

# **MAIDSTONE BOROUGH COUNCIL**

## **CABINET**

**16 MAY 2012**

### **REPORT OF HEAD OF FINANCE & CUSTOMER SERVICES**

**Report prepared by Paul Riley,  
Head of Finance & Customer Services**

#### **1. COMMUNITY INFRASTRUCTURE LEVY**

##### 1.1 Issue for Decision

1.1.1 This report informs Cabinet about the opportunity available to the Council to act upon its status under the Planning Act 2008 as a charging authority. This enables the Council, should it choose to do so, to develop and charge a Community Infrastructure Levy on relevant developments in the area.

##### 1.2 Recommendation of Head of Finance & Customer Services

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

##### 1.3 Reasons for Recommendation

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

1.3.2 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.

1.3.3 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.

- 1.3.4 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.
- 1.3.5 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.
- 1.3.6 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.
- 1.3.7 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.
- 1.3.8 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.
- 1.3.9 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.
- 1.3.10 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.

1.3.11 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 in paragraph 1.3.4 enabling it to set a charge for the purposes set out in paragraph 1.3.2. 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

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

1.3.13 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.

1.3.14 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.

1.3.15 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.

1.4 Alternative Action and why not Recommended

1.4.1 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.

1.5 Impact on Corporate Objectives

1.5.1 The development of an appropriate CIL that supports the infrastructure delivery plan and meets the test of viability will enable the achievement of the outcomes of a growing economy and a decent place to live by enabling effective improvements to the built environment.

1.6 Risk Management

1.6.1 Should Cabinet wish to continue with the development of a charging schedule the risks relate to future decision points, mainly in relation to the balance between viability and delivery of the needed infrastructure. The appointment of a CIL Officer and the use of the DCLG developed viability model would help mitigate these risks.

1.6.2 Should Cabinet not wish to continue with the development of a charging schedule the Council may fail to maximise resources necessary to deliver the needed infrastructure, it may also result in unnecessary delays to the planning process and additional complexity in the negotiation of developer contribution.

1.6.3 The level of funding available for infrastructure is significant and any decision relating to developing a CIL will have an impact on the medium term financial strategy. The strategy is built on a stable base as the Council has sound financial management and control however the likely value of the infrastructure need will mean significant changes to the strategy will be required to maintain the current level of robustness.

1.7 Other Implications

1.7.1

- 1. Financial
- 2. Staffing
- 3. Legal
- 4. Equality Impact Needs Assessment

X
X
X

- 5. Environmental/Sustainable Development
- 6. Community Safety
- 7. Human Rights Act
- 8. Procurement
- 9. Asset Management

X
X

1.7.2 The financial implications are set out in the report to the extent they can be detailed at this stage. Greater financial analysis will be completed following the identification of the funding gap that requires CIL funding. The CIL regulations currently allow for a maximum of 5% of the levy to be used by the charging authority for administration.

1.7.3 The decision to develop and charge a CIL means that specific regulations will apply to developer contributions within the Borough. This is to ensure that infrastructure is only delivered through a single charge. In addition the Localism Act 2011 and some as yet unspecified statutory instruments will continue to change the legislation relating to CIL and officers will need to remain abreast of these changes as the charging schedule is developed.

1.7.4 An equality impact assessment will be required to complete the charging schedule work and this will be developed at a later stage once appropriate details are available.

1.7.5 The CIL cannot be used to influence policy and cannot be a tool to directly achieve sustainable development. It can, however, be used to provide sustainability through the types of infrastructure provided.

1.7.6 The CIL funds can be used to acquire and enhance the Council's assets where this is identified as a need of the development occurring in Maidstone.

## 1.8 Relevant Documents

### 1.8.1 Background Documents

1.8.2 Planning Act 2008

1.8.3 Localism Act 2011

- 1.8.4 Community Infrastructure Levy Regulations 2010 (2010 No. 948)
- 1.8.5 Community Infrastructure Levy (Amendment) Regulations 2011 (2011 No. 987)
- 1.8.6 The Local Authorities (Contracting Out of Community Infrastructure Levy Functions) Order 2011 (2011 No. 2918)
- 1.8.7 "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>

**IS THIS A KEY DECISION REPORT?**

Yes  No

If yes, when did it first appear in the Forward Plan?  
 .....

This is a Key Decision because: .....  
 .....

Wards/Parishes affected: .....  
 .....