

Name of meeting: Scrutiny Panel

Date: 28th January 2020

Title of report: Community Infrastructure Levy (CIL)

Purpose of report:

To highlight the content of Community Infrastructure Levy Charging Schedule and allow questions and comments about the content of the document.

To note the timeline for next steps for adoption of the Charging Schedule.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Yes – The Schedule will have an effect on all wards
Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)?</u>	No
The Decision - Is it eligible for call in by Scrutiny?	Yes
Date signed off by <u>Strategic Director</u> & name Is it also signed off by the Service Director for Finance? Is it also signed off by the Service Director for Legal Governance and Commissioning?	Angela Blake (on behalf of Karl Battersby): 20 th January 2020 Eamonn Croston: 20 th January 2020 Julie Muscroft: 20 th January 2020
Cabinet member portfolio	Cllr Peter McBride to be consulted at Portfolio holder briefing on 22 nd January 2020.

Electoral wards affected: All

Ward councillors consulted: Cllr McBride Regeneration Portfolio Holder Briefing (22nd January 2020)

Public or private: Public

Has GDPR been considered?

Yes. The Charging Schedule does not contain any personal data. The storage of information received in relation to consultation on this document will be in accordance with the Planning Policy Privacy Notice which can be viewed on the council's website.

1. Summary

The Community Infrastructure Levy (CIL) Charging Schedule is identified in the Council's Local Development Scheme and is intended to outline the amount developers must contribute towards infrastructure costs in different parts of Kirklees (charging zones and rates applicable) once the CIL Charging Schedule is adopted by the Council.

The CIL Charging Schedule was subject to examination by an independent Inspector (known as an Examiner in this CIL process) including a public hearing on 16th September 2019. The Council has now received the Inspector's recommendations which considered if the schedule provides an appropriate balance between the desirability of charging CIL alongside development viability considerations across the district. The Charging Schedule will not form part of the statutory development plan.

The Inspector has recommended approval of the CIL Charging Schedule subject to modifications, which are set out later in this report.

2. Information required to take a decision

What is the Community Infrastructure Levy

Section 206 of the Planning Act 2008 sets out the powers for Local Authorities to introduce a new charge on different types of new development in their area, known as 'Community Infrastructure Levy' (CIL). The proceeds of this charge should be spent on infrastructure needed to support growth in the District, a proportion of which must be passed to local communities where development has taken place.

The CIL is intended as a means of contributing to the funding of infrastructure required to support growth in the District and deliver the policies and proposals in the Local Plan. It replaces part of the system of Planning Obligations (Section 106 Agreements). The CIL will help to meet the District's priorities by generating funding to provide infrastructure while being set at appropriate rates that will continue to attract investment, create jobs, and deliver new housing.

The CIL is a tariff system that local authorities can choose to charge on new development in their area by setting a Charging Schedule detailing the rates that developments will be liable to pay. The Charging Schedule will sit alongside the Kirklees Local Plan, but will not form part of the statutory development plan.

Once adopted, CIL is non-negotiable and enforceable. CIL will be charged on new developments specified in the Charging Schedule. It is charged per square metre on the net additional gross internal floor-space of development. CIL is not charged on certain types of development including affordable housing and buildings used for charitable purposes.

The amount payable for each development proposal will be set at the time planning permission is granted and payment will be due at the commencement of development. Larger amounts will be payable in instalments over fixed time periods, in line with the instalment policy.

The process for setting and implementing the Charging Schedule is set out in the Community Infrastructure Levy Regulations 2010, together with subsequent amended CIL Regulations in 2011, 2012, 2013, 2014, 2015 and 2019. Initially the CIL Regulations introduced restrictions on the pooling of Section 106 funding towards infrastructure proposals but this restriction has now been removed.

Changes to CIL legislation and how CIL will be monitored

The government introduced changes to the CIL legislation and guidance in September last year, which includes an impetus for authorities to be more transparent in terms of their s.106 and CIL spending (where authorities have adopted CIL).

To ensure that the levy and infrastructure spending is open and transparent, charging authorities must prepare and publish an annual Infrastructure Funding Statement notwithstanding whether the Council has formally adopted a CIL.. The CIL Regulations set out that charging authorities must include the following within the Infrastructure Funding Statement:

- A report relating to the previous financial year on CIL;
- A report relating to the previous financial year on section 106; and
- A report on the infrastructure projects/types of infrastructure to be funded/partly funded by CIL (the Infrastructure List) in the future

Parish and town councils must also report on their levy income and spending. For each year when they have received neighbourhood funds through CIL, Parish and Town Councils must publish the information specified in Regulation 62A. These reports are to be submitted to Kirklees Council annually, no later than the 31st December and must include the following:

- Total CIL Receipts for the reported year
- Total CIL Expenditure for the reported year
- Summary of what the CIL was spent on during the reported year
- Total amount of receipts retained at the end of the reported year and previous years

They should publish this information on their website or on the Council's website. If they haven't received any money they do not have to publish a report, but may want to publish some information to this effect in the interests of transparency.

Summary of the Inspector's report

The CIL examination in public hearing session was on 16th September 2019 and following the submission of post hearing documents, the Council is now in receipt of the Inspector's final report. The Inspector is recommending, subject to modifications set out in the report, that the Draft Charging Schedule provides an appropriate basis for the collection of CIL in Kirklees and would not put the achievement of the development of the area at risk. The key modifications are as follows:

- Reduce the residential charging rate in Charging Zone 3 from £5 per square metre (psm) to £0 psm
Reason: The evidence concluded that there is a lack of viability and insufficient headroom to support a CIL charge in Zone 3 for the tested typologies. i.e. different sizes of residential development schemes
- Amend the zone boundary to include the whole of Dewsbury Riverside strategic site in Charging Zone 3 and therefore subject to a zero CIL charge
Reason: The site specific testing (requested by the Inspector post hearing) demonstrated that taking into account infrastructure and development costs the scheme would be unable to support a CIL charge and as such the Inspector has recommended the zonal boundaries are amended to incorporate the site fully into Charging Zone 3.
- Remove the Bradley strategic site from Charging Zones 2 and 3 and create a site specific zone with a rate of £5 psm
Reason: The site specific viability testing for Bradley strategic site takes into account infrastructure and development costs and identifies a modest amount of headroom for charging CIL. The evidence highlights a £5 psm charge would be preferable across the whole

of the site and as such the Inspector is recommending the removal of this site from Charging Zones 2 and 3 and a site specific charge of £5 psm.

Appendix 1 sets out the changes to the CIL Charge Rates following examination as they would appear in the charging schedule.

At an extraordinary council meeting on 12 October 2016 the council agreed to approve the Draft Charging Schedule being published for consultation, and that formal representations be invited, and thereafter that the Draft Charging Schedule be submitted for independent examination in public in accordance with the approved Local Development Scheme.

Following the examination the Inspector has recommended approval of the CIL Charging Schedule subject to modifications. Therefore the council is now in a position to adopt CIL at Full Council.

3. Implications for the Council

This report is to provide Scrutiny Panel with information about the CIL process followed to date and the outcome of the CIL examination process. The main implications for the Council are that CIL provides an alternative mechanism to secure funding towards infrastructure projects across the district both at a strategic level for the Council and at a local level for communities.

The implementation of CIL means that both Section 106 obligations and CIL can be collected from developments. However the use of S.106 will be limited to that which makes a development acceptable in planning terms, whilst strategic infrastructure will be funded through CIL.

If following approval and implementation of the CIL Charging Schedule the Council wishes to stop charging the levy it may do so at any time by making a formal resolution to do so.

If the person or parties who have assumed liability for CIL (or the relevant landowner in default) fails to pay CIL, the council as a collecting authority has a range of sanctions available to it to recover CIL debts and to remedy breaches of the CIL regulations. These include imposing surcharges or interest penalties and extend as far as the service of a CIL stop notice (which can require a development to stop until CIL is paid or the stop notice is withdrawn), or applying for a court order to recover CIL debts. Failure to comply with a CIL stop notice or a court order seeking recovery of a CIL debt is a criminal offence.

Neighbourhood proportion

A 'meaningful proportion' of CIL raised in an area (the neighbourhood proportion) must be spent on local infrastructure priorities. The council will work with local communities and Town and Parish Councils to agree their local spending priorities. In areas, without Neighbourhood Plans the 'meaningful proportion' of CIL is 15%.

Five neighbourhood plan areas have been formally designated within the Kirklees district. Whilst most of these are at the early stages of preparation, if the neighbourhood plans proceed to a successful outcome and become part of the statutory development plan the 'meaningful proportion' of CIL would be 25% for that area.

3.2 Benefit

The CIL does not have to directly relate to a development unlike a s.106 agreement and can be collected on a range of developments and then 'pooled'. The pooled levy can then be spent on a range of infrastructure across the district to be prioritised by the Council, providing greater flexibility in the delivery of local infrastructure. The neighbourhood proportion also provides parish

councils the opportunity and flexibility to assign this proportion of the funds to local infrastructure projects.

3.3 Risks

The collection, spend and reporting of CIL is governed by legislation set out in the Planning Act 2008 (as amended by the localism act 2011) and the CIL Regulations 2010 (as amended). If the Council does not put in place appropriate governance arrangements consistent with the CIL regulations then there is a risk of legal challenge relating to the use of CIL monies.

3.4 Costs

There will be a financial implication with regard to implementing, administering and collecting of CIL. The Council, as the charging authority will be able to use funds from CIL to recover the costs of administering the levy, with up to 5 per cent of total CIL receipts to be used on administrative expenses to ensure that the overwhelming majority of revenue from the levy is directed directly towards infrastructure provision.

3.5 Governance arrangements

The Governance arrangements in relation to CIL are currently under consideration by officers and senior management.

3.6 Working with People

The CIL will enable communities to seek monies towards infrastructure projects in their local communities via the neighbourhood fund proportion of the CIL monies and potentially improve collaboration between the Council and Parish Councils.

3.7 Working with Partners

The CIL will enable developers and agents to understand the council's expectation with regard to the charge on CIL liable development.

3.8 Place Based Working

The CIL income could be used to promote area based community projects through the neighbourhood fund proportion and also prioritise funding strategic infrastructure schemes in a particular locality.

3.9 Climate Change and Air Quality

The CIL Charging Schedule itself would have no impact on Climate Change and Air Quality. The collection of monies from CIL could contribute to infrastructure schemes which would mitigate impacts on climate change and air quality.

3.10 Improving outcomes for children

The CIL will secure funding for strategic infrastructure priorities including education.

3.11 Other (eg Legal/Financial or Human Resources)

Legal - The requirements for producing a CIL Charging Schedule are set out in the Community Infrastructure Levy Regulations 2010, together with subsequent amended CIL Regulations in 2011, 2012, 2013, 2014, 2015 and 2019.

Financial - The costs of public consultation and public examination activity have already been met from the Planning Policy budget. The CIL would generate funding towards

infrastructure provision but is dependent on planning permission being approved and sites being built.

Human resources - The CIL is identified in the revised LDS and as such existing resources have already been identified for the project. Cross-service officer working groups will be required to implement CIL once approved but this will be from existing officer resources

3 Consultees and their opinions

Cllr Peter McBride, Portfolio holder, will be briefed on 22nd January 2020 on the content of the CIL Inspector's report.

The issues raised with regard to the consideration of CIL have been identified through joint working with Development Management and Planning Policy to ensure a joined up and justified approach.

4 Next steps and timelines

The next steps:

- Economy and Neighbourhood Scrutiny Panel - 28th January 2020
- Cabinet – tbc
- Full Council – tbc
- Adoption of the Community Infrastructure Levy – tbc
- Implementation date of the Community Infrastructure Levy - tbc

6 Officer recommendations and reasons

Scrutiny Panel to note the Community Infrastructure Levy Charging Schedule process and implications of the Inspector's report as well as providing any appropriate feedback based on the content of the Scrutiny Report and presentation during the Scrutiny Panel session.

Reason: Scrutiny Panel requested early input into the consideration of the adoption of the Community Infrastructure Levy.

7 Cabinet Portfolio Holder's recommendations

Cllr Peter McBride Portfolio Holder will be briefed on Wednesday 22nd January 2020 about the recommendations of the Examiner.

Cllr McBride was also briefed prior to consulting on the CIL in April 2019.

8 Contact officer

Steven Wright (Planning Policy and Strategy Group Leader, Planning Policy Group)
steven.wright@kirklees.gov.uk
(01484) 221000

John Buddle (Planning Policy Team Leader)
John.buddle@kirklees.gov.uk
(01484) 221000

9 Background Papers and History of Decisions

Local Plan adopted 27th February 2019 (www.kirklees.gov.uk/localplan)
Local Plan Examination Library (<https://www.kirklees.gov.uk/beta/planning-policy/local-plan-examination-library-2017.aspx>)

10 Service Director responsible

Karl Battersby
Strategic Director for Economy and Infrastructure
E-mail: karl.battersby@kirklees.gov.uk
Tel: (01484) 221000

Appendix 1:

CIL Rates following the Inspectors Recommendations:

Kirklees CIL Charging Rates (per sq.m)	
Residential Development (C3)*	All sites
Zone 1	£80
Zone 2	£20
Zone 3	£0
Zone 4 (Bradley strategic site)	£5
All other uses	£0

**Not including 'Retirement Living Accommodation' defined as residential units which are sold with an age restriction typically over 50s/55s with design features and support services available to enable self-care and independent living.*

Previous CIL Rates (as examined):

Kirklees CIL Amended Draft Charging Rates (per sq.m)	
Residential Development (C3)*	All sites
Zone 1	£80
Zone 2	£20
Zone 3	£5
Retail Warehousing (A1)**	£0 district wide
All other uses	£0 district wide

**Not including 'Retirement Living Accommodation' defined as residential units which are sold with an age restriction typically over 50s/55s with design features and support services available to enable self-care and independent living.*

***Retail Warehouse definition: large stores in edge-of-centre and out-of-centre locations specialising in the sale of household goods (such as carpets, furniture and electrical goods), clothes, DIY items and other ranges of goods, catering mainly for car-borne customer*

