

TO: EXECUTIVE
10 FEBRUARY 2015

**APPROVAL OF THE BRACKNELL FOREST COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE, INSTALMENT POLICY AND 'REGULATION 123 LIST', ADOPTION OF THE BRACKNELL FOREST PLANNING OBLIGATIONS SUPPLEMENTARY PLANNING DOCUMENT AND WITHDRAWAL OF THE LIMITING THE IMPACT OF DEVELOPMENT SUPPLEMENTARY PLANNING DOCUMENT.
Director of Environment, Culture and Communities**

1 PURPOSE OF REPORT

1.1 The purpose of this report is to:

- Inform the Executive of the outcome of the Examination into the Bracknell Forest Community Infrastructure Levy (CIL) Draft Charging Schedule;
- Seek approval for the introduction of CIL in Bracknell Forest in Spring 2015;
- Seek approval for the CIL Charging Schedule (including the minor modifications required by the Examiner) and associated documents;
- Seek the adoption of a new Planning Obligations Supplementary Planning Document (SPD) and withdrawal of the existing Limiting the Impact of Development SPD which the new SPD will supersede.

2 EXECUTIVE SUMMARY

2.1 Following the examination in public of the Council's CIL Draft Charging Schedule, and publication of the Examiner's Report, the next step in the process of introducing CIL charging is to gain Executive approval for the Charging Schedule incorporating the minor modifications required by the Examiner (none of which affect the Council's proposed CIL rates). Full Council decisions will be required for the publication of the CIL Charging Schedule and for setting the date for CIL charging to commence.

2.2 There are two additional CIL documents that require Executive Approval, namely:

- The 'Regulation 123' List of infrastructure projects for which CIL will be charged, and for which it will no longer be possible to seek Section 106 contributions; and,
- The Council's instalments policy which provides for CIL payments to be paid in instalments dated from the commencement of the scheme. The phasing of payments will vary with the size of the CIL liability.

2.3 To take account of the introduction of CIL and recent government changes to the operation of Section 106 agreements it is also necessary to adopt a new Planning Obligations SPD. A draft version of the Planning Obligations SPD was consulted on during the summer of 2014 and a number of minor changes are proposed as a result. The new SPD will replace the current 'Limiting the Impact of Development' SPD.

3. RECOMMENDATION(S)

3.1 That the Executive:

- (i) recommends to Council publication of the Charging Schedule at Appendix A;**
- (ii) recommends to Council the commencement of CIL charging in Bracknell Forest on 6th April 2015;**
- (iii) approves the 'Regulation 123' List of Infrastructure Projects for which CIL will be charged at Appendix B for publication on the Council's website;**
- (iv) approves the CIL Instalment Policy at Appendix C for publication on the Council's website;**
- (v) approves the adoption of the Planning Obligations Supplementary Planning Document at Appendix D with effect from 6th April 2015; and,**
- (vi) approves the withdrawal of the Limiting the Impact of Development Supplementary Planning Document (July 2007) with effect from 6th April 2015.**

4 REASONS FOR RECOMMENDATION(S)

- 4.1 The Community Infrastructure Levy (CIL) will become an important mechanism by which the Council will secure money to create new and improve existing infrastructure to support growth in the Development Plan. It is important that the Borough introduces CIL charging by 6th April 2015 as after this date there will be major limitations on the Council's ability to fund major infrastructure through Section 106 contributions.

5 ALTERNATIVE OPTIONS CONSIDERED

- 5.1 The option of not introducing CIL has been considered and rejected at previous stages in the process. The main reason for this is that the government has introduced legislation that prevents local planning authorities from pooling contributions from more than five S106 Agreements towards any infrastructure type or project. This means that without CIL it would be very difficult for the Council to secure development related funding towards the cost of major infrastructure items such as the proposed learning village at Blue Mountain, Binfield.

6 SUPPORTING INFORMATION

Background to CIL

- 6.1 CIL was introduced in the Planning Act 2008 and further measures relating to its operation are contained in the Localism Act and in Regulations. It is basically a standardised tariff system for collecting contributions towards infrastructure provision from developers. CIL payments will be calculated by applying tariff rates to the net increase in floor area resulting from a development.

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(Report referred to in paragraphs 5.7- 5.7.7)

- 6.2 Developing the CIL is an Executive function, and has been informed by input from an Overview and Scrutiny Working Group, an Officer Steering Group and public consultation. The decisions to approve the Charging Schedule and to commence CIL charging are Council decisions which will be put to the Council meeting on 25 February 2015.

The Examination

- 6.3 The Council has followed a lengthy process of consultation, viability assessment and infrastructure planning to identify a funding gap for which CIL should be charged and devise a set of proposed rates and charging zones. These were set out in a Draft Charging Schedule which was submitted for examination on 8 September 2014. The Council is required to set rates that strike an appropriate balance between helping to fund necessary new infrastructure and the potential effect of the proposed rates on the economic viability of development across its area.
- 6.4 The hearing sessions of the examination were held on 21 November 2014. The basis for these were the submitted Draft Charging Schedule (DCS), which was published for public consultation between 10 June 2013 and 23 July 2013, along with the associated Statement of Modifications and associated Revised DCS, which was published for public consultation between 4 July 2014 and 15 August 2014. The Council also made a request, prior to the Hearing sessions, that the examiner consider some further (minor) modifications to the Charging Schedule.
- 6.5 The final examiner's report, following a fact-check by officers, was received on 16 December and is attached at Appendix E. The examiner supported all the Council's proposed rates and its requested minor modifications.
- 6.6 The key findings of the report are that :
- The Council's Infrastructure Delivery Plan is a comprehensive assessment of the infrastructure needed to support planned growth;
 - The Core Strategy and Site Allocations Local Plan, along with companion policy documents and guidance, provide a robust development plan framework for sustainable growth in the borough;
 - The evidence demonstrates a sizeable infrastructure funding gap which CIL receipts are anticipated to significantly reduce; the evidence therefore supports the introduction of a CIL regime;
 - The background economic viability evidence for both residential and commercial development that has been used is reasonable, robust, proportionate and appropriate;
 - The examiner was satisfied that the strategic sites CIL zones and their respective charges will not put development across these areas at risk;
 - The examiner advised that the Council would be well advised to monitor carefully the local impacts of the strategic site charges on these developments given their critical importance;
 - The examiner also accepted the Council's proposed rates for residential care accommodation but included a minor modification to clarify the forms of development to which this rate would apply. The amended definition is 'Specialist

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residential accommodation for older people including sheltered housing, retirement housing, Extra Care Housing and residential care accommodation'; and,

- The examiner accepted the Council's proposed minor modifications to clarify the extent of the zones within which the care accommodation rates will apply.

The Charging Schedule

- 6.7 The final Charging Schedule, incorporating the Examiner's minor modifications, is attached at Appendix A. It carries forward all the rates in the submitted Draft Charging Schedule. Residential rates vary from £0 per square metre in the town centre to a maximum of £350 per square metre for developments in the Northern Parishes below the affordable housing threshold. The six strategic urban extensions allocated in the Site Allocations Local Plan are defined as specific charging zones. They all have a residential rate of £150 per square metre, apart from Warfield where the rate is £220.

Regulation 123 List

- 6.8 The 'Regulation 123 List' is a list of infrastructure projects or types which may be wholly or partly funded from CIL receipts. It is important because contributions cannot be sought for any item on the list from Section 106 agreements. Consideration was given to the scale of infrastructure proposed and whether it is appropriate to use CIL funding or seek contributions via S106 agreements. The general principle is that where a project is likely to require contributions from a large number of developments (such as a new secondary school or major highway improvement) it should be funded by CIL. In other cases there may be benefits in terms of certainty, cost and timing of delivery in continuing to fund smaller projects via S106.
- 6.9 In accordance with government guidance, a draft Regulation 123 List was produced for the CIL Examination along with an Infrastructure Funding Gap document which set out the known site-specific matters where S106 contributions may continue to be sought.
- 6.10 The Examiner found the Council's list to be clear and comprehensive and to reflect the Infrastructure Delivery Plan. The list is attached at Appendix B and it is recommended that it is published on the Council's website in accordance with the requirements of CIL Regulation 123.

Instalments Policy

- 6.11 The CIL Regulations include provisions for the charging authority to operate an instalments policy to allow staged payments of CIL. This is a means of ensuring that developers are not faced with unreasonably high up-front CIL charges at the commencement of a major development. In line with other charging authorities' policies it is proposed to allow payment by instalments above a threshold amount of CIL with longer periods being allowed the larger the amount of CIL payable. Following the consultation on the draft charging schedule, the proposed instalments policy has been reviewed along with the impact it has on development viability. The updated draft policy is attached at Appendix C to this report.
- 6.12 In order for the Instalments policy to become effective it must be published on the Council's website in accordance with CIL Regulation 69B.

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Exceptional Relief

- 6.13 The Council has the discretion to decide on whether or not to make Relief for Exceptional Circumstances (REC) available for developers. The aim of REC is to help bring schemes forward which would not otherwise have been viable because of the combined costs of the CIL levy and Section 106 requirements.
- 6.14 Charging authorities may offer relief from the levy in exceptional circumstances where a specific scheme cannot afford to pay the levy. If the Council wishes to offer exceptional circumstances relief in its area it must first publish a notice of its intention to do so. A charging authority can then consider claims for relief on chargeable developments from landowners on a case by case basis, provided the conditions set out in Regulation 55 (as amended) are met:
- a section 106 agreement must exist on the planning permission permitting the chargeable development; and,
 - the charging authority must consider that paying the full levy would have an unacceptable impact on the development's economic viability; and,
 - the relief must not constitute a notifiable state aid.
- 6.15 The viability evidence indicates that the proposed rates will not cause the vast majority of sites in the Borough to become unviable for development. It is therefore not proposed to make exceptional relief widely available. The Council will have a presumption against its use, but will retain the ability to introduce it (and then to remove it) when its use is required for a particular site in line with the conditions listed above.

CIL Income

- 6.16 Income from CIL will be allocated towards infrastructure spending to support growth in the Borough in accordance with the Regulations. Allocation to specific projects will be determined through the Council's normal budget setting process. 15% of any CIL receipts will be passed to the Town or Parish Council whose area contains the CIL liable development. This will rise to 25% where a Neighbourhood Development Plan is in place. None are in place in the Borough yet, but three local councils have established a designated area for neighbourhood planning which is the first of several steps in the process of adopting a Neighbourhood Development Plan.

7 Planning Obligations Supplementary Planning Document

- 7.1 In order to provide clarity on the relationship between CIL and the continued use of S106, the Council prepared a draft Planning Obligations Supplementary Planning Document (POSPD). This formed part of the set of documents submitted for Examination with the CIL Draft Charging Schedule. This SPD will replace the existing Limiting the Impact of Development SPD (LID SPD) and provide updated cost and other information. It was consulted on from Friday 4 July to Friday 15 August 2014. A schedule of the representations made, along with officers' responses and recommendations is included in the POSPD Statement of Consultation at Appendix F.

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- 7.2 The SPD will supplement Policy CS6 in the adopted Core Strategy which requires development to contribute to the delivery of infrastructure and mitigate any adverse impacts it causes. The POSPD explains what infrastructure will be needed to support and mitigate planned development and the legislative and policy framework.
- 7.3 The draft document explains the various means of securing infrastructure provision including planning conditions, planning obligations, section 278 agreements, CIL and other sources of funding. It also explains how development viability will be taken into account in cases where normal infrastructure funding provision makes development unviable.
- 7.4 It sets out the basis on which the Council will seek contributions towards a range of individual infrastructure types including:
- Transport
 - Waste Management
 - Education
 - Affordable Housing
 - Community Facilities
 - Public Realm
 - Retail Facilities
 - Public Art
 - Police Service
 - Primary Health Care
 - Open Space of Public Value
 - Thames Basin Heaths Special Protection Area Avoidance and Mitigation
 - Rights of Way
- 7.5 Representations on the draft POSPD were made by six organisations and included the reference to the following matters:
- Support for taking a flexible approach to S106, especially where there are unforeseen development costs;
 - Specific reference should be made to payments in kind in lieu of CIL payments;
 - More consultation should be carried out with Parish Councils on specific infrastructure needs;
 - Further information and detail should be provided on biodiversity and flood management matters;
 - Document should be more concise and the scope scaled back;
 - Greater clarity should be provided on transport, community facilities, waste management and open space contributions;
 - High levels of education contributions are implied – focus should be on how strategic site requirements will be delivered;

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- Health facilities should be included in the viability assessments for CIL setting or put as generic item in the Regulation 123 List;
- Specific reference should be made to the infrastructure requirements for the Warfield strategic allocation; and,
- Reference should be made to the potential transfer of community facilities to Parish Councils in accordance with a recent Council report.

7.6 A number of minor changes have been made to the POSPD in response to the comments received during the consultation and to a recent Ministerial Statement. The changes can be summarised as follows:

- Reference to the Ministerial Statement of 28 November 2014 on restricting the use of affordable housing and tariff style S106 contributions on smaller developments (below 10 new homes and below 1,000 square metres gross floorspace);
- Reference to the potential for the Council to accept land and/or infrastructure in lieu of CIL payment under CIL Regulation 73. Calculation of the value of any such land or infrastructure would be made in accordance with the Regulations and guidance;
- Reference to the potential for ownership of community facilities to be passed directly to Town or Parish Councils, or to other appropriate third parties, subject to Council agreement;
- Information on the potential need to improve the public realm due to increased pressure from new development;
- Additional information on the Council's requirements for affordable housing, including nomination rights and wheelchair accessible housing;
- Additional information on requirements for biodiversity and mitigating adverse impacts on water bodies; and,
- Additional information on requirements for Public Rights of Way and flood risk management.

7.7 The adoption of SPDs is governed by Section 19 of the Planning and Compulsory Purchase Act 2004 and Regulation 10 of the Town and Country Planning (Local Planning) (England) Regulations 2012. These include requirements for the Local Planning Authority to have regard to:

- national policies and advice contained in guidance issued by the Secretary of State;
- any other local development document which has been adopted by the authority;
- the resources likely to be available for implementing the proposals in the document; and,
- compliance with their statement of community involvement.

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The preparation of the POSPD is considered to meet with these requirements and supports the implementation of the Council's adopted Core Strategy and Site Allocations Local Plan.

- 7.8 The local planning authority must also—
- (a) carry out an appraisal of the sustainability of the proposals in each document; and
 - (b) prepare a report of the findings of the appraisal.

To comply with these requirements, the preparation of the POSPD was informed by Sustainability Appraisal (SA) and Strategic Environmental Assessment (SEA). The final Sustainability Appraisal / Strategic Environmental Assessment report is attached at Appendix G.

- 7.9 A copy of the SPD, incorporating the changes made, is attached at Appendix D. The POSPD will supersede the guidance in the Limiting the Impact of Development SPD and it is therefore proposed to withdraw it at the time that the POSPD comes into effect (6th April 2015).

8. Future Programme

- 8.1 The two further key stages are:

Key Milestone	Date
Council Approve Final Charging Schedule	25 February 2015
Commence CIL Charging	6 April 2015

This timetable will enable the Council to commence CIL charging before the limitations on the pooling of S106 contributions come into effect.

- 8.2 Work has been undertaken on establishing the regimes for administration, collection and spending of CIL. Software for the calculation of CIL liabilities, the receipt and issue of notices and monitoring of CIL is available as an add-on to the Council's existing planning application system (Uniform). Further work will be required to calibrate the system once the final charging schedule and zones are adopted. The Council will also have a duty to monitor and report annually on the collection and spending of CIL.
- 8.3 Specific changes to enable the implementation of CIL have been separately proposed in the Scheme of Delegation. Officers are testing the use of Uniform software for managing the processing of CIL and carrying out trial calculations based on actual planning applications.
- 8.4 The Council has also taken action to raise awareness of CIL with local developers and agents. Officers will be requesting the necessary information from applicants to calculate CIL liability in advance of the Council decision. This is because all relevant applications determined on or after 6th April 2015 will be liable to pay and there will be a number of applications in the system that were submitted in advance of this date but where the decision will be made after it.

9 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 9.1 Nothing to add to the report.

Borough Treasurer

- 9.2 The introduction of CIL has the potential to generate significant income to finance infrastructure costs associated with future development, although it will not meet the cost of all infrastructure requirements in full. The actual level of income will depend upon the numbers and types of new development within the Borough. Income from CIL will be allocated to specific infrastructure projects through the Council's usual capital budgeting processes.

Equalities Impact Assessment

- 9.3 A full impact assessment for the introduction of the CIL has been published by CLG (January 2011). This includes an Equalities Impact Assessment, which concludes that the CIL is unlikely to have an adverse impact on any social group. An Equalities Screening Record has been completed for the Planning Obligations Supplementary Planning Document and is attached at Appendix H.

Strategic Risk Management Issues

- 9.4 None as a consequence of this report. However, timely introduction of CIL will reduce the risks associated with lack of adequate funding for necessary infrastructure. There are strategic risks associated with CIL, particularly around the level of CIL receipts and the potential non-delivery of housing if CIL is set too high (with consequential impacts on the New Homes Bonus). It will therefore be important, as highlighted in the Examiner's Report, to review the impact of CIL on strategic developments.

Consultation

- 9.5 Consultation has been carried out on the Draft Charging Schedule and the Draft POSPD, including local businesses and Town and Parish Councils in accordance with the Regulations and the Council's Statement of Community Involvement.
- 9.7 The results of the consultation on the draft Charging Schedule were reported to the CIL Examiner. The results of the consultation on the draft POSPD are included in the POSPD Statement of Consultation at Appendix F, along with the changes recommended as a result of the consultation.

Background Papers

APPENDIX A	Bracknell Forest Council Charging Schedule February 2015
APPENDIX B	Regulation 123 List
APPENDIX C	Instalments Policy
APPENDIX D	Planning Obligations Supplementary Planning Document
APPENDIX E	Bracknell Forest Examiners Report
APPENDIX F	Planning Obligations Supplementary Planning Document – Statement of Consultation (includes summary of comments received on the POSPD and officers' responses)

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(Report referred to in paragraphs 5.7- 5.7.7)

- APPENDIX G Planning Obligations SPD – Sustainability Appraisal / Strategic
Environmental Assessment
- APPENDIX H Planning Obligations Supplementary Planning Document – Equalities
Impact – Equalities Screening Record

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