out which types of infrastructure will be financed by CIL and which by S106.

Recommended Comments within Consultation

Included below are some detailed points on the PDCS that is suggested Members would wish to make...

Colchester BC are also progressing along a similar journey and it is suggested that liaison between the Borough and City in developing their respective CIL policies so as to share their experiences and feedback from their consultations. For example, Colchester's recent decision to carry out new evidence based research as a direct response to Developer concerns raised.

Para 2.2: - This should make it clear that pooling of up to five planning obligations/financial contributions will remain acceptable.

Para 4.4 – The 'Essex School Organisation Plan' has been replaced by 'Commissioning School Places in Essex' (current edition 2011-16).

Table 4 – It is felt that too many instalments are being offered. We suggest that all liability under £50k should be paid up front with subsequent instalments of not less than £100k each. Having an instalment policy also means that the Borough would face increased processing and monitoring costs relating to the individual payments. Therefore it is suggested that they reduce the options from the current four tiers.

It is also suggested that consideration be made on the instalment process in regard to using only commencement criteria for payments made after the initial payment. For example, developer timescales for completing dwellings may fall outside the timescale of the instalment policy and so could cause issues with their readiness to make payment. Therefore number of occupied dwellings or dwellings complete may be alternative factors to use that would not be too difficult to monitor.

Para 11 – It is suggested that a paragraph clarifying how land will be dealt with should be added, for example, *‘In general, requirements for land to deliver infrastructure will be secured on site via a section 106 agreement. Only in the event that land is required from one development to facilitate other developments in the area could it be appropriate for land to be considered as part of the CIL payment’.*

Proposals

Following the decision on Colchester’s PDCS in August 2011, it is not proposed to consider in this document any other options than to comment constructively upon Chelmsford’s PDCS.

A lower tier authority has to choose whether to introduce CIL but there are now many incentives in favour of introducing it. CIL is designed to help remedy a number of drawbacks in the current regime of developer contributions under Section 106 of the 1990 Town and Country Planning Act. S106 payments are heavily concentrated on larger sites and involve individual site by site negotiations. For ECC, S106 payments are also heavily concentrated on Education and Highways and Transportation.

Section 106 payments will not end but they have already become more restricted by law and further restrictions will be imposed in the years to 2014. It would be possible for CIL receipts to be used towards the projects in the Integrated County Strategy in Chelmsford.

Once the PDCS has been examined and found ‘sound’, CIL revenues will begin to be paid to the City Council as the Charging Authority. The City is not obliged to invest in the infrastructure items in the PDCS. It will be possible for the City and partners to reallocate funds received to different priorities. Therefore the governance arrangements to be brought in for CIL are particularly important.

Outline Proposal for Governance arrangements

In discussions with officers at Chelmsford CC, ECC officers have drawn up the outline below of a suggested governance framework for Chelmsford, which is similar to that proposed in the County Council’s response to Colchester’s PDCS last year. Chelmsford has indicated in its PDCS that it wishes to use its existing Local Delivery Mechanism (LDM) known as Chelmsford Tomorrow, and which was established to help allocate funds under the previous Standard Charges (SPD). To do this it is suggested that Chelmsford Tomorrow should be more formally constituted and become the Decision Making Body of the two groups proposed.

It is suggested that in paragraph 11.3 – Greater clarity is required regarding how the LDM will be formalised to take on this new role As was suggested in Colchester, ECC should press for two tiers – Advisory (group of service officers) and Decision Making (senior officers and Members) with the following principles: -

- No organisation to have an absolute voting majority e.g. Chelmsford 4, ECC 2, Health 1, Police 1 & Environment Agency 1.
- An impartial (non voting) chair – from possibly the Chelmsford Society or the local Chamber of Commerce.

The proposed governance structure comprises:

- (i) A Decision Making group consisting of a Member and a very senior officer from each Authority, i.e. a reformed Chelmsford Tomorrow;
- (ii) An Advisory officer only level group sitting beneath the Decision making group.

The composition of these bodies would include ECC services involved in infrastructure in Chelmsford. Both these bodies would meet at least twice a year and the advisory body would put forward a proposal for what items of infrastructure could and should be delivered over the next period.

One possibility for consideration would be that the main ECC services likely to receive CIL (Schools and Highways and Transportation) would have a more or less permanent representative on these bodies, with other ECC services being invited to attend when these bodies were considering proposals particularly relevant to their own services (e.g. Libraries would attend if consideration was being given at the meeting to the use of CIL funds for a new or extended library in the City).

While there is no timescale specified for a future review of the first Charging Schedule Chelmsford CC has indicated that they would wish to consider a review of the Charging Schedule in 2016. It is open to the Charging Authority to amend its Regulation 123 list much more rapidly by a resolution of the Charging Authority.

Chelmsford Tomorrow would consider these proposals and could approve, reject or amend them. Alternatively it could ask for more work to be done by officers with a view to reconsidering a revised proposal at the next or a future meeting.

Conclusions

Cabinet is recommended to approve the Preliminary Draft Charging Schedule (PDCS) including suggested comments for Chelmsford CC to consider together with an outline proposal included in this document on the governance of CIL in Chelmsford.

Relevance to ECC's corporate plan and other Strategic Plans

The introduction of CIL will contribute particularly to the following aims:

- Our vision of the best quality life in Britain
- Increasing educational achievement and skills
- Maintain and improve the transport network
- Promoting sustainable economic growth
- Delivering value for money

It will also contribute towards strengthening communities and working better with our partners.

Internal and External Consultation

Chelmsford CC will have undertaken two rounds of external consultation on the Draft Schedule before the EIP begins. ECC services have been consulted in the course of drawing up this document. Attached are also documents produced by ECC Schools Service and Spatial Planning and Regeneration on CIL and the Colchester Draft Charging Schedule.

Legal Implications (Monitoring Officer)

CIL is an important part of new development contribution to infrastructure across the county. As ECC will continue to deliver a significant part of that infrastructure it is appropriate that it ensures that the draft Charging Schedule meets the requirements. What is proposed is a proportionate response to the consultation.

Finance and Resources Implications (Section 151 Officer)

The CIL Regulations came into force in April 2010 and provides Lower tier Authorities (Charging Authorities) with a new mechanism for collecting developer-funding for infrastructure needed to support growth. County Councils will not be responsible for preparing CIL, although they will need to be consulted under the Regulations.

The scope of Section 106 reduces between now and 2014 and without the financial provision of the CIL charging policy; the county will find itself in a more challenging climate. ECC received on average £8.5m per year, over the last 5 years, and are currently holding Contributions of £40.5m as at 29/02/12. Within the Budget Book, the Capital Programme for 2012/13 incorporates Section 106 Contributions of £10.35m for Highways and Transportation and £8.525m for other services (e.g. Education).

The Districts need to develop their own CIL charging schedules; otherwise they, and indeed as a result, ECC, will run the risk of losing valuable developer-funding for infrastructure.

The starting threshold has been lowered therefore CIL will encompass more future housing development projects than that previously covered by Section 106. This allows for previously untapped income streams to be received by the charging authority. CIL is to be levied on the net additional floor space as a result of the development.

The Charging Schedule is index linked by the national all-in Tender Price Index under regulation 40 of the CIL legislation. The charge rates will therefore keep pace with the index.

The district will be entitled to allocate up to 5% of its CIL Receipts for administration of the process. Therefore the County could have the ability to recover costs from ongoing administration if agreement is reached with the Council.

CIL may produce significant funding for infrastructure and help cover the gap in infrastructure demands that are brought about by new development; and it will be vital that the County Council works closely with districts and ensures that:

- Remaining Districts are encouraged in the preparation of a CIL Charging Schedule ensuring that it reflects infrastructure needs including County Council services such as schools and transport and the Integrated County Strategy.
- A Protocol is produced - agreeing what evidence is needed to justify any claim on the CIL receipt and agreeing timetables for monies to be transferred to the County Council.

Human Resources Implications

It is believed that these developments can be undertaken by the redeployment of existing staff resources (e.g. from existing Section 106 work) and without an increase in staffing

Equality Impact Assessment

Chelmsford CC has undertaken an Equality Impact Assessment on this.

Background papers

Chelmsford CC Preliminary Draft Charging Schedule (PDCS)

Chelmsford CIL Evidence Base can be found on their website:

<http://www.chelmsford.gov.uk/index.cfm?articleid=20375>

DCLG publications on CIL can be found here on their website:

<http://www.communities.gov.uk/planningandbuilding/planningsystem/communityinfrastructurelevy/>

