

MAIDSTONE BOROUGH COUNCIL

**PLANNING, TRANSPORT AND DEVELOPMENT OVERVIEW AND
SCRUTINY COMMITTEE**

15 OCTOBER 2013

REPORT OF THE HEAD OF PLANNING AND DEVELOPMENT

Report prepared by Darren Bridgett

1. COMMUNITY INFRASTRUCTURE LEVY

1.1 Key issue for decision

1.1.1 There are two issues for consideration/decision.

1.1.2 Issue 1. To note the progress made in determining the basis for the council to charge a Community Infrastructure Levy (CIL), including the justification for charging by development type and by development location.

1.1.3 Issue 2. To consider the guidelines upon which the council determines the infrastructure to be included on the list of relevant infrastructure.

1.2 Recommendations of the Head of Planning and Development

1.2.1 There are two recommendations.

1.2.2 Recommendation 1

That the Planning, Transport and Development Overview and Scrutiny Committee (PTD OSC) notes the progress made in determining the basis for the council to charge a CIL, including the justification for charging by development type and by development location.

1.2.3 Recommendation 2

That the PTD OSC recommends that the Cabinet Member for Planning, Transport and Development approves the guidelines for determining which infrastructure is included on the list of relevant infrastructure, as set out in this report.

1.3 Reasons for recommendation

1.3.1 Recommendation 1

On 16 May 2012 Cabinet confirmed its commitment to develop and charge a CIL. The council has since commissioned consultants Peter Brett Associates (PBA), to undertake viability testing of the local plan and to identify how the CIL could be applied in the borough. This testing forms the basis for the preliminary draft charging schedule (PDCS), which is currently being developed. The progress developing the PDCS is outlined in this report.

- 1.3.2 Recommendation 2
Regulation 123 of The Community Infrastructure Levy Regulations 2010 requires that a 'list of relevant infrastructure', commonly referred to as the 'regulation 123 list', is drawn up to identify which infrastructure CIL will be used to fund. If the list is not drawn up, it is assumed that CIL pays for all infrastructure, which would mean that section 106 (s106) obligations no longer had a role to play. It is proposed that a standardised, although not concrete, approach is used to identify which infrastructure is 'relevant', to promote consistency, transparency and a basis for future additions to the list.
- 1.3.3 Background and introduction
- 1.3.4 Recommendation 1: noting CIL progress to date
In May 2012 Cabinet confirmed its commitment to develop and charge a CIL. To support the approach adopted by this decision, the council commissioned PBA to undertake viability testing of the local plan. The work would assess the cumulative plan viability and specific site viability (including generic sites representing possible future developments), which would in turn provide the basis for specific CIL charges. The commissioning process was undertaken in co-operation with Swale Borough Council.
- 1.3.5 The basis for testing was, at the time, the emerging Core Strategy – now the Maidstone Borough Local Plan. The Core Strategy was consulted on in 2011 and included spatial and core policies, which outlined the types of development expected to come forward during the plan period. The 2011 document helped to determine which non-residential developments were likely to come forward. PBA used this information, and their experience, to develop a number of generic non-residential development scenarios.
- 1.3.6 At the time of commissioning (summer 2012), the council was preparing a strategic site allocations consultation document with the ultimate intention that following a successful consultation, the sites in this document would be amalgamated with the Core Strategy consulted on nine months earlier. The strategic site allocations provided the basis for more specific site viability testing. The Strategic Housing Land Availability Assessment

(SHLAA) 2009 provided an understanding of the availability of sites elsewhere in the borough – this understanding formed the basis for a number of generic site viability assessments, particularly in rural areas where no allocations had been proposed.

1.3.7 Understanding the balance of costs

Where development types and development locations have been assessed for their potential viability, a number of factors have been considered. These are the costs that local policy might place on a development. The proposed costs that the council is seeking to implement through its plan are:

- Affordable housing
- CIL contributions
- S106 contributions

and

- Sustainable construction standards

For the purposes of testing, sustainable construction standards were set as per proposed policy CS6 (approved for further consultation at 13 March 2013 Cabinet). The reason for this was to strike a reasonable balance between sustainability considerations and other costs – the purpose of viability testing is not to test every eventuality, but a reasonable selection of scenarios. This means that there is a balance to be struck between the remaining three elements. If, for example, the affordable housing cost increases, then there will be less funding available for CIL and s106 contributions and vice versa.

1.3.8 Marginal viability

For a development to be considered viable on a given site, there needs to be a reasonable prospect that the landowner can make money above the existing use value of the site, otherwise he/she is unlikely to sell it to a developer. The value above the existing value, to make the prospect of sale more attractive, is referred to as the uplift. For the purposes of the viability testing, this uplift is 40% on top of the existing use value. If, after the potential development value is calculated, and the development costs are subtracted, there is enough value left to meet the existing use value, but not enough to meet the uplift on top of that value, the site is considered marginal in viability terms.

1.3.9 Local Plan viability testing – evidence document

The Local Plan viability testing was published on the council website in August 2013, following a members presentation in July 2013. The viability testing differentiates by development type and by development location. It is important to note that development types for the purposes of CIL/viability testing do not necessarily

reflect development types identified in the Use Class Order (as amended in 2013).

1.3.10 Residential CIL

Following how testing scenarios were derived for residential development, a broad categorisation became apparent. Policy recommendations, following this categorisation, were split as follows:

- Maidstone urban area (previously developed land)
- Maidstone urban and urban periphery (greenfield), and garden land
- Rural and rural settlements

1.3.11 Draft CIL rates proposed by PBA for residential development, by location, were:

- Maidstone urban area - £35 per m²
- Maidstone urban and urban periphery, and garden land - £84 per m²
- Rural and rural settlements - £105 per m²

Note: the draft CIL rates that PBA proposed were based on having adopted equivalent affordable housing rates of:

- 20%
- 25%
- 40%

At Cabinet on 13 March 2013, policy CS10 (affordable housing) was approved for further consultation, with varied affordable housing targets of:

- 15%
- 30%
- 40%

The PBA proposed CIL rates also assume a split between CIL and s106 obligations of 70%/30%.

1.3.12 The council has sought to pursue different affordable housing targets for each location (from those suggested by PBA), and may seek to pursue a varied split between CIL and s106 funding, dependent on the information that comes forward through the infrastructure delivery plan (IDP). It is therefore still a part of the process for the council to decide how these variances, that is to say what is the most appropriate funding method for identified infrastructure needs, might affect the CIL rates that it proposes for consultation.

1.3.13 Non-residential CIL

Retail, although ostensibly one category, shows varying levels of viability. Where front running authorities have sought to charge different CIL rates, based on the type of retail assessed, they have found varying levels of success. The latest government consultation on CIL (ending May 2013) proposed that retail uses may be considered different to one another based on their size and impact on the local community. However, this has not yet been adopted by government.

Retail viability assessments (potential £ per m ²)	
Local/convenience	£189 per m ²
Supermarket	£260 per m ²
Retail warehousing	£276 per m ²
Superstore	£434 per m ²

1.3.14 All other non-residential development types tested showed only marginal viability, or in most cases, negative viability. Further information is available in the published evidence document Local Plan Viability Testing.

1.3.15 Translating evidence into policy

The next stage of CIL development at Maidstone is the preparation of, and consultation on, the preliminary draft charging schedule (PDCS). For the council to adopt CIL, it needs to prepare on this basis:

- Preliminary draft charging schedule – consultation
- Draft charging schedule (DCS) – consultation
- Submission to the Secretary of State
- Examination
- Adoption

1.3.16 The CIL preparation timetable is intended to follow the local plan preparation timetable. The timetables are aligned to allow the council to iterate between the requirements of the IDP and the rates at which CIL is set.

Local plan	CIL
Regulation 18	PDCS
Regulation 19	DCS
Submission to Secretary of State	Submission to Secretary of State
Examination	Examination
Adoption	Adoption

1.3.17 Officers are currently testing the implications of the proposed different CIL levels and how the delivery of infrastructure can be

programmed with the potential income flow that these levels might produce.

1.3.18 Recommendation 2: agreeing the guidelines for determining the list of relevant infrastructure

The list of relevant infrastructure provides a clear basis for the council and potential developers to know how infrastructure will be funded. The implication of knowing how infrastructure will be funded is that thought will also need to be given to how the infrastructure will be delivered. The council will in some cases, become its own delivery agent, that is, it may need to commission projects for the delivery of infrastructure, rather than relying on the developer to deliver. In other cases, such as highways, the delivery agent will remain Kent County Council and it will be for Maidstone Borough Council and Kent County Council to agree governance protocols for funding.

1.3.19 It is important to understand that as the plan period progresses, the need for infrastructure may change. When these changes occur, there should be guidelines for how any new infrastructure is funded – assuming a continuance of the CIL and s106 options. The advantages and disadvantages of CIL funding have been briefly considered earlier in this report, but the decision to include an infrastructure type or infrastructure project on the list of relevant infrastructure should also be guided by other factors, which are recommended below.

1.3.20 If it is strategic infrastructure

Where strategic infrastructure needs to be delivered, particularly on a borough wide basis, the pooling of contributions through CIL is likely to be the most feasible approach to do this. The need to prove a link to development, as per s106 obligations, will not be a restricting factor.

1.3.21 If the cost of the infrastructure is significant

Pooling restrictions may mean that five s106 obligations cannot sufficiently finance an identified infrastructure project. This is likely to be the case with strategic infrastructure.

1.3.22 If the number of development sites that should contribute to specific infrastructure exceeds the s106 pooling limit

There may be more than five development sites that should contribute to an infrastructure project. It is also not necessarily the case either that one site, as allocated, would be submitted to the council in one planning application, potentially increasing the number of s106 obligations further still.

1.3.23 If infrastructure contributions are determined by set standards

Where infrastructure is determined by standards, for example open spaces, that need to be adopted in policy (if the delivery method were usually s106 obligations), it may be more advantageous to collect CIL contributions and have the council deliver the infrastructure itself. This would bypass the need to strictly consult on and examine standards through the planning system (as per procedures set by planning regulations). This could offer flexibility in the long term for amending standards if considered necessary.

1.3.24 If the delivery of infrastructure is necessary before development proceeds

In some cases the delivery of infrastructure to enable a development or developments to proceed, might be necessary at an early stage, even prior to development proceeding. If the council has sufficient knowledge of this requirement, through detailed infrastructure planning in the IDP, it may be able to assist in the delivery of the infrastructure project, overcoming any funding/viability issues if they are likely to arise.

1.3.25 If applications are being submitted that require infrastructure based mitigation before the adoption of CIL

The list of relevant infrastructure will come into force when the CIL is adopted. For applications that are submitted prior to the adoption of CIL, the council will still need to seek infrastructure improvements using s106 obligations. Where it is the case that an infrastructure project needs to be, or can only be, delivered over a longer time period, potentially with high costs involved, the council has the option to split the infrastructure project into component parts. The council could, for example, continue to take s106 monies towards one phase of the project and then at an appropriate time, when that first phase has been delivered or commissioned, assuming that CIL has now come into force, place the second phase of the project onto the list. This would ensure that developers are not being required to pay twice for the same piece of infrastructure. As part of the ongoing administration of CIL, accounting procedures would need to be put into place to ensure transparency in situations such as this.

1.3.26 These factors are suggested as guidelines as to how the list of relevant infrastructure is determined. While in most cases, the council could reasonably apply these considerations to an infrastructure type or infrastructure project and determine if it is a suitable inclusion, there may be unforeseen circumstances that mean it is still more preferable to seek delivery through s106 obligations. The council should recognise this and in such circumstances seek clarification of the reasoning. The council should, in any case, retain the ability to apply flexibility in its administration of the CIL.

- 1.3.27 Future tasks – prioritising the list of relevant infrastructure
A significant implication of the CIL and the list of relevant infrastructure is that the council itself will collect the funds and make the decisions on distributing these funds. At Cabinet on 13 March 2013, the decision was made to prioritise infrastructure contributions, based on information in the IDP, as it stood at that time.
- 1.3.28 The final development (housing and employment) targets for the borough are still to be determined and agreed. The infrastructure requirements arising from any other proposed land allocations (beyond those agreed at Cabinet on 13 March 2013) will need to be factored in to the preparation of the list of relevant infrastructure and ultimately the council may need to review/reaffirm its decision relating to the prioritisation of infrastructure.
- 1.3.29 Capital programme
With the identification and agreement of development targets to be included in the Maidstone Borough Local Plan, the council will be able to estimate with a degree of accuracy the potential income that could be generated by the CIL. S106 income is more difficult to predict, because by its nature, an element of it will be based on developer negotiations. This would take account of potential variances in the CIL rate, affordable housing contributions and the amount of CIL passed to relevant parish councils and neighbourhood forums.
- 1.3.30 The receipts information will need to be phased (to understand timing) and read with the IDP requirements. This will allow the council to have a clearer understanding of when funds are likely to come in, where they are likely to come from and which decisions it is likely to need to make regarding the allocation of different sources of funding.
- 1.4 Alternative action and why not recommended
- 1.4.1 Cabinet has already confirmed its commitment to introduce a CIL for Maidstone. Much of this report addresses the process following that decision. The alternative action in this case relates to the issue of how the list of relevant infrastructure is populated.
- 1.4.2 Feasibly, the council could choose not to set guidelines for populating the list of relevant infrastructure. The council could choose a limited amount of infrastructure types or infrastructure projects to include on the list. The benefit of such an approach is simplicity, however, whereas CIL may be more simple, the

infrastructure requirements will still exist and would therefore need to be delivered through s106 obligations.

1.4.3 Continuing to use s106 obligations as the primary infrastructure delivery method could still be achievable, however, the national introduction of CIL has brought with it codified restrictions on s106 usage. These have been addressed in the main body of the report, but the essence is that s106 obligations:

- From 6 April 2014, can be pooled for a maximum of five agreements towards any one infrastructure type or infrastructure project, counting back to 6 April 2010
- Must be shown to reasonably relate to the development in question

1.4.4 The ability of the council to consistently collect CIL on all relevant developments means that it is not subject to there being a reasonable infrastructure requirement associated with a development. The existence of a link is significantly less likely with minor development proposals (because they are unlikely to cause a noticeable impact on local amenities) and even if it were so with each small development proposal, the administration cost of implementing so many legal obligations could outweigh the income generated by them.

1.5 Impact on corporate objectives

1.5.1 The adoption of CIL impacts on two of the corporate objectives.

1.5.2 **For Maidstone to have a growing economy** – the introduction of CIL, to support the local plan and IDP, will allow the council to predict with more certainty where infrastructure is required and when that infrastructure can be delivered. The increased confidence that this would foster would mean that the borough is a more attractive place to locate for residents and businesses.

1.5.3 **For Maidstone to be a decent place to live** – the local plan and IDP, which the introduction of CIL supports, are in essence tools to allow Maidstone Borough to continue to be a decent place to live.

1.6 Risk management

1.6.1 The risk in determining the list of relevant infrastructure is not getting the correct balance between CIL and s106. The council might propose too few infrastructure types or infrastructure projects, which could place an unachievable delivery requirement on the use of s106 obligations, given their inherent restrictions. Alternately, the council might place too many infrastructure types or infrastructure projects on the list, which means that there might

not be enough funding to support the list ever reasonably being delivered. Having too many types or projects listed may also mean that the council sets itself too demanding a task in terms of administration of CIL and the commissioning and delivery of infrastructure, before it has had the chance to gain the necessary experience of working with this system.

1.6.2 In both cases, the council would need to monitor the ongoing performance of infrastructure delivery, across CIL and s106 obligations. If infrastructure delivery is not proceeding as forecast, it may be that the list of relevant infrastructure needs to be changed. The council would need to make an informed decision and then consult on this. The type of consultation has not yet been specified in detail by government, however, it is anticipated that 30 days of consultation and a report to Cabinet would be the appropriate approach. In order to identify if such a situation were occurring, the council would need to monitor on a set basis, perhaps as part of its planning annual monitoring report, or as part of its financial monitoring, its own performance in this regard. It would then be for the officers to make recommendations to address any underperformance.

1.7 Other implications

1.7.1

1.	Financial	X
2.	Staffing	X
3.	Legal	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 introduction and collection of the CIL, as well as infrastructure payments, will require new financial procedures to be implemented within the council.

- 1.7.3 **Staffing** – the ongoing administration of the CIL is likely to require dedicated staff support.
- 1.7.4 **Legal** – the council will need to implement internal and external governance arrangements in relation to the implementation of the CIL. The ongoing use of s106 obligations will also require legal input.
- 1.7.5 **Environmental/sustainable development** – the CIL will support the delivery of the Maidstone Borough Local Plan, aims and objectives. The plan is written to deliver environmental/sustainable development as a key aspect.
- 1.7.6 **Procurement** – the procurement arm of the council will need to guide the commissioning and delivery of relevant infrastructure.
- 1.7.7 **Asset management** – there are likely to be implications for the council’s own asset management as part of the delivery of infrastructure. The council may wish to implement procedures where assets are managed externally, however, this would need to be determined depending on which infrastructure types and infrastructure projects are delivered.
- 1.8 Relevant documents
- 1.9 None.
- 1.9.1 Appendices
- 1.9.2 Appendix 1 – Community Infrastructure Levy – background information.
- 1.9.3 Background documents
- 1.9.4 Local Plan Viability Testing, Maidstone Borough Council, 2013.
- 1.9.5 The Community Infrastructure Levy Regulations, 2010.
- 1.9.6 The Community Infrastructure Levy (Amendment) Regulations, 2013.
- 1.9.7 Report of the Director of Change, Planning and the Environment – Maidstone Borough Local Plan, to Cabinet, 13 March 2013.
- 1.9.8 Record of decision of the Cabinet – Maidstone Borough Local Plan, 13 March 2013.

IS THIS A KEY DECISION REPORT?

Yes

No

If yes, this is a key decision because: It potentially affects all wards and parishes.

Wards/parishes affected: All wards and parishes.

Appendix 1 – Community Infrastructure Levy – background information

A1.1. Community Infrastructure Levy background

Community Infrastructure Levy (CIL) was introduced by the government as a means of infrastructure funding that would work alongside the existing system of section 106 (s106) obligations. CIL is intended to be the primary mechanism for funding new infrastructure, however, it is not intended to fully replace s106 obligations. A number of restrictions on the continued use of s106 obligations have been implemented as part of the introduction of CIL.

A1.2. CIL takes the form of a set charge (per m²) which is levied on all residential development, and on all non-residential development above 100m², some exemptions apply such as affordable housing and charities. Differentiations in the charge can be determined by development type or by development location. To justify a CIL the council must undertake viability testing of the development (types and locations) that it expects to come forward during the plan period. This will indicate whether development can sustain a CIL charge, or whether a nil rate (£0 per m²) should be set.

A1.3. Payment of CIL is non-negotiable, unlike s106 obligations.

A1.4. CIL/s106 split

The government intends that s106 obligations will still be used for site specific infrastructure, for example, an access road to a given development. This means that the council, in testing what money is available to fund infrastructure, needs to make a judgement on what is an acceptable balance between funds that will be delivered through CIL and funds that will be delivered through s106 agreements. If the council considers that it will still seek to deliver a proportion of infrastructure improvements through the use of s106 obligations then it should consider whether setting a high CIL rate will leave enough s106 monies to fund those improvements.

A1.5. S106 pooling limit

At 6 April 2014 (proposed, but not yet agreed, to be pushed back to 6 April 2015) a pooling limit of five will be applied to s106 obligations for the funding of a specific type of infrastructure or infrastructure project. The date at which the counting for this pooling limit began was 6 April 2010. If the council were to adopt CIL sooner, this limit would apply at the adoption date, the counting date would remain the same.

A1.6. List of relevant infrastructure (regulation 123 list)

A list of relevant infrastructure should be drawn up by the council. This list, also referred to as the regulation 123 list, is the list of infrastructure that the council intends to charge CIL for. Any

infrastructure that is on the list cannot be funded by section 106 obligations. The list of relevant infrastructure is distilled from the infrastructure delivery plan (IDP) – which details the infrastructure that the council, service providers and stakeholders deem necessary to support development proposed by the local plan.

A1.7. The range of available funding

Funding for infrastructure included in the IDP can come from a number of sources, including development funding. Other sources of funding that will be indicated in the IDP will include, but not be limited to; existing capital schemes/programmes (for example with waste water), block funding (for example in the local transport plan), other councils (for example where infrastructure needs cross the borough boundary) and other funding mechanisms, such as the Local Pinch Point fund or other such equivalents.

A1.8. If the council declines to draw up a list, it is assumed that all infrastructure will be funded by CIL, and none by s106.

A1.9. The council is not obliged, by including an infrastructure project or type on the list, to commit to funding it.

A1.10. Advantages/disadvantages

Among the primary benefits of CIL, is the fact that developers will have more certainty regarding what the likely cost of infrastructure contributions will be for any given development. In turn there is more transparency regarding the spending of CIL as it is specified solely to be spent on infrastructure. Another benefit is that CIL can be pooled for infrastructure projects that are not necessarily linked to a specific development, s106 obligations must relate specifically to the development that is being proposed.

A1.11. An alternate view is that some developers may wish to see infrastructure contributions spent specifically to enable the development which they are proposing. In essence, they will see the benefit of their own infrastructure contribution.

A1.12. Duty to pass CIL to local councils

If a neighbourhood plan has been adopted, the council is obliged by changes to the regulations, which came into force in 2013, to pass 25% of CIL receipts from development in the given area to the local council (parish councils in the case of Maidstone). If it is a non-parished area with a recognised neighbourhood forum and an adopted neighbourhood plan, the Borough Council will administer 25% of the CIL receipts from development in the given area on the behalf of the relevant forum.

- A1.13. Where no neighbourhood plan has been adopted, the council must pass on 15% of CIL receipts, subject to a cap equivalent to £100 per existing dwelling in the area.
- A1.14 If there is no recognised parish council or neighbourhood forum, the proceeds of the CIL would not be passed on, however, the council could still administer funds on behalf of local residents if it considered this the most appropriate way in which to proceed.