

Strategic Planning, Sustainability & Transportation Committee

11 October 2016

Is the final decision on the recommendations in this report to be made at this meeting?

No

Community Infrastructure Levy: Draft Charging Schedule

Final Decision-Maker	Council
Lead Director or Head of Service	Rob Jarman: Head of Planning and Development
Lead Officer and Report Author	Andrew Thompson: Principal Planning Officer
Classification	Public
Wards affected	All

This report makes the following recommendations:

A. That the Strategic Planning, Sustainability and Transportation Committee:

1. Approves the revised Draft Regulation 123 List (Appendix B);
2. Note the officer responses to the representations received on the Draft Charging Schedule (Appendix C);

B. That the Strategic Planning, Sustainability and Transportation Committee recommends that Council:

3. Approves the Community Infrastructure Levy: Draft Charging Schedule (Appendix A), Schedule of Modifications (Appendix B) and Draft Regulation 123 List (Appendix C) for submission to the Planning Inspectorate in accordance with Regulation 19 of the Community Infrastructure Levy Regulations 2010 (as amended).

This report relates to the following corporate priorities:

Keeping Maidstone Borough an attractive place for all and Securing a successful economy for Maidstone Borough

- Securing provision of and improvements to infrastructure in our Borough

Timetable	
<i>Meeting</i>	<i>Date</i>
Corporate Leadership Team	26 September 2016
Strategic Planning, Sustainability and Transportation Committee	11 October 2016
Council	7 December 2016

Community Infrastructure Levy: Draft Charging Schedule

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 Committee resolved to publish the Draft Charging Schedule, Draft Regulation 123 List and Draft Instalments Policy for consultation at the meeting on 12 July and consultation took place between 5 August and 16 September.
 - 1.2 The principal purpose of the consultation was to seek views on the proposed Community Infrastructure Levy (CIL) charging rates and the viability evidence which underpins these rates. In setting CIL rates, Charging Authorities must strike an appropriate balance between the desirability of funding infrastructure and the viability of development and this will be the key test when the Draft Charging Schedule is examined.
 - 1.3 The Draft Regulation 123 List and Draft Instalments Policy were also published for consultation, however it is not the purpose of the CIL examination to test or scrutinise these documents, which relate more to implementation than the setting of rates.
 - 1.4 Responses to the consultation have been considered by officers and it is not considered that substantive changes are required to any of the documents before the Draft Charging Schedule is submitted for examination.
 - 1.5 This report seeks Committee's approval for minor changes to the Draft Regulation 123 List and Committee is recommended to note the officer responses to the consultation.
 - 1.6 The report also seeks Committee's recommendation to Council to submit the Draft Charging Schedule for examination.
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2. INTRODUCTION AND BACKGROUND

- 2.1 A total of 21 representations were made during the consultation period which, although not particularly high, is not unexpected given the technical nature of the Community Infrastructure Levy (CIL). For comparison, some 34 responses were received during consultation on the Preliminary Draft Charging Schedule.
- 2.2 Some of the comments relate to the Draft Charging Schedule and supporting viability evidence, however many are more concerned with the implementation of the CIL. A full summary of the representations and officer responses are attached at Appendix C however the key points raised include:
 - That the CIL rate should be higher within the AONB and that comparison retail in the town centre should also carry a CIL charge;
 - Queries regarding the robustness of the Council's viability evidence;

- That the Draft Charging Schedule is premature, given that the Local Plan examination is not yet concluded;
- That the Council has not assessed how potential CIL receipts would compare to the alternative continuation of the existing section 106 regime;
- That the Regulation 123 List should be subject to various suggested amendments; and
- Clarification should be provided on the mechanics of the neighbourhood portion.

Draft Charging Schedule and evidence base

2.3 The Draft Charging Schedule identifies the proposed rates that would be charged for different types of development. Very few respondents comment that the rates are either too high or too low, and no evidence is presented to justify a change to the proposed rates.

2.4 The AONB Unit suggest higher rates should be applied for residential development within the AONB in order to provide greater funding for green infrastructure. The proposed CIL rates must however be rooted in the viability evidence and the Draft Charging Schedule reflects the outcomes of the Maidstone Plan and CIL Viability Study July 2015 and the affordable housing policies in the Local Plan.

2.5 Similarly, although Mr Gardiner suggests that all retail development should carry a CIL charge within the town centre, the Viability Study shows that comparison retail cannot sustain a CIL charge within the town centre boundary. On the other hand, convenience retail can sustain a CIL charge across the borough and therefore the proposal to apply a borough-wide CIL rate for convenience retail is considered justified.

2.6 In respect of the Viability Study itself, only GL Hearn (on behalf of Redrow Homes) make any specific criticisms regarding its methodology or conclusions. Whilst it is acknowledged that the work predates the submission version of the Local Plan, the Study takes a flexible approach to assess a range of development “typologies” and, in proposing CIL charging rates, applies a significant buffer to the ensure there is sufficient “headroom” for additional section 106 contributions and variability in site specific circumstances. Relevant factors affecting viability have been tested through the Study and it is considered that the work remains robust for the purposes of the CIL examination.

2.7 Aside from these key examination tests, some representors make more general comments about the principle and timing of pursuing the CIL approach.

2.8 Representations from KCC and Montagu Evans point to the fact that the Local Plan examination is not yet concluded, and comment that there are a number of unresolved objections to the Local Plan. It is asserted therefore, that consultation on a Draft Charging Schedule which is based on the submission Local Plan is premature.

2.9 The National Planning Policy Framework (NPPF) states at paragraph 175 that “where practical, Community Infrastructure Levy charges should be worked up and tested alongside the Local Plan”. The CIL rates are inextricably linked to

policies in the Local Plan, including site allocations and affordable housing policies. Indeed, the supporting viability evidence considers both the Local Plan and the CIL to inform decision making on the appropriate balance between affordable housing requirements and CIL rates. Similarly, the infrastructure evidence developed for the Local Plan supports both the Plan and the CIL.

- 2.10 Whilst the Local Plan is yet to be tested at examination, the Council has followed best practice in developing the Draft Charging Schedule alongside the Plan and it is appropriate that consultation took place to enable its submission and subsequent adoption. The Council has submitted what it considers to be a sound Local Plan and this is an appropriate basis on which to progress the Draft Charging Schedule.
- 2.11 The Draft Charging Schedule will not be examined before the Local Plan examination is sufficiently progressed and, in the event that changes to the Local Plan through its examination necessitate the need for modifications to the Draft Charging Schedule, this can be dealt with through the CIL examination process.
- 2.12 KCC has commented that the Council has not presented an analysis to show how income from CIL would compare with the alternative of continuation under the existing section 106 regime. KCC asserts that implementation of the CIL may actually reduce the total level of infrastructure funding available however no evidence is provided to support this conclusion.
- 2.13 The Council is expected to submit evidence regarding the amount of money collected in recent years through section 106 agreements, and in respect of affordable housing delivery, as part of the evidence base required for submission of the Draft Charging Schedule to the Planning Inspectorate. The Funding Gap Analysis (June 2015) paper will require updating at the point of submission, and it is intended to include this additional analysis within that updated document.
- 2.14 Analysis of the monies secured through section 106 agreements associated with residential planning consents granted between the period April 2011 – March 2016 (the first five years of the Local Plan period) shows that the average per dwelling section 106 contribution over this period was around £6,245. This figure would of course be significantly lower if consents granted without section 106 agreements were included in the calculations.
- 2.15 With the implementation of the CIL, a single dwelling with 90 sqm floorspace in the urban area would incur a liability of around £8,400, whilst the same dwelling in the rural areas would incur a liability of around £8,900. For larger sites which also provide affordable housing the average per dwelling figures (calculated over both market and affordable units) would reduce to around £5,900 in the urban areas and £6,240 in the rural areas. Larger sites however are likely to incur additional contributions for site specific mitigation through section 106 or 278 agreements, or through planning conditions, in addition to their CIL liabilities and affordable housing provision. Overall contributions therefore may be significantly higher.
- 2.16 Whilst it is accepted that some of the larger sites recently gaining consent have made significant contributions through the existing section 106 regime, the above analysis indicates broad alignment between the average per dwelling

figures before and after introduction of the CIL. Larger sites will continue to fund site specific mitigation through other routes, and therefore the overall average per dwelling contribution is likely to increase, not reduce.

2.17 Further, the introduction of the CIL brings other significant advantages as sites of ten or less dwellings would be making contributions towards infrastructure through the CIL but are exempt from making contributions under the existing section 106 regime. The introduction of the CIL also provides Parish Councils and communities with funding for local infrastructure, where development takes place within their areas and, importantly, the CIL will also allow the Council, as Charging Authority, to direct CIL receipts towards key strategic infrastructure projects which do not meet the strict tests for the use of section 106 planning obligations.

Draft Regulation 123 List

2.18 The Draft Regulation 123 List sets out the types of infrastructure which may be funded wholly or partly through the CIL, and identifies any exclusions to this approach; where developer contributions will continue to be sought through section 106 planning obligations, section 278 agreements or planning conditions. The approach is in line with Policy ID1 of the Local Plan which sets out that the CIL will be used for strategic infrastructure projects, which relate to multiple sites and/or cumulative impacts, whilst section 106/278 agreements will be used for site specific infrastructure mitigation.

2.19 Representations from KCC, Highways England (HE), Staplehurst Parish Council, the Environment Agency (EA) and Woodland Trust seek amendments to the Draft Regulation 123 List. The EA and Woodland Trust seek specific references to Water Framework Directive schemes and woodland planting schemes respectively, however it is considered that such schemes are already encapsulated within the List.

2.20 KCC are generally supportive of the List but seek amendments to the education section to create more flexibility in the description of the primary education mitigation for site H1 (8) West of Church Road, Otham and to move the new primary school at the Lenham Broad Location from a CIL scheme to a section 106 scheme. KCC also seek a flexible approach to the funding of the potential South East Maidstone Strategic Link (SEMSL) through the CIL and/or section 106 planning obligations.

2.21 Once in place, the List can usually be updated without creating the need for a full review of the CIL Charging Schedule, and the need to keep the List under review is recognised. Should new evidence be made available, or circumstances change, later in the Local Plan period, there is scope to consider amending the List if necessary. KCC's proposed modification regarding H1 (8) is considered to be a reasonable change to make at this stage however, and the revised Draft Regulation 123 List (Appendix B) now reflects the need for flexibility at site H1 (8).

2.22 In regard to the Lenham Broad Location however, the delivery of a new primary school is not directly comparable to the school at the Invicta Barracks Broad Location, as asserted by KCC. The Lenham Broad Location is comprised of multiple sites and landownerships, and therefore the new primary school is a

strategic infrastructure response to support the Broad Location, not site specific mitigation as is the case at Invicta Barracks. Local Plan Policy ID1 establishes that the Council will use CIL in these circumstances, not section 106 agreements, and therefore it is not proposed to modify the List in respect of this project.

2.23 HE has sought clarification on the use of section 278 agreements to fund works to the Strategic Road Network and therefore the revised Draft Regulation 123 List (Appendix B) reflects this more specifically in the list of exclusions.

2.24 Staplehurst Parish Council seek amendments to the List to include foul and surface drainage. Where appropriate, drainage infrastructure will continue to be funded through section 106 agreements or through planning conditions and this is already set out in the List. Separately, Southern Water's representations confirm again that the CIL is not an appropriate method of funding waste water or sewerage infrastructure.

Draft Instalments Policy

2.25 Representations from KCC and Gladman support the principle of introducing the Draft Instalments Policy and no objections have been received to the approach from the development industry. Staplehurst Parish Council has commented that all CIL liabilities should be paid within 24 months of commencement. However, the later trigger point at 36 months only applies to the remaining 30% of sums over £1m and the approach is considered to be reasonable.

Governance and administration

2.26 A number of representors, including Parish Councils, have made a variety of comments on the application and mechanics of the neighbourhood portion. It is important to note that the criteria governing the circumstances where the neighbourhood portion increases from 15% to 25% are set nationally, and the Draft Charging Schedule reflects these national requirements.

2.27 The Council has committed to working with Parish Councils and communities to develop the administrative and governance framework to implement the CIL. Early work in this area is now beginning and the Council will ensure that necessary arrangements are in place in a timely manner to support the implementation of the CIL.

2.28 KCC also seek constructive engagement with the Council in the development and implementation of appropriate governance arrangements. This position is welcomed and it is considered that the role of KCC, and other infrastructure providers, in these processes will be essential to ensure effective implementation of the CIL regime.

Conclusions

2.29 In summary therefore, it is not considered that any substantive amendments are required to the Draft Charging Schedule and the document should be submitted for examination together with a revised Draft Regulation 123 List (Appendix B). The Funding Gap Analysis paper will be updated for submission to demonstrate the up-to-date position on the aggregate funding gap, and will include up-to-date analysis of funds secured through section 106 agreements in recent years.

3. AVAILABLE OPTIONS

Option 1a: Approve the Schedule of Modifications to the Draft Charging Schedule (Appendix B) and the revised Draft Regulation 123 List (Appendix C). This option should be selected if the modifications and revisions outlined are considered to be necessary.

Option 1b: Reject the Schedule of Modifications to the Draft Charging Schedule (Appendix B) and the revised Draft Regulation 123 List (Appendix C). This option should be selected if the modifications are not considered to be necessary.

Option 3a: Recommend that Council approves the Community Infrastructure Levy: Draft Charging Schedule (Appendix A), Schedule of Modifications (Appendix B) and Draft Regulation 123 List (Appendix C) for submission to the Planning Inspectorate in accordance with Regulation 19 of the Community Infrastructure Levy Regulations 2010 (as amended). This option should be selected if it is considered that the documents meet the specific assessment criteria available to the Independent Examiner.

Option 3b: Reject the Community Infrastructure Levy: Draft Charging Schedule (Appendix A), Schedule of Modifications (Appendix B) and Draft Regulation 123 List (Appendix C) for submission to the Planning Inspectorate in accordance with Regulation 19 of the Community Infrastructure Levy Regulations 2010 (as amended). This option should be selected if it is considered that the documents do not meet the specific assessment criteria available to the Independent Examiner.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

4.1 Option 1a is recommended. The representations submitted in response to the consultation have been considered and the proposed changes to the Draft Charging Schedule and Draft Regulation 123 List are considered necessary for clarity and to reflect some of the comments received.

4.2 Option 3a is recommended. The assessment criteria available to the Independent Examiner are set out below. The Draft Charging Schedule should:

- Comply with the legislative requirements set out in the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended);
- Be supported by background documents containing appropriate available evidence;
- Propose rates which are informed by and consistent with the evidence on economic viability across Maidstone Borough; and
- Evidence that the proposed rates would not threaten delivery of the Maidstone Borough Local Plan 2011 – 2031 as a whole.

4.3 The representations submitted in response to the consultation have been considered and minor changes are proposed, in accordance with Option 1a. It is considered that the Draft Charging Schedule, together with the Schedule of Modifications and Draft Regulation 123 List, meets these four tests and can therefore be submitted for independent examination.

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

5.1 Responses to the Preliminary Draft Charging Schedule consultation in 2014 and Committee and Cabinet decisions have helped to shape the Draft Charging Schedule. Responses to the Draft Charging Schedule consultation have informed the Schedule of Modifications and revised Draft Regulation 123 List.

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.1 Following submission of the Draft Charging Schedule to the Planning Inspectorate the Draft Charging Schedule will be subject to independent examination. Examination can be undertaken either through written representations or through hearing sessions, however this is the decision of the appointed examiner.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	The CIL Charging Schedule will support the delivery of the Local Plan and will assist in the delivery of the Council's corporate priorities.	Head of Planning and Development
Risk Management	The CIL will help to overcome some of the existing challenges in securing the delivery of necessary strategic infrastructure. Any delay in the introduction of CIL could exacerbate these issues.	Head of Planning and Development
Financial	The CIL will provide a significant source of funding towards delivery of the infrastructure needed to support	Head of Finance & Resources

	development in the borough. Up to 5% of annual CIL receipts can be retained by the Council for use towards the cost of CIL administration.	
Staffing	Management, monitoring and administration of the CIL may require a dedicated resource to ensure its effective implementation. Separately, more detailed infrastructure planning work is likely to be required to inform decision making on the allocation of CIL monies.	Head of Planning and Development
Legal	The Draft Charging Schedule and accompanying evidence base is required to facilitate its progression through Examination in Public, to adoption.	Team Leader (Planning), Mid Kent Legal Services
Equality Impact Needs Assessment	The IDP identifies the infrastructure necessary to support development in a sustainable manner, and therefore seeks to minimise the potential equality impacts of new development in the borough. The CIL will play a key role in delivering key strategic and community infrastructure which should benefit those equality groups most in need.	Policy & Information Manager
Environmental/Sustainable Development	The CIL will play a key role in delivering the infrastructure required to support planned development in order to mitigate the environmental and social impacts of new development, promote sustainable communities and facilitate economic development and growth within the borough.	Head of Planning and Development
Community Safety	The CIL will play a key role in the delivery of infrastructure schemes required to mitigate the safety impacts of new development such as transport schemes and potentially policing infrastructure.	Head of Planning and Development
Human Rights Act	N/A	Head of Planning and Development
Procurement	Consultants are used to prepare specialist or technical evidence to support the CIL and the Local Plan and are appointed in accordance with the Council's procurement procedures.	Head of Planning and Development Section 151 Officer
Asset Management	N/A	Head of Planning and Development

8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix A: Community Infrastructure Levy: Draft Charging Schedule.
 - Appendix B: Draft Regulation 123 List.
 - Appendix C: Summary of representations and officer responses.
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9. BACKGROUND PAPERS

- Background Paper A: Infrastructure Delivery Plan (May 2016)
http://www.maidstone.gov.uk/_data/assets/pdf_file/0016/121129/SUB-011-Infrastructure-Delivery-Plan-May-2016.pdf
- Background Paper B: Revised Plan and CIL Viability Study (July 2015)
http://www.maidstone.gov.uk/_data/assets/pdf_file/0011/94736/Revised-Plan-and-Community-Infrastructure-Lvy-CIL-Viability-Study-2015.pdf
- Background Paper C: Draft Instalments Policy (July 2016)
<http://maidstone-consult.limehouse.co.uk/file/4100566>
- Background Paper D: Funding Gap Analysis (June 2016)
<http://maidstone-consult.limehouse.co.uk/file/4100567>