

Report to	-	Cabinet
Date	-	9 February 2015
Report of the	-	Executive Director of Business Operations
Subject	-	Proposed Community Infrastructure Levy (CIL) Draft Charging Schedule

Recommendation: It be **RESOLVED:** That:

- 1) the Draft Charging Schedule and Regulation 123 List at Appendix 2 be approved for a four week consultation and published alongside the updated Infrastructure Funding Gap Analysis, the consultants' Further Viability Advice and the Statement of Consultation;
 - 2) following receipt of duly-made representations, the Draft Charging Schedule and Regulation 123 List be submitted for independent examination; and
 - 3) the Executive Director of Business Operations, in liaison with the Portfolio Holder responsible for Strategic Planning including Local Development Framework and Voluntary Sector Liaison, be authorised to propose possible modifications, if necessary, in the light of further evidence during the examination.
-

Service Manager: Tim Hickling
Lead Cabinet Member: Councillor Osborne

Introduction

1. This report has two functions.
 - It advises of the responses received during the public consultation on the Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule that took place between 8 August and 26 September 2014; and
 - It recommends that some amendments be made to the proposed Charging Schedule in light of these responses and that the revised version be published for further consultation and subsequent submission for independent examination.
2. As previously advised, many if not most Councils, including Wealden District Council, Lewes District Council and Eastbourne Borough Council, are developing a CIL in order to ensure that they do not lose vitally important funding for infrastructure when the Government's new strict limits on the ability to secure contributions through section 106 obligations on planning applications comes into effect from April this year.
3. Similarly, CIL will be an increasingly vital source of monies for infrastructure, such as parks and play areas, community and cultural facilities, transport

schemes, schools and flood defences to support sustainable development in Rother. Hence, the need to progress the CIL as expeditiously as possible.

4. In terms of the infrastructure needed to meet the Local Plan's requirements, once existing sources have been taken into account, it is estimated that there is still a "funding gap" of approximately £49m.
5. CIL is charged on the basis of £ per sqm on the net additional floorspace of new developments where they exceed 100 sqm, or smaller if it relates to the creation of a new dwelling. CIL rates are set out in a "charging schedule". Payment is due upon commencement of development, but liability is established upon granting planning permission only after the Charging Schedule has been adopted.

Consultation responses to Preliminary Draft Charging Schedule (PDCS)

6. The consultation in line with Cabinet Minute Reference CB14/10 generated some 23 responses. These have been referred to the Council's consultants Peter Brett Associates (PBA).
7. The main issues raised in the comments and an overview of how these have been addressed, are set out below. Individual comments made, together with officer responses, are contained in Appendix 1 to this report.

SUMMARY OF ISSUE	RESPONSE
General support for the introduction of CIL in the district.	The Council will implement CIL as soon as possible.
Further clarification in the funding gap analysis to justify the introduction of CIL.	The Infrastructure Delivery Plan has been updated, while the funding gap analysis has been refined and updated in response to comments and in consultation with key infrastructure providers.
The residential CIL charging rates should be set at levels which do not threaten viability across the district. Rates are too high.	The Council has taken a precautionary approach to setting residential CIL rates so as not to undermine housing delivery in the plan period. Further details are discussed in this report.
Non-residential CIL rates for retail are too high and will deter development in the district. Assumptions used for retail viability modelling do not reflect reality.	PBA have been asked to clarify the assumptions made for retail modelling and this has been addressed in their published Addendum Report.
Objection to the high CIL rate attributed to extra care and retirement homes schemes would deter this type of development in Rother.	PBA has undertaken further work to investigate viability for retirement homes, extra care and care homes. Further details and their recommendations can be found in their Addendum Report and are discussed below.
Support for the implementation of an Instalment Policy.	Agreed. To aid viability, the Council will develop an instalment policy in accordance with the CIL Regulations. This will be implemented as part of the governance protocols to be agreed at a later date. It is noted that an instalment policy will not be part of the CIL examination.
Support for a discretionary and exceptional relief policy.	A discretionary and exceptional relief policy will be developed in line with the CIL Regulations as part of the governance protocols. For example, it may be applied to charities.
Clarification on the Regulation 123 list to ascertain what will be spent	Some clarifications have been made regarding what will be funded through CIL and what types of

SUMMARY OF ISSUE	RESPONSE
through CIL and what types of infrastructure will be via s106 agreements.	infrastructure projects will be funded via s106.

Viability Testing and Proposed Amendment to the Charging Schedule

8. CIL rates must be informed by the findings of a viability assessment. PBA have reviewed and refined a number of their viability assessments in response to representations. These are contained in an Addendum Report, which is available in the Members' Room and online, (to be read in conjunction to the original PBA CIL report dated July 2014). The main matters arising are discussed below.

Changes to Stamp Duty

9. PBA advises that recent changes to Stamp Duty legislation result in a slight improvement to viability across all testing scenarios, making no significant difference to overall viability across the district.

Residential Dwelling Charges

10. Changes to national Planning Practice Guidance introduced by the Government in December 2014, exempt developments of 10 homes or less from affordable housing provision, but still allow for schemes of between 6-10 dwellings in rural areas and the Area of Outstanding Natural Beauty to make financial contributions. While these changes have implications for the application of recently adopted Core Strategy policies, (which are currently being assessed and will be reported to Cabinet shortly), the consultants advise that they make schemes of up to five dwellings more viable and have little difference on viability where financial contributions are involved.
11. Of note, the smallest scheme on a 'Brownfield' site in east Bexhill that would require affordable housing under Core Strategy policy (i.e. 11 dwellings) now has a maximum "headroom" for CIL of £78 per sqm. Setting a CIL rate up to the margins of viability is not advised and would make some small schemes within urban Bexhill unviable. This would be contrary to best practice. It is considered that setting a CIL rate of £50 per sqm for urban Bexhill is more appropriate
12. In relation to Bexhill, PBA have noted that it would be equally as valid to consider a 'Brownfield'/'Greenfield' split as much as an east/west division. On further consideration, the 'Brownfield'/'Greenfield' split is the preferred approach, this is now recommended as the basis for a differential CIL. It is also considered that the 'Brownfield'/'Greenfield' approach is less complex as it negates the need to set out boundaries between areas within Bexhill
13. In terms of the major strategic sites, PBA's further work concludes that the major sites at North East and North Bexhill, which are vital to achieving the quantum of housing in Bexhill, are distinct from the circumstances at Blackfriars, Battle. Viability evidence supports the Zone 1 Battle and Rural North and West of £240 per sqm should be applied to Blackfriars and not the Strategic Urban Extension Rate of £100 per sqm as previously applied. Therefore it is recommended to be considered in keeping with other sites in Battle.

Housing for Older People

14. PBA accept that differences between the values of retirement homes/sheltered housing, extra care housing and care homes warrant discrete assessments. In view of current interest in older people housing schemes on sites on the 'Greenfield' edges of settlements across the district, the assessment has been based on a 'Greenfield'/'Brownfield' basis, as well as on the type of provision.
15. PBA find that retirement homes may be treated in the same category as normal housing. However, other factors, notably greater communal areas, mean that extra care schemes have less scope for CIL. PBA recommend a charge of £25 per sqm on 'Brownfield' sites and £45 per sqm on 'Greenfield' sites. Further clarification was provided on the following assumptions:
 - Build costs assumptions in relation to retail development;
 - The level of developer profit assumed in the viability modelling for retail schemes; and
 - The values used in the viability modelling in relation to rent levels, yields, site coverage and land purchase.

Retail Charges

16. The July 2014, Viability Assessment showed that there is scope for CIL to be levied on some types of retail development and this remains so, although the Addendum Report provides clarification on retail assumptions in response to representations made.

Overview

17. Regulations require the Council to strike "*an appropriate balance*" between the desirability of funding infrastructure and the potential effect of the levy on economic viability of development across the district.
18. It is accepted that the Council's consultants, PBA, have provided robust advice in identifying the potential for CIL charges that retain attractive land values and allow for "headroom" to take account of the variations in circumstances and costs between individual sites. At the same time, they draw attention in their report to the need to consider current housing delivery and the possible need for a more conservative approach as land values adjust to paying CIL.
19. Careful consideration has been given to both the need to not deter, or defer, housing development on the one hand and, on the other, the need to ensure the infrastructure needed to be able to accommodate growth in a sustainable manner.
20. It is recommended that rates for the broad residential zones are reduced by a proportion, c15% or £15 per sqm (whichever is the greater), relative to PBA's recommendations to ease the introduction of CIL, at least in the early years, and be more aligned with other Councils in the locality. This would mean:

Residential Zones	PBA Addendum CIL Rate per sqm	Proposed CIL Rate per sqm
Zone 1		
Battle, Rural North and West	£240	£200
Zone 2		
Rye, Hastings Fringes and Rural East	£160	£135
Zone 3		
a) Bexhill – Urban	£60	£50
b) Bexhill – Greenfield/Fringes	£200	£170
c) Bexhill – Strategic Urban extensions	£100	£100
Extra Care Housing – Greenfield	£45	£45
Extra Care Housing – Brownfield	£25	£25
(NB Retirement housing rate as relevant residential zone)		

Non-Residential Development	PBA Addendum CIL Rate per sqm	Proposed CIL Rate per sqm
Retail – in centre convenience	£100	£100
Retail – out of centre convenience	£120	£120
Retail – out of centre comparison	£250	£250
All other forms of Development	£0	£0

21. In terms of anticipated CIL receipts, applying the respective charges over the whole plan period to an average 85sqm dwelling, the PBA recommendation is estimated to yield £36.9m from residential developments, while the discounted charge would yield an estimated £32.4m over the Core Strategy Plan period which ends 2028.
22. It is noted above that the funding gap is currently identified as £49m. If the lower rate is accepted, the shortfall in infrastructure funding will need to be found from other sources whose funding has yet to be determined.
23. There is however the potential to review CIL rates in light of operational experience and any updated funding gap. It is envisaged that such a review will be undertaken within three years of adoption.
24. In conclusion, at least for the early years of CIL, it is recommended that the proposed rates (highlighted in bold) in the above table and detailed within the Draft Charging Schedule at Appendix 2, are approved.

Regulation 123 List

25. The Council is required to publish a list of those infrastructure projects that will be funded by CIL. This is called 'Regulation 123 List' and is contained within the Draft Charging Schedule at Appendix 2. Following the PDCS consultation, some clarifications have been made to remove potential overlaps between CIL and s106 contributions.

Next Steps

26. If approved, the Draft Charging Schedule and accompanying documents will be published for public consultation for a period of four weeks, which allows for the consultation to finish before the “pre-election” (purdah) period. Following consultation, the Draft Charging Schedule and supporting evidence base will be submitted to the Secretary of State for Examination. It is envisaged that, assuming a successful Examination, adoption of CIL will be late summer/early autumn this year.
27. Arrangements for the administration of CIL need to be established. Hence, it is also proposed that these are drafted and submitted to a future meeting of Cabinet for consideration. While there is inevitably some cost in the preparation and implementation of a CIL, these can be recovered from future CIL receipts.

Dr Anthony Leonard
Executive Director - Business Operations

Risk Assessment Statement

The introduction of CIL is a decision to be taken by local authorities as its implementation is not compulsory. The Council could decide not to adopt CIL and continue to rely on negotiating individual section 106 Agreements to deliver infrastructure. However, reductions in the ability to ‘pool’ s106 monies would result in diminishing returns meaning that the Council’s ability to secure financial contributions to infrastructure from new development will be curtailed and essential infrastructure would not be delivered. Relying solely on s106 monies may also result in more legal challenges and will place a larger administrative burden on the Council in securing and managing legal agreements. Furthermore delays in adopting CIL will mean in the interim developers will want to secure planning consent prior to the implementation of CIL to avoid contributions.

The Council as well as other public bodies are facing the challenge of reducing financial settlements from Government whilst demand is growing for investment in essential infrastructure. Within this context, legislative changes have been made by Government to scale back the use of section 106 Planning Obligations as a mechanism to secure contributions. This means that the timely adoption of CIL is essential.

The Council must set CIL charges at an appropriate level. It is considered that while the viability of higher levels should not affect viability of the development, the risk to actual delivery is such that a more conservative approach is warranted. The scope for review helps address the risks of financial shortfalls for key infrastructure.