

MAIDSTONE BOROUGH COUNCIL

CABINET

24 FEBRUARY 2014

REPORT OF HEAD OF PLANNING AND DEVELOPMENT

Report prepared by Darren Bridgett

1. COMMUNITY INFRASTRUCTURE LEVY - PRELIMINARY DRAFT CHARGING SCHEDULE

1.1 Issue for decision

1.1.1 To approve the Maidstone Community Infrastructure Levy Preliminary Draft Charging Schedule, attached as Appendix A, for consultation alongside the Maidstone Borough Local Plan. The consultation would run from 21 March 2014 until 5pm, 7 May 2014.

1.2 Recommendation of the Head of Planning and Development

1.2.1 That Cabinet approves the Maidstone Community Infrastructure Levy Preliminary Draft Charging Schedule, attached as Appendix A, for consultation alongside the Maidstone Borough Local Plan. The consultation would run from 21 March 2014 until 5pm, 7 May 2014.

1.3 Reasons for recommendation

1.3.1 This report will be considered by the Planning, Transport and Development Overview and Scrutiny Committee on 18th February 2014.

1.3.2 On 16 May 2012, the Maidstone Borough Council Cabinet agreed to pursue the introduction of a Community Infrastructure Levy (CIL) in Maidstone for future infrastructure provision.

1.3.3 The Maidstone Community Infrastructure Levy Preliminary Draft Charging Schedule (PDCS), attached as Appendix A, is the first stage of consultation in the process of adopting CIL.

1.3.4 To be able to prepare a CIL for adoption, there must be an up to date local plan, which is the reason this has not been progressed sooner. The emerging Maidstone Borough Local Plan contains proposed land allocations, primarily for residential uses, but also for non-residential

uses i.e. employment and retail. The infrastructure delivery plan (IDP), which has been developed alongside the local plan, is an up to date inventory of which infrastructure is needed to support the proposed allocations. The total cost to date of the infrastructure identified in the IDP is approximately £75m.

- 1.3.5 The CIL does not have to fully fund all of this infrastructure. Government expects that there will be a funding gap between what the CIL can realistically provide for and what the total of infrastructure identified in the IDP costs. The gap can be addressed by alternate funding sources e.g. pinch point funding in relation to transport, other funding initiatives, section 106 obligations (where they meet the tests included in the 2010 CIL Regulations), and where possible by prioritisation of schemes/resources.
- 1.3.6 To date in Maidstone Borough, the primary funding source for infrastructure has been section 106 obligations. The New Homes Bonus, which provides another planning related funding source, is not ringfenced for spending on infrastructure, unlike CIL. Maidstone Borough Council currently has no set procedure to use New Homes Bonus receipts towards infrastructure funding.
- 1.3.7 **Evidence base**
In July 2013, the council provided member training on the Local Plan Viability Testing (2013) evidence document, which was prepared by Peter Brett Associates. This provides the viability element of the local plan evidence base. This document was prepared to support the production of the Core Strategy, but provides the same necessary support for the Maidstone Borough Local Plan and the CIL.
- 1.3.8 Local Plan Viability Testing contains a series of high level viability assessments, based on realistic development scenarios in the borough during the life of the local plan. These are residential and non-residential assessments, which have enabled the proposed CIL rates included in the appended PDCS. The development scenarios included residential sites, in particular those in the north west of the urban area and those in the south east of the urban area, as well as number of more generic development scenarios, based on the information in the 2009 Strategic Housing Land Availability Assessment (SHLAA). Non-residential development scenarios were based on national generic development assumptions, which were considered valid to be applied in Maidstone. The types of non-residential development that were tested are listed at paragraph 4.9 in the preliminary draft charging schedule, attached at appendix A.
- 1.3.9 The basis of these assessments is the residual land valuation model that takes into account all development costs to determine if there is any residual land value. The starting point is the potential development

value from which costs are subtracted. Development costs will include typical build costs, marketing costs and local planning policy associated costs such as affordable housing, the Code for Sustainable Homes/BREEAM and infrastructure costs (for the purpose of viability testing a combined CIL/s106 figure is used to incrementally test what infrastructure charge a site might be able to support). The residual land value i.e. after all costs have been subtracted, is what is left to pay to the landowner. If the residual value is not sufficient, then the landowner will not sell their site for development.

1.3.10 Proposed levy

The proposed residential levy follows the format of policy DM24 – Affordable housing, which was also underpinned by the Local Plan Viability Testing.

The **residential levy** as proposed, is:

Urban – previously developed land	£35 per m ²
Urban and urban periphery – greenfield and private residential gardens	£84 per m ²
Countryside, rural service centres and larger villages	£126 per m ²

The proposed non-residential levy solely relates to retail uses outside of the town centre and is based on the results of viability testing, that shows that these developments are the best performing non-residential development type. Traditional employment uses (B classes) are all shown to be unable to support a CIL charge.

The **retail levy** as proposed, is:

Out of town centre – local convenience retail (up to 750m ²)	£189 per m ²
Out of town centre – supermarket/superstore and retail warehouse (above 500m ²)	£260 per m ²

1.3.11 Superstores (2,500m² to 5,000m²) were shown to be able to support a CIL charge significantly higher than £260 per m² (up to £434 per m²). However, for the purposes of administering CIL and retaining simplicity in the proposed charging schedule, all out of town centre retail uses above 750m² (as per Valuation Office Agency categorisations) are proposed to be charged the same rate – which all are shown to be able to support.

1.3.12 Potential CIL income

Based on residential development with a deliverable housing target of 17,100, the potential income from CIL could be in the region of £42m, with potentially £10m of this being passed to local (parish) councils,

leaving around £32m for the council to fund infrastructure with. This is a calculated scenario and the final figures are subject to change e.g. if the rural part of the levy were set lower, at £105 per m², this would change the potential income from CIL to around £36.5m with £9m being passed to local councils, leaving around £27.5m for the council to fund infrastructure with. Factors that could vary the outcome include what the agreed final housing target is, how much development is permitted before the adoption of CIL (this would therefore not be subject to the levy), which local councils adopt a neighbourhood plan and when, and the strength of the economy i.e. developers might yet be able to prove that some parts of the proposed levy are too onerous.

1.3.13 List of relevant infrastructure (Regulation 123 list)

At the meeting of the Planning, Transport and Development Overview and Scrutiny Committee (PTDOSC) on 15 October 2013, members recommended that the proposed criteria for including infrastructure on the list of relevant infrastructure i.e. the infrastructure projects and infrastructure types which will be funded by CIL, be approved.

1.3.14 The criteria, later approved by the Cabinet Member for Planning, Transport and Development, were used to determine which infrastructure projects and infrastructure types from the IDP would be included on the list of relevant infrastructure within the PDCS.

1.3.15 The known costs of infrastructure projects and infrastructure types included on the list of relevant infrastructure currently total around £28.2m. This is with the recognition that some costs are yet to be confirmed.

1.3.16 It should be recognised that the infrastructure projects and infrastructure types on the list are subject to different degrees of risk. Where infrastructure is required to open up a site (although this is most likely to be covered by section 106 obligations) or is in itself unlikely to be controversial then the degree of risk attached could be seen as low to medium. Other infrastructure projects on the list, in particular some of the bigger transport items, are subject to agreement with relevant infrastructure providers and can carry a larger degree of risk, dependent on that agreement. Maidstone Borough Council has scoped the necessity of some of these schemes through the IDP and is confident of their inclusion on the list of relevant infrastructure, however, the specifics of some of these schemes have since been disputed by the relevant infrastructure providers.

1.3.17 Review of the list of relevant infrastructure

The list of relevant infrastructure will be reviewed annually as part of the CIL monitoring. The council can use this process to decide if the

list is still appropriate or needs to be amended, as infrastructure is delivered, new infrastructure requirements identified or new priorities decided. If the list needs to be amended it will need to be consulted on, however, the council can decide what it considers appropriate consultation for this task, related to the degree of proposed changes.

1.3.18 If the council proposes changes to the list of relevant infrastructure that would adversely affect the viability, and deliverability, of the local plan, it must then review the charging schedule and not just the list – meaning new evidence and a new consultation process. Worth noting with this point is that infrastructure costs tend to rise with time due to inflation, yet the CIL charge when set, will not be able to rise at an equivalent rate. Each year the purchasing power of CIL will diminish slightly in real terms.

1.3.19 **Relationship between CIL charge and the list of relevant infrastructure**

The CIL charge is dependent to some degree on the list of relevant infrastructure. As discussed at the meeting of (PTDOS) on 15 October 2013, some infrastructure types can more easily be delivered with CIL funding than they can be delivered through section 106 obligations, and vice-versa. What this means is that depending on the projects included in the IDP and subsequently which of those projects are more suited to CIL funding or section 106 obligations, the CIL charge needs to be set so that there is sufficient funding to meet an IDP balanced towards either CIL delivery or section 106 delivery – bearing in mind that payment of CIL is non-negotiable.

1.3.20 It is possible that a CIL charge set too high, combined with an IDP intended for delivery primarily through section 106 obligations, would mean that developers cannot afford to deliver section 106 obligations and that they might seek to renegotiate on viability terms. In this case, it might be that the council would then seek to include more infrastructure projects or infrastructure types on the list of relevant infrastructure because those that had been intended for continued delivery through section 106 were now being renegotiated. It is important to recognise, however, that this does not mean there would be more money available to fund infrastructure, because in effect there is only one contributions pot available. In such a situation, the council might need to seek alternate funding, in addition to what the developer could pay, and potentially re-prioritise which infrastructure it considered essential to deliver.

1.3.21 The PDCS consultation will be a necessary gauge of where this balance lies.

1.3.22 **Next steps**

The stages of consultation necessary to develop and adopt a CIL charging schedule are listed below. For the Maidstone CIL these stages have been synchronised with the Maidstone Borough Local Plan, because of the need for an up to date local plan.

Community Infrastructure Levy	Maidstone Borough Local Plan	Expected date
Preliminary draft charging schedule consultation (PDCS)	Regulation 18 (Preparation) consultation	March 2014
Draft charging schedule consultation (DCS)	Regulation 19 (Publication) consultation	Nov/Dec 2014
Submission to Secretary of State	Submission to Secretary of State	April 2015
Independent examination	Independent examination	Summer 2015
Adoption by Maidstone Borough Council	Adoption by Maidstone Borough Council	Autumn 2015

1.4 Alternative action and why not recommended

1.4.1 The alternative action that could be taken is to not produce a community infrastructure levy for Maidstone. The reason that this has not been recommended is that the primary alternative funding mechanism that remains is the use of section 106 obligations. Maidstone is proposing to use section 106 obligations alongside CIL, but as noted at 1.3.13 to 1.3.15, the council needs to determine the appropriate balance between the funding mechanisms. It might be possible to rely primarily or even wholly on section 106 obligations to deliver necessary infrastructure, however, with the introduction of the 2010 CIL Regulations the use of section 106 has been restricted.

1.4.2 By the Government restricting the use of section 106 obligations, it might be that the council, if it chose not to develop a CIL, would not be able to fund/facilitate infrastructure delivery (as identified in the IDP) to the same degree as it could with CIL.

1.4.3 The flexibility that CIL provides in terms of funding also means that infrastructure can be included on the list of relevant infrastructure that is not necessarily related to a development but is still worthy of funding. An example of this could be a public realm improvement scheme.

1.5 Impact on corporate objectives

1.5.1 For Maidstone to have a growing economy. The adoption of a community infrastructure levy has the potential to improve the Maidstone economy in a number of ways. Developers will have certainty about the likely development costs they will face, meaning that they can factor this into their plans accordingly. Charging a CIL will also likely enable the council to fund and therefore deliver more infrastructure in the borough, this means the borough will be a better place in which to conduct business.

1.5.2 For Maidstone to be a decent place to live. Charging a CIL will likely enable the council to fund and therefore deliver more infrastructure in the borough, this means the borough will be a better place in which to live.

1.6 Risk management

1.6.1 The risk of adopting a CIL is concerned primarily with the rate at which it is charged, cross referenced to which infrastructure is included on the list of relevant infrastructure. If the council intends to deliver infrastructure primarily through section 106 obligations it should not deny the viability of developments to meet these obligations by setting the CIL charge too high, given that CIL is non-negotiable. This might mean that section 106 obligations would not be able to be funded appropriately and that developers would seek to re-negotiate terms. The PDCS is the first stage of the consultation process and therefore the council can usefully learn from consultee comments about where the appropriate CIL charge might be set and about how developers see the advantages and disadvantages of CIL and section 106 obligations in relation to each other.

1.6.2 The potential proceeds from CIL are matched with what is required on the list of relevant infrastructure, given that the cost of the list is also likely to rise. The Maidstone Borough Local Plan consultation will provide a more complete picture in this respect, given that a full list of site specific allocations are being consulted on for the first time and can be read across to the PDCS consultation. The infrastructure delivery plan is included on this agenda, so provides a picture of how the infrastructure on the 123 list compares with that not on the 123 list.

1.7 Other implications

1.7.1

1. Financial
2. Staffing
3. Legal

X
X
X

4.	Equality impact needs assessment	
5.	Environmental/sustainable development	X
6.	Community safety	
7.	Human Rights Act	
8.	Procurement	X
9.	Asset management	X

- 1.7.2 Financial. The CIL will bring in significant financial receipts, which will need to be managed.
- 1.7.3 Staffing. Experiences of front-running councils show that managing the CIL is a full time position in itself. CIL receipts can be used towards its own administration. The benefit is that the non-negotiable nature of CIL contributions means that there is a relative saving in staff input.
- 1.7.4 Legal. Legal guidance will be needed where section 106 obligations are also involved in infrastructure delivery in addition to the CIL.
- 1.7.5 Environmental/sustainable development. Infrastructure identified in the IDP is necessary to make new development environmentally sustainable and therefore acceptable.
- 1.7.6 Procurement. When the CIL has been adopted, the council will itself deliver infrastructure, which in turn will involve procurement.
- 1.7.7 Asset management. With the delivery of infrastructure, the council is likely to gain assets, these will need to be managed.
- 1.8 Relevant documents
- 1.8.1 Maidstone Local Plan Viability Testing, 2013.
- 1.8.2 Appendices
- 1.8.3 Appendix A. Maidstone Community Infrastructure Levy, Preliminary Draft Charging Schedule, March 2014.
- 1.8.4 Background documents
- 1.8.5 None.

IS THIS A KEY DECISION REPORT?

THIS BOX MUST BE COMPLETED

Yes

No

If yes, this is a key decision because: Policies, plans and strategies

Wards/parishes affected: All