Chorley Council

Report of	Meeting	Date
Director of Partnerships, Planning and Policy (Introduced by the Executive Member for Partnerships & Planning)	Executive Cabinet	15 December 2011

COMMUNITY INFRASTRUCTURE LEVY

PURPOSE OF REPORT

1. To present the background and rationale for pursing the Community Infrastructure Levy (CIL) and gain approval to consult on preliminary draft charge rates.

RECOMMENDATION(S)

2. To approve the attached Preliminary Draft CIL Charging Schedule for consultation.

EXECUTIVE SUMMARY OF REPORT

3. CIL has the potential to unlock funding additional to that which has been previously secured under Section 106 planning obligations and will enable authorities to better forecast the amount of funding that will arise from developer contributions and so better plan infrastructure delivery. This should mean that new developments are better accommodated within existing communities and serviced by the necessary infrastructure such that there are overall benefits for residents and businesses alike. The commissioned viability research takes into account the proportions of affordable housing sought from market residential developments as set by policy in the Core Strategy, the wide variability in the economic viability of non-residential developments and recommends draft charge rate levels to consult on.

4. CIL rates are set through the preparation of Charging Schedules. Across Central Lancashire each District Council will need a separate Schedule as each will be a separate CIL Charging Authority. However it is appropriate to prepare the Schedules jointly and the consultants' work assists with that process. The approach required to setting charge levels is a strategic one taking account of overall development viability and how this might vary from development type and from place to place compared with what funding is required to make up at least part of the infrastructure funding gap. The Government expects the outcome of the process will be the achievement of an 'appropriate balance' of charging developments and funding infrastructure such that there will be an overall positive economic effect on development across the area in the medium to long term.

Confidential report Please bold as appropriate	Yes	**No**

Key Decision? Please bold as appropriate	**Yes**	No

Reason Please bold as appropriate	1, a change in service provision that impacts upon the service revenue budget by £100,000 or more	2, a contract worth £100,000 or more
	3, a new or unprogrammed capital scheme of £100,000 or more	**4, Significant impact in environmental, social or physical terms in two or more wards**

REASONS FOR RECOMMENDATION(S)

(If the recommendations are accepted)

5. To gain approval to consult.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

6. The only option to pursuing CIL is to just rely on Section 106 planning obligations to secure developer contributions but as these provisions are being progressively curtailed by regulations so in relation to infrastructure provision this source of funding is reducing.

CORPORATE PRIORITIES

7. This report relates to the following Strategic Objectives:

Strong Family Support		Education and Jobs	
Being Healthy		Pride in Quality Homes and Clean Neighbourhoods	
Safe Respectful Communities		Quality Community Services and Spaces	
Vibrant Local Economy		Thriving Town Centre, Local Attractions and Villages	
A Council that is a consistently Top Performing Organisation and Delivers Excellent Value for Money			

BACKGROUND

8. Chorley Council's Local Development Framework Working Group and the Central Lancashire Joint Advisory Committee have received reports on progressing CIL that have explained how Section 106 provisions for funding off-site infrastructure are being reduced. In contrast CIL can be applied to a wider range of developments than has been the past practice for Section 106 planning obligations and the monies collected can spent more freely. Adopting CIL is not mandatory for authorities but councils will almost certainly lose out on infrastructure funding from developer contributions if CIL is not pursued. CIL can provide a predictable ready source of funding that will greatly enable infrastructure planning and delivery.

9. The Joint Advisory Committee may come to have a role in coordinating the setting of infrastructure priorities and the spending of CIL monies across Central Lancashire as numerous projects will have wider than District benefits and some will coincide with County Council responsibilities. However the District Councils collect the CIL monies and have full control on how they are spent, infrastructure agencies cannot demand such funds are passed to them. It will also be important for the three District authorities to collaborate on setting charge rates so that these are complementary rather than conflicting otherwise developers' location choices could be inappropriately skewed by CIL charge rates.

10. Because of this it is appropriate for the three District Councils to work together to collect the development viability evidence that will inform what charge rates can reasonably be levied.

However as the Councils will be separate CIL Charging Authorities each will need to adopt separate schedules of charge rates. Despite this a joint examination of two or more Charging Schedules is permitted under the CIL Regulations.

11. Consultants Roger Tym and Partners have been appointed to draw together the development viability evidence across Central Lancashire and help prepare a first stage (Preliminary Draft) Charging Schedule for each District Council. These consultants are leading experts on CIL having been appointed to head up the Planning Advisory Service's national training programme and are assisting front runner local authorities implement CIL. As a result we are benefiting from the very latest CIL thinking and experience as this is a new planning area; the first few authorities are just bringing in their charges. The per metre squared charges endorsed by examining Inspectors at the first three authorities to pursue CIL are summarised below.

- Newark and Sherwood – residential £0-75, business £0-20, retail £100-125
- Shropshire – residential £40-80, all other uses nil
- London Borough of Redbridge – all uses £70

12. The stages of preparation for CIL Charging Schedules are similar to LDF documents. The envisaged timetable for each authority is as follows.

Consultation – 6 weeks	Jan – Feb '12
Publication – 4 weeks	April '12
Submission	June '12
Joint Examination	August '12
Examiner's Report	September '12
Adoption	November '12

This timetable is deliberately planned to follow behind the envisaged adoption of the Core Strategy. The Core Strategy informs the setting of CIL charges because it establishes the broad location of development (a factor in assessing development viability) and is itself informed by infrastructure planning.

13. The viability consultants' brief includes assisting with the key aspect of engaging with landowners and developers on the Preliminary Draft Charging Schedules and to complete their study taking into account the outcomes of this. The consultation stage will also involve the appropriate range of other consultees, including Parish Councils as the Government intend these to be responsible for spending a proportion of CIL monies in local neighbourhoods experiencing development.

14. Members are reminded of the key features of CIL:
    a. It applies to most types of built development over 100 square metres in floor area (and any new dwellings smaller than this)
    b. Exceptions include social housing and developments by charities
    c. Apart from such exceptions most other uses are potentially liable to pay CIL
    d. The charge is levied at a rate set per square metre of new floorspace
    e. The level of charge levied can vary for different uses, types of development and locations but these variations must be related to differences in development economic viability
    f. For situations where a CIL charge would be likely to render a development unviable a nil charge can be levied but these circumstances must be decided in advance in the Charging Schedule, once set the charges are not negotiable on a case by case basis
    g. The levy is normally payable on commencement of the development but payments by instalments can be made subject to the authority's policy

h. The charges are adjusted each year by being linked with a build costs index
i. The money collected is not limited to being spent on infrastructure related to the donating development (unlike Section 106 contributions)
j. The levy can be used to increase the capacity of existing infrastructure or to repair failing infrastructure, if that is necessary to support development
k. The charging authority is free to set the published infrastructure spending priorities unfettered by the Schedule setting process and can update these priorities whenever it wishes
l. However developments must not be charged twice (ie through CIL and S.106) for the same items of infrastructure. To avoid this happening a list of those infrastructure items or types to be funded through CIL should be published (the Regulation 123 list). Also certain development sites (typically large strategic sites) can be exempt from CIL (in highly exceptional circumstances) if they are to provide (through S.106 obligations) on-site infrastructure and where an additional CIL charge would render the development unviable.
m. In-kind contributions – such as the donation of land for infrastructure – can be used to off-set CIL liabilities
n. CIL monies can be passed, with the consent of the Charging Authority, to other agencies/infrastructure providers (such as Lancashire County Council) and be spent on infrastructure provided outside the Charging Authority's area, provided it benefits the latter.

15. The Localism Act is proposing that a 'meaningful proportion' of CIL monies raised in a neighbourhood is spent in that neighbourhood – just how this will be done remains to be decided at the national level (current consultation).

16. The charging authorities have discretion as to what the levels (rates) of charge will be set at but these must be subject to consultation and examination before Charging Schedules can be adopted. The overall justification for the level of charges to be levied is based on an approach that would still facilitate rather than discourage development (through high charges) and achieve an 'appropriate balance' between the infrastructure funding gap and what it is reasonable for developments to contribute to financially taking account of their economic viability. It is however a strategic approach, it is not necessary to prove that all developments will still be viable, some, for particular site specific reasons, may not be.

17. At the time of a Charging Schedule being brought into force, there will be numerous developments already with planning permission that are subject to S.106 obligations. CIL will not apply to these developments unless the permissions expire and even then their on-site infrastructure requirements may be re-negotiated under a new planning application and S.106 obligation. In any event total monies collected through CIL will start off from a low level and build up over time as more newly permitted development occurs and is implemented.

18. The whole process of implementing CIL will necessitate a new revenue collection, enforcement of non-payment, holding of monies and payments system that will need to be audited and reported on each year. This will all need to feed into a step changed approach to infrastructure delivery management. At the outset there should be a list of infrastructure funding priorities that will guide decisions on how CIL monies are allocated. Over time as infrastructure schemes are implemented and/or new infrastructure needs arise authorities are free to revise their infrastructure spending priorities without the necessity to consult any parties. Although locally, work with other Central Lancashire authorities, other neighbouring councils, the County Council and other infrastructure providers, will continue to be appropriate.

PRELIMINARY DRAFT CHARGING SCHEDULE

19. A pre-requisite of being able to adopt CIL is that there is a funding gap between the cost of necessary infrastructure and the other (non-developer contributions) funding sources available and this must be demonstrated on a District by District basis. So the previously published Central Lancashire Infrastructure Delivery Schedule is being split into separate components to reveal the individual District level overall funding shortfalls. See Appendix A. Also some narrative will be added to explain the situation for each type of infrastructure.

20. There is however not a requirement for expected CIL revenues to make up all of the funding gap in the District. It is appropriate to assume that some other funding streams will arise over the next 15 years or so that cannot be quantified in advance.

21. The consultants have researched the viability of residential and a range of non-residential uses. They have taken due account of the previous housing viability work done primarily to inform the scope to secure affordable housing from market housing schemes through a policy in the Core Strategy. They have also considered (as they were required to do) a wide range non-residential types of development as set out below as CIL is applicable to all types of uses.

22. The profitability of the various non-residential uses varies widely and to an extent is influenced by the scale and location of the developments. This is especially true of retail schemes – large food based superstores which tend to be located in edge of centre sites are the most profitable/viable and hence have the greatest ability to pay CIL charges.

23. For market housing developments a key issue is the effect on the rate of CIL that can be charged by also seeking a proportion of affordable housing which would be secured through a separate S106 agreement. Affordable housing at present is not classed as infrastructure for CIL purposes although the Government is currently consulting on funding the provision of affordable housing through CIL. The present position is that not only are the two aspects funded separately but the proportion of affordable housing actually achieved on a site is subject to negotiation (the starting point being the policy target) whereas the CIL charge is fixed from the outset. Our consultants have taken full account of the proportions of affordable housing sought from market residential development set in the relevant Core Strategy policy. High CIL charges for residential development may impact on affordable housing delivery although in practice this will probably vary on a site by site basis depending on a site's attractiveness to the market much as it does now without a CIL charge being in place.

24. To assess the overall economic viability of all types of developments the consultants have taken account of all the costs involved in implementing schemes including costs of construction, financing and any other likely residual (eg site specific) S.106 contributions in addition to affordable housing.

25. At the present time the economic viability of all forms of development is depressed by the wider state of the economy. The availability of finance for developers is still restricted following the recession. Lenders, such as banks, are cautious in supporting only the most profitable schemes, interest rates remain high so the rates of return on capital investment have to be high to make the loans affordable.

26. A factor that also affects development viability is the level of effective demand from occupiers. Most residential schemes are speculative (built in advance of knowing who will occupy the homes) and depend heavily on the ability of the future owners to be able to secure mortgages. Many non-residential schemes are built for occupier clients and this significantly enhances the economics of the development so the risk for the developer is greatly reduced. However CIL charges cannot be varied for speculative compared to 'built to order' schemes. Speculative non-residential development is particularly depressed at the present time.

27. CIL charges can be varied from place to place if the viability of development also varies according to location. However as with the previous affordable housing work clear cut geographical boundaries of differing degrees of viability can be difficult to define (as they have fuzzy edges) and especially hard to use when built up areas are close together as they are locally. As it is the consultants have found broadly similar extents of economic viability across Central Lancashire bearing in mind the main locations envisaged for development in the Core Strategy.

28. Nil CIL charges for community uses are likely to be appropriate as of course the profitability/viability of these developments is very low or negative and many such schemes amount to infrastructure in their own right. However a nil charge for some commercial types of development (such as industrial and warehouse uses) could also be justifiable, especially at the present time as their economic viability is typically marginal. However by the same token a modest CIL charge would make little difference to the economic prospects of individual schemes but given the large number of the business developments envisaged over the next 15 years could raise a significant amount of money.

29. As with most courses of action there are choices to be made in setting CIL charges; there are a number of questions that need to be considered. How close to the point of viability should charges be set bearing in mind the risk in discouraging development altogether? What overall proportion of the infrastructure funding gap should CIL be expected to meet? Are there clearly definable sub-areas that ought to have different CIL rates based on localised viability variances? At the initial (Preliminary Draft Charging Schedule) consultation stage these sorts of issues can be considered as part of the engagement process. At the following stage (Publication) a further draft Schedule is produced with any appropriate revisions reflecting the earlier consultation. At the Publication stage formal representations can be made and those received are submitted to an examining Inspector for consideration alongside the Schedule.

30. As it is, for the initial preparatory stage, our consultants have proposed rates to feed into a Preliminary Draft Charging Schedule for each District for consultation purposes. The draft rates proposed for the Chorley Borough are shown in Appendix B; reflecting the similar economic conditions elsewhere in Central Lancashire, the same draft rates are proposed in the other two Districts.

31. In the future although the charge rates levied will be annually linked to a build cost index the viability of developments locally may change significantly over time. In which case a new Charging Schedule will need to be produced. The first authority nationally to adopt CIL charges envisages a review will be necessary after two or three years of operating the rates.

IMPLICATIONS OF REPORT

32. This report has implications in the following areas and the relevant Directors' comments are included:

Finance	✓	Customer Services	
Human Resources		Equality and Diversity	
Legal		Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

COMMENTS OF THE STATUTORY FINANCE OFFICER

33. Clearly the scale of the potential infrastructure schemes and the investment in the Borough is of vital importance as we move forwards. The numbers included in the report are of

course indicative and based upon a number of assumptions in terms of the infrastructure projects in the pipeline.

34. The new system however is more transparent and understandable for both developers and the Council alike. Fixing the CIL charges at the appropriate level is key and the consultation will seek views from the various stakeholders on that point.

35. As the recommendation is to approve the document for consultation, there are now immediate financial implications for the Council.

LESLEY-ANN FENTON
PARTNERSHIPS, PLANNING AND POLICY

There are no background papers to this report.

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