

Report of	Meeting	Date
Chief Executive	Central Lancashire Strategic Planning Joint Advisory Committee	15 December 2014

## REVIEWING THE COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE

### PURPOSE OF REPORT

- To inform Members about the process of reviewing the Community Infrastructure Levy Charging Schedule.

### RECOMMENDATION(S)

- To commit to a joint review of the CIL Charging Schedule and budgetary provision

### EXECUTIVE SUMMARY OF REPORT

- The Central Lancashire Authorities should commit to a joint review of the CIL Charging Schedule and budgetary provision. Policy 27 of the Core Strategy requires all new dwellings to meet Level 4 of the Code for Sustainable Homes from January 2013 and Level 6 from January 2016 and is a material consideration in the determination of a planning application for residential development. The Government has chosen to deregulate Level 6 of the Code for Sustainable Homes, requiring one set of standards which should be assessed by the Building Regulations. The change will mean that Core Strategy Policy 27 will become obsolete and that the CIL charging schedule may not reflect up to date viability information. A review starting in 2015 should review the viability information and evidence base, and provide the opportunity to reflect changes in recent legislation and guidance, as well as reflect on the impact of CIL on development since operating within the Central Lancashire area. The Review process will involve 2 rounds of public consultation and an independent examination and will take in the region of 12 -15 months to complete before a reviewed charging schedule is adopted. Consultants will need to be appointed to update the CIL viability study and the viability and infrastructure funding evidence. Budgetary provision should also take into consideration the costs of the examiner and the programme officer.

### BACKGROUND

- The Councils adopted the Community Infrastructure Levy (CIL) in July 2013 with Chorley Council and South Ribble Borough Council implementing CIL from the 1<sup>st</sup> September 2013 and Preston City Council from the 30 September 2013.
- The Planning Practice Guidance incorporates the CIL guidance and indicates charging authorities must keep their charging schedules under review and should ensure that levy charges remain appropriate over time. For example charging schedules should take account of changes in market conditions, and remain relevant to the funding gap for the infrastructure needed to support the development of the area. When reviewing their charging schedule, charging authorities should take account of the impact of revised levy rates on approved phased developments, as well as future planned development.
- Charging authorities may revise their charging schedule in whole or in part. Any revisions must follow the same processes as the preparation, examination, approval and publication of

a charging schedule (as specified under the Planning Act 2008 and particularly sections 211-214 as amended by the Localism Act 2011 and the Levy Regulations).

7. The Government does not prescribe when reviews should take place. However, in addition to taking account of market conditions and infrastructure needs, charging authorities should also consider linking a review of their charging schedule to any substantive review of the evidence base for the relevant Plan (the Local Plan). Even if the original charging schedule was not examined together with the relevant Plan, there may be advantages in coordinating the review of both.

#### WHY THE CIL CHARGING SCHEDULE NEEDS TO BE REVIEWED AND REVISED?

- 8 **High Court Challenge on Charging Schedule for Residential Development.** Fox Strategic Land and Property Limited Fox argued at the CIL Examination that the evidence upon which the £65 per square metre for residential development put forward by the councils was based was flawed, and that if CIL were charged at this level it would threaten the viability of housing development in central Lancashire.
9. But, in June 2013 an examiner appointed by the authorities concluded that the charge of £65 was justified, and, on that basis Chorley and South Ribble adopted the charging schedule under regulation 25 of the community infrastructure levy Regulations 2010 in July 2013, and Preston in August 2013. The charging schedules came into effect in September 2013.
10. In these proceedings, Fox sought an order quashing Chorley's charging schedule for residential development, basing its claim on various allegations of unlawfulness in the examiner's approach. It issued similar proceedings against Preston and South Ribble, which were stayed pending the outcome of this claim.
11. Following a hearing in March 2014, Judge J Lindblom dismissed the claim that the examiner's approach was irrational, that he failed to understand the evidence on the size of dwellings, density, and the cost of development, and failed to allow for the potential effects of a requirement in development plan policy, due to come into effect in January 2016, that new housing must meet Level 6 of the Code for Sustainable Homes.
12. Judge Lindblom said: "I think the examiner was entitled to conclude, as he did, that in striking the balance between the need to fund new infrastructure and the likely effects of CIL on the viability of development, the councils had taken an 'appropriately measured' approach". He applauded that approach.  
  
"In the light of the appraisals the examiner was confident that the proposed charge would not jeopardize housing development in the councils' areas. In his judgment, the councils had plainly left enough scope for housing development to bear the burden of CIL and remain viable".  
  
"I do not see how any of the examiner's conclusions can be said to be irrational. They were both reasonable and sufficiently reasoned, and were at least adequate for the purposes of the assessment he had to make. They were founded on 'appropriate available evidence', in accordance with section 211(7A) of the 2008 Act, and they were, in my view, both realistic and complete."
13. Judge Lindblom added that a planned review in 2015 will make it possible to gauge the true effects that the present CIL charge, or a charge set at a different level, would have on the viability of residential development built to comply with Level 6.
14. The CIL legislation requires that any review of CIL applies to the whole of the charging authority's area, which means a review of the rates should apply to each of the Central Lancashire authorities and as before in order to ensure that an appropriate differential CIL rate can be applied a joint review of the charging schedule should be undertaken.

This review also provides the opportunity to reflect changes in recent legislation and guidance, as well as reflect on the impact of CIL on development since operating within the Central Lancashire area.

- 15 **Core Strategy Policy 27: Sustainable Resources and New Developments.** Policy 27 of the Core Strategy requires all new dwellings to meet Level 4 of the Code for Sustainable Homes from January 2013 and Level 6 from January 2016 and is a material consideration in the determination of a planning application for residential development.
- 16 Since the implementation of the Councils CIL, the Government has chosen to deregulate Code Level 6 and this is presently going through Parliament. The Government is requiring one set of standards which should be assessed by the Building Regulations. It is also likely there will be 4 other optional standards and to utilise these there needs to be a local plan policy in place and information to show it is viable.
- 17 The imminent changes will mean that Core Strategy Policy 27 will become obsolete and that the CIL charging schedule may not reflect up to date viability information.
- 18 **Infrastructure Delivery Schedule** To illustrate that a CIL rate is justifiable the charging authority must determine the size of its total or aggregate infrastructure funding gap. To determine the size of the infrastructure funding gap, Officers will need to update the Infrastructure Delivery Plan (IDS) in consultation with infrastructure providers. The IDP identifies the quantum and type of infrastructure required to realise strategic infrastructure provision as set out in the Core Strategy and within the emerging Councils Local Plans. The IDP estimates costs, identifies potential funding sources and the lead delivery organisation for each piece of infrastructure. The updated IDP, will undergo public consultation alongside the Preliminary Draft Charging Schedule.
- 19 **The Regulation 123 List.** Each Council has an individual Regulation 123 List which stemmed from the Infrastructure Delivery Plan (IDP) and includes a range of strategic infrastructure provision, covering specific transport, education, leisure and health projects to be funded at least in part by CIL and that it is likely the Councils will seek to spend CIL funds upon. Each authority Regulation 123 List includes and duplicates the Pan Central Lancashire list that covers transport schemes. The CIL Regulation 123 List restricts the use of planning obligations for infrastructure that will be funded in whole or in part by the Community Infrastructure Levy, to ensure there is no duplication between the two types of developer contributions. The Regulation 123 List is a 'living' document and will need to be the subject of on-going update and monitoring.
- 20 There are a number of schemes on the Regulation 123 List that have been completed (without CIL funding) and need to be removed e.g. health, school and cycling schemes. Others schemes may need revising and expanding or adding to reflect new information and the identification of new or alternative infrastructure requirements. Lancashire County Council is presently reviewing and updating the position around current and future schools provision in relation to growth and planning permissions.
- 21 The list is not a part of the charging schedule, but is published on the Council's website when the CIL Charging Schedule is adopted. A key purpose of this list is to allow developers or other interested parties to check, at the point at which a section 106 agreement is being sought by the Council, that they are not being 'double charged' for any particular type or item of infrastructure. It is important to regularly review the Regulation 123 list to ensure it reflects the latest position in infrastructure needs. The minimum time for consultation of a revised Regulation 123 List is 4 weeks and may result in more schemes being put forward by consultees.

## HOW IS A CHARGING SCHEDULE PREPARED?

22 A charging schedule is prepared and adopted as follows:

- the charging authority prepares its evidence base including viability in order to prepare its draft levy rates, and collaborates with neighbouring/overlapping authorities (and other stakeholders)
- the charging authority prepares a preliminary draft charging schedule and publishes this for consultation
- consultation process takes place
- the charging authority prepares and publishes a draft charging schedule
- period of further representations based on the published draft
- an independent person (the “examiner”) examines the charging schedule in public
- the examiner’s recommendations are published
- the charging authority considers the examiner’s recommendations
- the charging authority approves the charging schedule

## WHAT IS THE ROLE OF THE COUNTY COUNCIL?

23 County councils are responsible for the delivery of key strategic infrastructure. Charging authorities must consult and should collaborate with them in setting the levy, and should work closely with them in setting priorities for how the levy will be spent in two-tier areas.

24 Collaborative working between county councils and charging authorities is especially important in relation to the preparation or amendment of the Regulation 123 infrastructure list, bearing in mind the potential impact on the use of highway agreements by the county council.

## NEXT STAGES

25 In reviewing and setting CIL rates, the Council is required to strike an appropriate balance between the desirability of funding infrastructure from CIL and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across the Central Lancashire area, using appropriate available evidence to inform the Preliminary Draft Charging Schedule.

26 A review of the CIL charging schedule should be started with consultants appointed to undertake an updated CIL economic viability assessment to consider the impacts of the proposed revised CIL rates on the economic viability of development across the Central Lancashire area. The Review process will involve 2 rounds of public consultation and an independent examination. The review should be started at the beginning of 2015 as it is likely to take in the region of 12 -15 months to complete before a reviewed charging schedule is adopted.

## RISK ASSESSMENT

27 The risk of not starting a CIL charging review are that the imminent changes to the Building Regulations will mean that the Core Strategy Policy 27 will become obsolete and that the CIL charging schedule may not reflect up to date viability information and may be challenged.

28 The risk of starting a CIL charging review is that in May 2015 the general election may result in a change of political party. The Labour party has indicated they do not want to scrap the principle of developers contributing to infrastructure but want to make CIL simpler and more straightforward so that Councils are able to use assets to lever in wider funding. This may alter the CIL process and make any review work unnecessary or obsolete. In addition due to the election purda period no consultation on a preliminary charging schedule can take place.

## REVIEW BUDGET

29. The consultant's fee for the Councils adopted CIL charging schedule including viability appraisal work and examination attendance came to £60,000. Any review will utilise the use of appropriate available evidence which includes the adopted Central Lancashire Core Strategy; and the emerging Councils Local Plans and Infrastructure Delivery plans for the Central Lancashire area (although these will need updating).
30. Consultants will need to update the CIL viability study and the viability and infrastructure funding evidence. Any review will not be as lengthy and will not require defining the parameters e.g. Preston inner area.
31. 'Planning Practice Guidance 12 June 2014', provides the most up to date guidance, and replaces earlier guidance, in relation to the process and evidence local authorities are required to carry out and gather to update a charging schedule.
32. Charging Authorities need to demonstrate that their proposed levy rate or rates are informed by 'appropriate available' evidence and consistent with that evidence across their area as a whole. It will stand an authority in a defensible position at Examination if a recognised valuation model and methodology are used to assess viability of development with a CIL charge in place. Development costs arising from existing regulatory requirements, and any policies on planning obligations in the relevant Plan, such as policies on affordable housing and identified site-specific requirements for strategic sites have to be factored into this viability exercise.
33. A charging authority is required to draw on existing data where it is available, this may include values of land in both existing and planned uses and property prices. The authority must then directly sample an appropriate range of types of sites across its area, in order to supplement existing data. Engagement with developers will be necessary to achieve this. At the time of the initial sampling exercise new residential development was very limited across Central Lancashire, so there will now be a significantly greater number of developments to assess. This exercise should concentrate on strategic sites, and those sites where the impact of the levy on economic viability is likely to most significant (such as brownfield sites).
34. More Councils have now adopted CIL in England so there are more examples and a number are now undertaking reviews e.g. Fareham Borough Council. It would be expected that a review would be a cheaper process although it may not be significantly less when examiner and administrative costs are also taken into account. The costs of the CIL Examiner came to £18,157.99 and the cost of the Programme Officer was £1,657.28.
35. Members will be aware that Chorley Council acted as host authority for the Central Lancashire joint working and is content to continue to do so. Assuming that Members equally wish to share the cost, the respective Councils are asked to make suitable budget provision on a three way split. In the light of the City Deal Lancashire County Council may wish to consider whether it makes a contribution to budget provision or in staffing resources. It is anticipated that officer resources will be met from existing base budgets. The cost of the review is estimated at 80k.

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Alison Marland	5281	5 December 2014	Reviewing CIL Charging Schedule Report