

Report to:

Strategic Planning Committee

Date of Meeting:

Tuesday 20 August 2019

Public Document:

Yes

Exemption:

None

Review date for release

None



Subject:

Community Infrastructure Levy: Draft Charging Schedule consultation document, and revised instalment policy

Purpose of report:

To provide some context for the Community Infrastructure Levy (CIL), including the current adopted Charging Schedule, and highlight the key findings from recent viability evidence to inform its revision. The report identifies the main issues arising from public consultation on a Preliminary Draft Charging Schedule earlier this year, how responses have been taken into account, and subsequent changes being proposed. The Draft Charging Schedule consultation document is presented for approval by the Committee for a six week consultation period, and to Full Council for submission for Examination following this. Finally, the opportunity is also taken to update Members on Government changes to the CIL system.

Recommendation:

1. Note the consultation responses received on the Preliminary Draft Charging Schedule and endorse the council response
2. Approve the Community Infrastructure Levy Draft Charging Schedule consultation document for public consultation over a period of six weeks
3. Recommend the Community Infrastructure Levy Draft Charging Schedule to Full Council for submission to the Planning Inspectorate for Examination together with any consultation responses received during the consultation recommended at 2 above
4. Approve the revised Instalment policy

Reason for recommendation:

To ensure Members are aware of the result of public consultation on the CIL Preliminary Draft Charging Schedule, and seek approval for public consultation on the Draft Charging Schedule and then submission to the Planning Inspectorate for Examination. A revised instalment policy is also presented for approval.

Officer:

Keith Lane, Planning Policy Officer

klane@eastdevon.gov.uk

01395 571684

Financial implications:

There are no other financial contributions to highlight at this stage. Please refer to the Finance Implications per the Report for the 20th February meeting.

Legal implications:

The Community Infrastructure Levy (Amendment)(England) (No. 2) Regulations 2019 come into effect on the 1st September 2019 at which time the Council has a duty to comply, apply and take into consideration the new regulations as amended. Other than that there are no legal implications other than as set out in the Report.

Equalities impact:	Low Impact
Risk:	Low Risk
	<p>In setting rates, CIL Regulations require a balance between using CIL to fund infrastructure; and the potential effects on development viability. The rate in the Draft Charging Schedule reflects this, but is subject to consultation and examination by an independent examiner before it can be adopted. The CIL Regulations dictate how the publication of the draft charging schedule and associated documents should be made available, and this will be followed.</p>
Links to background information:	<ul style="list-style-type: none"> • Adopted CIL Charging Schedule • Strategic Planning Committee 20 February 2019, minutes item 48 • CIL Review and Cranbrook DPD Viability Study and Annexes • Preliminary Draft Charging Schedule consultation document and comments received • CIL Charging Schedule Consultation Statement • CIL Draft Charging Schedule Consultation Statement • East Devon Infrastructure Delivery Plan Review • Cranbrook Infrastructure Delivery Plan • Community Infrastructure Levy Planning Practice Guidance
Link to Council Plan:	Developing an outstanding local economy; Delivering and promoting our outstanding environment; Continuously improving to be an outstanding council

Report in full

1. Introduction

- 1.1 The Community Infrastructure Levy (CIL) can be imposed on new development, and is a tool to help deliver infrastructure to support development. CIL is payable on development that creates net additional floor space, expressed as pounds per square metre. However, some development is exempt from paying CIL, for example if less than 100 square metres in size (apart from new dwellings), dwellings built by self/custom builders, affordable housing, and charitable development. The rate of CIL is set in a “charging schedule”.
- 1.2 The council adopted its current Charging Schedule in April 2016, and began charging CIL a few months later on 1 September 2016. The current Charging Schedule contains a charge for residential development. Retail development outside town centres and Cranbrook is also subject to CIL. All other non-residential uses do not pay CIL.
- 1.3 In accordance with CIL regulations, these figures are index-linked on 1 January each year, meaning the rates for development permitted this year are now higher than when adopted in 2016 (figure 1 below shows how the current indexed CIL rate compares to the proposed new rate).
- 1.4 On adoption of the current Charging Schedule, the council made clear that an early review would be required. A key reason for reviewing and then revising the Charging Schedule is to reflect the emerging Cranbrook Plan. This will ensure a consistent approach to infrastructure delivery at the town (i.e. section 106 rather than CIL), and align the future growth of Cranbrook with a revised CIL charging zone – for example, if the current Charging Schedule continued to apply, “Grange” expansion area will be paying more CIL than the others, which clearly would not be justified.
- 1.5 The Charging Schedule is also being revised to take account of amended legislation, updated national policy and guidance on viability issues, latest information on development costs and values in East Devon, and any lessons learnt from applying the current

Charging Schedule. The first stage of consultation in preparing a revised Charging Schedule (on a ‘Preliminary Draft’) took place over February to March 2019.

- 1.6 When setting a CIL rate, a balance must be struck between the desirability of using CIL to fund infrastructure to support development, and the potential effects of CIL on development viability. The infrastructure requirements to support development are contained in the East Devon Infrastructure Delivery Plan (IDP) review (November 2017) and Cranbrook Infrastructure Delivery Plan (February 2019). The East Devon IDP identified a total infrastructure cost of some £350m to deliver the Local Plan and emerging Cranbrook Plan, with a funding gap of £270.9m.
- 1.7 To date,¹ the council has received CIL receipts of £2.1m to spend on infrastructure, and is due to receive at least £1.4m from development already commenced. Assuming the new CIL Charging Schedule is adopted in April 2020, ‘net’ CIL receipts from it are anticipated to be around £23.6m.² This means that total estimated CIL funds (from current and proposed future CIL rates) of £27.1m falls some way short of the infrastructure cost of delivering the Local Plan and emerging Cranbrook Plan. Therefore, a range of other funding sources will be required (including s.106) to deliver necessary infrastructure, alongside a degree of prioritisation.³

2. CIL Review and Cranbrook DPD Viability Study

- 2.1 As noted at Strategic Planning Committee on 20 February 2019, viability evidence is set out in the “CIL Review and Cranbrook DPD Viability Study”, prepared by consultants Three Dragons with Ward Williams Associates, January 2019. This study considers updated viability policy and guidance, development costs and values in East Devon, and then makes an assessment of the viability of typical sites envisaged to come forward, considering Local Plan policy requirements and other costs.
- 2.2 In general, the viability study recommends an increase in residential CIL rates compared to the current Charging Schedule (as index-linked), although rates are still within the appropriate viability headroom – as a guide, the study applies a 50% buffer compared to the maximum theoretical rate. The exception is Cranbrook, which is not able to support any CIL (both residential and non-residential) due to the level of section 106 planning obligations and other costs associated with that development.
- 2.3 Outside Cranbrook, the study recommends a higher rate for residential development at Sidmouth and Budleigh Salterton (£200 per square metre), compared to elsewhere (£150 per square metre). This reduces to £100 per square metre for strategic allocated sites, due to additional costs from planning obligations – if the council is concerned about risk to delivery on strategic allocated sites, the study includes an option for low or zero CIL, which would allow for more on-site infrastructure and other planning obligations.
- 2.4 The study recommends that CIL is not charged on rural exception sites, to reduce the level of market housing that may be required to subsidise the provision of affordable housing. CIL is also not viable for sheltered housing, extra care housing and care homes.
- 2.5 For non-residential development, retail development outside town centres would be viable with CIL, but around half the current rate due to a weaker retail sector than previously. All other non-residential development is not able to support a CIL charge.

¹ As at 4 July 2019.

² Assuming an average new dwelling size of 108 square metres. This is described as “net” as it is the figure available to the district council to spend on infrastructure, and therefore excludes the following: affordable housing; custom and self-build housing relief (average £547,356 per year based upon experience so far), administration (5% of total); the portion of CIL that is passed on the parish councils from development in their area (15% without a neighbourhood plan, 25% with a made neighbourhood plan).

³ For example, the council has agreed that 8.6% of CIL receipts will be top-sliced for habitats mitigation – see Strategic Planning Committee, 29 March 2017, minutes (item 44):

<https://democracy.eastdevon.gov.uk/Data/Strategic%20Planning%20Committee/20170329/Minutes/290317-Strategic-Planning-Committee-minutes.pdf>

3. Preliminary Draft Charging Schedule consultation responses

- 3.1 Following approval at Strategic Planning Committee on 20 February, the Preliminary Draft Charging Schedule was published for consultation from 21 February until 22 March 2019. A total of 15 consultation responses were received, raising a range of issues which are set out in full in the Consultation Statement. The following text provides a summary of the responses.
- 3.2 There was some general support for the Preliminary Draft Charging Schedule, including rural exception sites, extra care housing, holiday accommodation and hotels not paying CIL. Conversely, there was objection to private care homes being exempt from CIL. The proposed intention to hold parallel and linked examinations into the CIL Charging Schedule and the Cranbrook Plan was welcomed.
- 3.3 A mixture of responses were submitted in relation to Cranbrook. Some supported a nil rate at the town to allow more timely provision of infrastructure through s.106 rather than CIL; whilst others felt that the difference between development costs and sales values suggested that a CIL contribution would be viable. Concern was raised that the level of planning obligations for Cranbrook will mean that some infrastructure would be unaffordable, and external funding will be required to deliver. It was proposed that the extent of the Cranbrook £0 charging zone should be defined by the expansion area boundaries, rather than built-up area boundaries, to reflect economic reality on the ground.
- 3.4 It was suggested that all strategic allocations should be zero rated, so that s.106 agreements can be used to deliver infrastructure, particularly education, which is directly related to the site. Viability concerns were raised if a combination of CIL and s.106 could be applied to a strategic site on the edge of Exeter. It was specifically suggested that the Axminster charging zone should be amended to reflect the wider development area in the masterplan endorsed by the council, rather than the (smaller) Local Plan allocation.
- 3.5 Some concerns were raised with the Viability Study, including it is too optimistic, does not include or has unrealistic assumptions and costs, and is not sufficiently robust, requiring significant further analysis.
- 3.6 A single comment on the draft instalment policy considered it was generally sound but there should be scope for negotiated agreement of an alternative payment plan if sensible.
- 3.7 Other comments welcomed the top priority given to habitat mitigation, and highlighted that, in the future, further consideration will need to be given to the charging zones and relevant CIL rates in the context of potential GESP allocations. It was suggested that progress on the Charging Schedule should be delayed either until amended CIL Regulations are published by the Government, or contingency measures are articulated.

4. Consideration of responses and proposed Draft Charging Schedule consultation document

- 4.1 The accompanying Consultation Statement details the comments received and an officer response to each comment, which has been verified by the consultants (Three Dragons) who prepared the Viability Study.
- 4.2 Overall, no changes are proposed to the rates of CIL following consultation on the Preliminary Draft Charging Schedule. It is considered that the Viability Study provides sufficient evidence to inform the rates, using an appropriate methodology, costs and values for a strategic viability study. Concerns regarding the level of planning obligations at Cranbrook will be considered through the Cranbrook Plan – it is obviously not possible to ‘improve’ viability by setting the CIL rate lower than £0. It is conceivable that external funding may become available in the future to assist with infrastructure delivery at the town (as occurred with the permitted scheme), and the council will explore this as potential funding options arise.
- 4.3 The option for lower or zero CIL at other strategic allocated sites has been considered. However, most of the large strategic allocated sites in the Local Plan already benefit from

planning permission, with the remainder subject to planning applications. Therefore, retaining a CIL charge is consistent with their passage through the planning process thus far, and provides certainty for the developers regarding the costs associated with bringing their sites forward.

4.4 Two changes to the maps showing the charging zones have been made in light of the consultation responses highlighted above:

- The Cranbrook charging zone, showing the area to which zero CIL applies, has been amended to reflect the “Cranbrook Plan area” rather than the built-up area boundary, to provide greater flexibility in progressing and delivering the Cranbrook Plan and in recognition of economic viability
- The Axminster strategic site charging zone has been changed to reflect the area covered by the Masterplan rather than the Local Plan allocation, to recognise that the council has endorsed a masterplan advocating a larger area for development

4.5 Finally, the definition of “retail” has been slightly amended to provide greater clarity by explaining that it applies to all uses that fall within Classes A1, A2, A3, A4, A5, and related *sui generis* uses.

4.6 In general, the proposed residential rates in the Draft Charging Schedule are higher than the current adopted Charging Schedule (as index-linked), whilst the retail rate has halved, as shown in figure 1 below.

Figure 1: Current CIL rates compared to proposed revised rates⁴

Type and location of development	Current indexed CIL rate (per square metre)	Proposed new CIL rate (per square metre)
All development in Cranbrook	£80.09	£0
General residential development in Sidmouth and Budleigh Salterton	£147.23	£200
General residential development in the rest of East Devon	£94.23 (urban area) or £147.23 (rural area)	£150
Sheltered housing, extra care housing and care homes	£0-£147.23	£0
Rural Exception Sites	£147.23	£0
Strategic sites ⁵	£94.23	£100
Retail (out of centre) ⁶	£176.67	£84
All other non-residential uses	£0	£0

4.7 A comparison of the current rates and proposed rates at the Local Plan strategic allocated sites is given in figure 2 below. The proposed rates at these sites are slightly higher than current rates (although the gap is likely to be even smaller given that current rates will

⁴ Note that the comparison between the current and recommended rates is to inform the councils’ decision and that the use categories for the current CIL rate and proposed rate may not always be exactly the same – for example the current charging schedule refers to “residential” which the council has been implementing as a C3 use, which may or may not be directly comparable with the recommendations for sheltered/extra care which may be C2 or C3.

⁵ Rate applies to residential development on strategic sites, as shown on the charging zone maps.

⁶ Retail is defined as all uses that fall within Classes A1, A2, A3, A4 and A5 of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order, and related *sui generis* uses. The retail rate applies to qualifying floor space outside of Town Centre Shopping Areas as defined in the East Devon Local Plan 2013 to 2031, as shown on the charging zone maps.

increase from 1 January 2020 through indexation). The exception is Cranbrook, where the rate that would be applied within that plan area is reduced to zero.

Figure 2: Local Plan strategic allocated sites – comparison of current CIL rates with proposed revised rates

Strategic allocated site	Current indexed CIL rate (per sq m)	Proposed new CIL rate (per sq m)
Axminster urban extension	£94.23	£100
Cranbrook expansion areas	£80.09	£0
Cranbrook expansion areas within Grange area, Southbrook House, Bluehayes House, South Whimple Farm, other small sites adjacent to B3170 ⁷	£147.23	£0
East of Exeter sites (Pinhoe, North of Blackhorse, Mossayne)	£94.23	£100
Goodmores Farm, Exmouth	£94.23	£100
Ottery Moor Lane, Honiton	£94.23	£100
Winslade Park, Clyst St Mary	£147.23	£100

- 4.8 For comparison purposes, these proposed changes in the CIL rates will generate an estimated ‘gross’⁸ total of around £37.2m, compared to a slightly higher total of £40.3m if the rates were not revised. This lower figure is due to zero CIL from Cranbrook, but off-set to some degree by higher general rates elsewhere, and the re-submission of Mossayne under CIL. It is important to note that although Cranbrook will not be paying CIL, it will still make a significant contribution to infrastructure delivery through s.106.
- 4.9 There is a risk that generally increasing the CIL rates (as proposed) impacts on our ability to provide policy compliant levels of affordable housing. Whilst the Three Dragons viability work is based on providing the proposed CIL rates and policy compliant affordable housing levels and also includes a not insignificant margin (50% buffer compared to the maximum ‘theoretical’ rate); experience with the existing charging schedule has shown that site specific abnormal costs can often mean that policy compliant affordable housing levels are not viable.
- 4.10 A review of a selection of planning applications approved or awaiting a decision in recent years shows that most sites are achieving a level of affordable housing that achieves the Local Plan targets, but there have been viability issues at some sites resulting in a reduced level of affordable housing. Overall, the Local Plan policy target from sites granted planning permission or awaiting a decision is 1,095 affordable dwellings, but the total number of affordable homes approved is 895, some 200 below the target.
- 4.11 The definition of affordable housing within the revised NPPF is broader than previously, and puts greater emphasis on affordable products to buy which are more viable for developers to provide. This may improve the position. It is inherently difficult to model abnormal costs however it is considered that Three Dragons work should have sufficient leeway built into it to allow for this. In any event, the proposed CIL rates will be subject to

⁷ These areas are outside the expansion areas shown on the current Charging Schedule, and are therefore currently within the higher “rural” CIL rate. The emerging Cranbrook DPD now includes this land, so they are part of the proposed zero rated area.

⁸ Described as “gross” as it does not exclude custom and self-build housing, administration (5% of total), or the neighbourhood portion.

consultation through the Draft Charging Schedule, and then examination by an independent examiner before they can be adopted.

5. Draft Charging Schedule – Next steps

- 5.1 Following resolution of this Committee, the Draft Charging Schedule consultation document will be published for a period of public consultation. CIL Regulations require at least four weeks to seek representations – it is recommended that six weeks is allowed given the holiday season (therefore, the consultation is envisaged to run from 21 August until 2 October). At the end of the consultation period, officers will prepare a summary of the main issues raised by the representations. This will be submitted alongside the Draft Charging Schedule, consultation responses and other documents set out in the Regulations, for examination by an examiner.
- 5.2 It should be noted that, unlike a Local Plan, the examination is not required to be carried out by an Inspector at the Planning Inspectorate on behalf of the Secretary of State. Instead, legislation requires an examiner who is independent of the council and has appropriate qualifications and experience. Given the Cranbrook Plan will be undergoing examination at the same time, and the relationship between the two documents (including a common viability study), it is logical to use the Planning Inspectorate who will hopefully be able to appoint the same Inspector as the Cranbrook Plan.
- 5.3 Following examination and upon receipt of a satisfactory report from the examiner, the council can then progress to adopting the Charging Schedule and then bring it into effect.

6. Revised Instalment policy

- 6.1 CIL Regulations allow payment of the levy by instalments, defined from when development has commenced. Where no instalment policy is in place, the full amount of CIL is due 60 days after development has commenced. The council's current instalment policy (known as "phased payment policy") requires payment in five instalments, with three instalments of 10% over the first year, 30% within 540 days, and the remaining 40% within 720 days. As there are no thresholds for the CIL liability, it means that developments with a relatively small amount of CIL to pay (e.g. for a single dwelling) are subject to the same proportions as those with a large liability (e.g. several hundred dwellings).
- 6.2 The Preliminary Draft Charging Schedule consultation document included a draft instalment policy which introduced thresholds for development, depending upon the amount of CIL to be paid (the "liability"). This would better reflect economic viability, given that small sites are generally completed (and therefore generate value) more quickly than larger sites. It would also reduce administration (for the council and applicants), and mean that the council receives CIL from the smaller schemes more quickly. Following consultation, the policy has been simplified by reducing the number of thresholds for CIL liability, shown in figure 3 below.

Figure 3: Revised Instalment policy

Total CIL liability	Number of instalments	Amount payable	Payment period (due from commencement)
Up to £75,000	2	50% 50%	90 days 180 days
Between £75,001 and £300,000	3	25% 25% 50%	90 days 180 days 360 days
Over £300,000	3	25% 25%	180 days 360 days

Total CIL liability	Number of instalments	Amount payable	Payment period (due from commencement)
		50%	540 days

- 6.3 The instalment policy does not require an independent examination, but we must give at least 28 days' notice before the new policy takes effect. Therefore, following resolution of this Committee, the council will publish the revised instalment policy on its website, and state that it comes into force at least 28 days following this (intended to be Monday 23 September).
- 6.4 To aid the viability and delivery of development and to provide clarity, the revised instalment periods (in figure 3) shall only apply to CIL liable developments where a liability notice has been issued on or after the date the revised instalment policy comes into force. Up to this date the current instalment periods as set out in paragraph 6.1 above shall apply.

7. Government changes to the CIL system

- 7.1 Along with other authorities, the council has been making representations to Government for some time regarding aspects of the CIL system. A key concern was the s.106 "pooling" restriction which meant that, from April 2010, no more than five s.106 agreements could be agreed for the same infrastructure project or type of infrastructure.
- 7.2 Following consultation earlier this year, the Government has made some amendments to the CIL Regulations, which come into force on 1 September 2019. The new regulations introduce some key changes to the preparation and implementation of CIL charging schedules, and the system of s.106 planning obligations, including:
- Only one period of public consultation required when preparing charging schedules, rather than two
 - Removal of the section 106 pooling restriction
 - A requirement for the council to publish an annual rate summary every December showing the CIL rate, as adjusted for inflation, for the following calendar year
 - Replacement of "Regulation 123 lists" of infrastructure that the council intends to fund, or may fund, through the levy, with an annual infrastructure funding statement (see following bullet point)
 - A requirement for the council to publish an annual infrastructure funding statement setting out how CIL and planning obligations is collected, how much is spent and what it is spent on; along with a list of infrastructure projects or types of infrastructure which will be, or may be, wholly or partly funded by CIL. This statement should be published by 31 December each year, starting from 2020
 - Limiting the penalty for failing to submit a commencement notice for developments that are exempt from paying CIL (such as residential extensions and self-build housing), to whichever is the lower of 20% of the full chargeable amount, or £2,500 (rather than the full chargeable amount)
 - Allowing fees to be sought by council's to monitor s.106 agreements
- 7.3 The Government considers that these amendments should make CIL and section 106 planning obligations more effective, fairer and more transparent to local communities and developers. The removal of the s.106 pooling restriction in particular is to be welcomed to facilitate delivery of the infrastructure necessary to support development.