

Report to: **Strategic Planning Committee**

Date of Meeting: Wednesday 20 February 2019

Public Document: Yes

Exemption: None

Review date for release None

Agenda item: 7

Subject: **Community Infrastructure Levy Preliminary Draft Charging Schedule: consultation document**

Purpose of report: To set out the context for the Community Infrastructure Levy (CIL) and East Devon's current charging schedule, and highlight the key findings from the viability evidence that will be used to inform a revision of the charging schedule. The Preliminary Draft Charging Schedule consultation document is presented for approval by the Committee for a four week consultation period.

Recommendation: **Members are asked:**

- 1. To note the findings of the "CIL Review and Cranbrook DPD Viability Report"**
- 2. To approve the Community Infrastructure Levy Preliminary Draft Charging Schedule for public consultation over a period of four weeks**

Reason for recommendation: To ensure Members are aware of the findings of the CIL Review and Cranbrook DPD Viability Report, and to seek approval for public consultation on the Preliminary Draft Charging Schedule.

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Financial implications: The determination of CIL charges at an appropriate viability level is outlined in the report, there is an increase in the overall level of income derived which does aid infrastructure delivery and when combined with the recommendations relating to the delivery of Cranbrook through s106 agreements do help mitigate the substantial funding deficit position. There is still however a funding gap where resources from differing organisations will need to be used to meet infrastructure requirements.

Legal implications: There are no other legal implications at this stage other than as set out in this report.

Equalities impact: Low Impact

Risk: Low Risk

When preparing a charging schedule, CIL regulations require public consultation on a 'preliminary draft'. This consultation provides the



opportunity for comment at this early stage, allowing changes to be made to reflect responses, where appropriate. Given this, there is a low risk associated with this report.

Links to background information:

- Minutes of the Meeting of the Council, 20 April 2016, item 78: <http://eastdevon.gov.uk/media/1684688/200416-council-mins.pdf>
- East Devon adopted CIL Charging Schedule: <http://eastdevon.gov.uk/media/1680258/adopted-charging-schedule.pdf>
- East Devon Infrastructure Delivery Plan Review (November 2017): http://eastdevon.gov.uk/media/2270747/idp-review-2017_report.pdf
- Community Infrastructure Levy Planning Practice Guidance: <https://www.gov.uk/guidance/community-infrastructure-levy>
- [CIL Review and Cranbrook DPD Viability Study:](#)

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. Background

- 1.1 The Community Infrastructure Levy (CIL) 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, social housing, and charitable development. The rate of CIL is set in a “charging schedule”.
- 1.2 Members will be aware that the council charge CIL on new development in East Devon (as appropriate), having adopted its CIL Charging Schedule in April 2016. The council began charging CIL on 1 September 2016.
- 1.3 The current Charging Schedule contains three different charging ‘zones’ for residential development:
 - £80 per square metre (psm) at Axminster, Cranbrook (permitted area), Exmouth, Honiton, Ottery St Mary, Seaton and edge of Exeter allocation sites
 - £68 psm at Cranbrook expansion areas
 - £125 psm at Sidmouth, Coast and Rural (the rest of East Devon)
- 1.4 Retail development outside town centres and Cranbrook is also subject to CIL, charged at £150 psm. All other non-residential uses do not pay CIL.
- 1.5 In accordance with CIL regulations, these figures are index-linked on January 1 each year, meaning the rates for development permitted this year are now slightly higher than when adopted in 2016 (see figure 1 below for how the current indexed CIL rate compares to the proposed new rate).
- 1.6 On adoption of the 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 align with 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 boundary of Cranbrook expansion areas with that of a revised CIL charging zone – for example, although most of the expansion areas in the Cranbrook Plan are within the £68 psm zone,

there are some areas that would be charged £125 psm (e.g. Grange) under the current Charging Schedule, which would clearly not be justified.

- 1.7 The revised Charging Schedule takes account of 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.
- 1.8 As noted at the last Strategic Planning Committee (29 January 2019), the Government has published draft CIL regulations that make significant changes to the system. These include removing “regulation 123 lists” of infrastructure to be funded by CIL, removal of the section 106 “pooling” restriction, and streamlining the production of a charging schedule so that only one round of consultation is required (rather than two) before it is submitted for Examination. The council intends to progress the CIL Charging Schedule assuming that these regulations will be finalised in due course. Having considered the draft regulations and transitional arrangements, consultation on a preliminary draft charging schedule is still required until the final regulations are published. There is no indication as to when the final regulations will be published, so it is recommended to progress with consultation on a preliminary draft, rather than wait.
- 1.9 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 set out in the Infrastructure Delivery Plan review (November 2017). This identifies a significant infrastructure cost to deliver the Local Plan and emerging Cranbrook Plan, with a funding gap of some £270.9m. An estimated £30.9m of CIL would be generated from the adopted Charging Schedule – this amount includes CIL from the Cranbrook expansion areas, so will be lower if this is not charged CIL in the future (as proposed). The large infrastructure funding gap demonstrates the need to charge CIL – potential effects on viability are discussed in the next section.
- 1.10 There is a risk that changing the CIL rates impacts on our ability to provide policy compliant levels of affordable housing. While 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; 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. The new definition of affordable housing within the NPPF 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 how it is considered that Three Dragons work should have sufficient leeway built into it to allow for this. In any event this is the first round of consultation and it will be interesting to get feedback from the development industry on the viability of the revised charging schedule before proceeding.

2. CIL Review and Cranbrook DPD Viability Study

- 2.1 As noted at Strategic Planning Committee on 27 November 2018, consultants have been appointed to prepare viability evidence that will inform the revised CIL Charging Schedule (alongside a viability assessment of the Cranbrook Plan). This evidence is set out in the “CIL Review and Cranbrook DPD Viability Study”, prepared by Three Dragons with Ward Williams Associates, January 2019.
- 2.2 This study considers updated national policy and guidance on viability issues, latest information on 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.
- 2.3 In general, the viability study recommends an increase in residential CIL rates compared to the current adopted charging schedule (as indexed), although rates are still within the appropriate viability headroom considered in the study. The exception is Cranbrook, which is not able to support CIL (residential and non-residential) due to the level of section 106

planning obligations and other costs associated with that development. Outside Cranbrook, the study recommends differing charging zones for general residential development at Sidmouth and Budleigh Salterton (£200 per square metre), and elsewhere (£150 per square metre). This rate reduces for strategic allocated sites, due to additional infrastructure costs provided through section 106 planning obligations – if the council is concerned about risk to delivery on strategic allocated sites, there is an option for low or zero CIL, which would allow for more on-site infrastructure and other planning obligations. In order to provide greater clarity, we suggest that strategic allocated sites are defined as those which are 150 dwellings or greater, consistent with the scale of development that applies higher section 106 costs used in the viability study. A lower rate for strategic sites in Sidmouth and Budleigh Salterton is recommended by the consultants but as there are no such sites in the local plan it is considered that there is no need to include a charging category for this form of development.

- 2.4 It is recommended 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, the evidence shows that only retail development would be viable with CIL, but at a lower rate than the current charging schedule due to a weaker retail sector than previously. It is recommended that the rate applies to all retail development within use class A and outside of town centres. The study considers a range of other non-residential uses, noting that most share similar characteristics for the purposes of viability so are covered by the same rate.
- 2.6 Figure 1 below presents the current indexed CIL rate alongside the recommended CIL rates from the viability study.

Figure 1: Current and potential residential and non-residential CIL rates¹

| 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 allocated sites ² in the rest of East Devon excluding Sidmouth and Budleigh Salterton | £94.24 | £100 |
| Retail (out of centre) | £176.67 | £84 |
| All other non-residential uses | £0 | £0 |

- 2.7 The study recommends that the council monitors development costs and values, with a sustained change in key variables enough to trigger a review of the CIL rate. In any case,

¹ 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 and recommended CIL 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.

² Rate only applies to residential development of 150 dwellings or more on strategic allocated sites.

a review should be considered in two to three years, noting that it does not have to lead to a revised charging schedule.

3. Preliminary Draft Charging Schedule consultation document

- 3.1 A Preliminary Draft Charging Schedule (PDCS) consultation document is appended to this report. This contains the charging schedule itself (i.e. the table of CIL rates), explanatory text, and maps showing the charging “zones”.
- 3.2 The CIL rate in the PDCS reflects the findings of the viability study shown in figure 1 above. It should be noted that the proposed rate should be reasonable, given the available evidence, but is not required to exactly mirror the evidence. Government guidance makes clear there is room for pragmatism, giving the example that the rate might not be appropriate if set right at the margins of viability.³ The viability study includes a 50% buffer compared to the theoretical maximum CIL rate that could be charged, so is not considered to be “right at the margins of viability”.
- 3.3 CIL regulations allow payment of the levy by instalments, defined from when development commenced. A revised draft instalment policy is presented in the PDCS consultation document. Given that small sites are generally completed (and therefore generate value) more quickly than larger sites, it is now considered reasonable to introduce thresholds for development, depending upon the amount of CIL to be paid. This would reduce administration (for the council and applicants), and also mean that the council receives CIL from the smaller schemes more quickly.

4. Next steps

- 4.1 Assuming the recommendations in this report are resolved, the Preliminary Draft Charging Schedule consultation document will be published for consultation. The CIL Regulations do not set the length of public consultation for a preliminary draft charging schedule, but a draft charging schedule (the following stage) must undergo at least four weeks of public consultation.
- 4.2 Although we would normally consult for a period of six weeks on planning policy documents, in this instance four weeks is suggested as it is a revision of an existing document, and to enable alignment with the Cranbrook Plan preparation timescale (intention for a concurrent Examination to benefit from ‘economies of scale’, as happened with the Local Plan and existing Charging Schedule), in a manner that is consistent with CIL Regulations.
- 4.3 Following public consultation on the Preliminary Draft Charging Schedule consultation document, the responses will be reviewed and consideration given to any potential changes to the document as a result. A Draft Charging Schedule will then be produced, and published for consultation for at least four weeks. At this stage, representations may request the right to be heard by the Examiner (i.e. attend hearing sessions). Consultation on a Draft Charging Schedule should take place in early summer 2019.
- 4.4 Later in the summer of 2019, it is anticipated that the Draft Charging Schedule, supporting evidence, and representations will be submitted for Examination (alongside the Cranbrook Plan).
- 4.5 All going well, it is expected that a new Charging Schedule will be adopted by the council and brought into effect in 2020.

³ Planning Practice Guidance, Reference ID: 25-019-20140612: <https://www.gov.uk/guidance/community-infrastructure-levy#Community-Infrastructure-Levy-rates>