

MAIDSTONE BOROUGH COUNCIL
RECORD OF DECISION OF THE CABINET

Decision Made: 16 May 2012

COMMUNITY INFRASTRUCTURE LEVY

Issue for Decision

To consider the report of the Head of Finance and Customer Services informing Cabinet about the opportunity available to the Council to act upon its status under the Planning Act 2008.

Decision Made

That Cabinet confirms their commitment to develop and charge a Community Infrastructure Levy.

Reasons for Decision

The Community Infrastructure Levy (CIL) was introduced by the Planning Act 2008 and came into force on 6th April 2010 through the Community Infrastructure Levy Regulations 2010, which were amended in 2011.

CIL allows local authorities to raise funds from developers that are undertaking building projects in their area. The funds can be used for a wide range of infrastructure such as roads, schools, flood protection and green space but only if it is needed as a result of development.

The CIL is calculated as a fixed charge per square metre of development and is the product of three considerations:

- The expected level of development;
- The financial need that the expected level of development creates, in relation to the provision of infrastructure; and
- An assessment of the viability of the charge once calculated.

CIL charging authorities in England are the bodies that prepare development plans for their area as these are informed by the assessment of infrastructure needs. For this area the CIL charging authority would be Maidstone Borough Council.

The majority of development in an area has some impact upon the infrastructure needed and, in fairness, the development should support that cost. The Government's opinion is that there must be a balance between that need and certainty for the developer. Funds could be raised through developer contribution without setting a CIL but the Government sees CIL as a statement of need in advance, which aids the developer's decision making and speeds up the process of development.

Developer contributions are also known as section 106 contributions. They are raised through agreement with a developer to provide for infrastructure and will not be completely replaced by CIL. If, and only if, an authority chooses to set a charging schedule for CIL, the regulations will create a limitation on developer contribution in two ways. The contributions will only be for matters not covered by the CIL charge and such contributions will only have limited local pooling abilities, meaning that the Council could no longer use developer contributions to provide infrastructure that is not local to the area of the development.

In order to ensure that an effective balance is struck, the charging schedule will be subject to independent public inspection. As part of that inspection the Council will need to evidence the viability of development in the area once such development is subject to CIL.

The viability assessment could be completed in a number of differing ways but the DCLG has funded the development of a viability model through some Kent district councils. It would be prudent to await the completion of that development work and to consider the possible adoption of the viability model developed. At this time it is expected that the model would be available for consideration by July 2012.

In the meantime the Council is considering the employment of a CIL development officer. This post would be a fixed term position on a shared basis with Swale Borough Council. It would enable the Council to prepare the data for the viability model and to assess the results. This appointment would be at no extra cost to the authority as it can be funded from existing resources.

Although the Council will be the charging authority it may need to pass money to other bodies. In some cases it is acceptable to support infrastructure delivery outside of the borough where such infrastructure will benefit the development within the borough. The scheme also makes collaboration between charging authorities possible including the pooling of funds.

Setting the charge must be completed as prescribed in legislation and follows a series of steps. To commence with, this authority is a charging authority as set out above enabling it to set a charge for the purposes set out above. This status is conferred upon it by the Planning Act 2008. If Cabinet confirms a commitment to the development of a CIL, a summary of the process then followed is:

- Identify infrastructure need
- Identify funding available from other sources
- Identify funding gap
- Test viability of development in area
- Produce a charging schedule that matches funding need and viability
- Consult with developers, infrastructure providers and the public
- Assess consultation responses and revise as necessary
- Set up independent inspection

- Revise as necessary following the inspection
- Adopt charges, publish the schedule and commence charging

These tasks are complex and must be completed accurately as the charging schedule cannot be amended once published without returning to consultation and inspection.

The Government has not specified a recommended lifetime for charging schedules and there is no requirement for charging authorities to review their charging schedules. To ensure that a charging schedule remains realistic it is appropriate to review the schedule periodically. The Planning Act 2008 allows charging authorities to revise a part of their charging schedule. However, any revisions, in whole or in part, must follow the same process as that applied to the preparation, examination, approval and publication of the initial schedule.

Production of an accurate and up-to-date development plan to indicate infrastructure need is ongoing and the identification of available resources is also ongoing. This work requires completion whether the Council produces a charging schedule or not.

An indicative timetable for the work suggests that successful completion would take between 15 and 18 months, dependent upon the level of engagement with stakeholders at each stage.

Alternatives considered and why rejected

The Council could choose not to set and charge CIL. This would reduce the possible options to finance necessary infrastructure work and would influence the robustness of the medium term financial strategy.

Background Papers

Planning Act 2008

Localism Act 2011

Community Infrastructure Levy Regulations 2010 (2010 No. 948)

Community Infrastructure Levy (Amendment) Regulations 2011 (2011 No. 987)

The Local Authorities (Contracting Out of Community Infrastructure Levy Functions) Order 2011 (2011 No. 2918)

"Community Infrastructure Levy Guidance, Charge setting and charging schedule procedures" (2010). Published by Secretary of State as guidance under section 221 of the Planning Act 2008. Available from:

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1518612.pdf>

Should you be concerned about this decision and wish to call it in, please submit a call in form signed by any two Non-Executive Members to the Head of Change and Scrutiny by: **25 May 2012**