

**Cheltenham Borough Council**  
**Council – 15<sup>th</sup> October 2018**

**Community Infrastructure Levy (CIL) Formal Adoption of Charging Schedule and Supporting Policies, Approval of Regulation 123 List for Publication and Setting a Commencement Date for Charging**

<b>Accountable member</b>	Cllr Jordan
<b>Accountable officer</b>	Tracey Crews, Director of Planning
<b>Ward(s) affected</b>	All
<b>Key/Significant Decision</b>	Yes
<b>Executive summary</b>	This report seeks Council adoption of a Community Infrastructure Levy (CIL) Charging Schedule and supporting policies, alongside approval of a list of infrastructure that may be funded from CIL (Regulation 123 list) for publication and to set a commencement date for charging of 1st January 2019.
<b>Recommendations</b>	<ol style="list-style-type: none"><li>1. <b>Adopt the Cheltenham Borough Council Community Infrastructure Levy Charging Schedule, as modified in line with the recommendations of the Independent Examiner.</b></li><li>2. <b>Adopt the following supporting policies:</b><ol style="list-style-type: none"><li>a. <b>Payment by instalments (Regulation 69b)</b></li><li>b. <b>Request for Review and Appeals (Part 10)</b></li></ol></li><li>3. <b>Approve the Regulation 123 list for Cheltenham Borough Council for publication.</b></li><li>4. <b>Set a commencement date for charging of the 1st January 2019, in line with JCS partner authorities.</b></li></ol>

## Financial implications

This report includes the consideration of resource implications and is supported by estimates of income from CIL and the expenditure associated with the implementation of a service for 'Charging and Collection of the Levy'.

The indicative running costs for all three JCS authorities managing CIL over the first 3 years are:

Year 1 – £116,646

Year 2 – £125,274

Year 3 – £127,185

These costs will be funded from the 5% admin allowed from the CIL income and any shortfall will be funded from the JCS funds held by Tewkesbury Borough Council.

Funding for the two members of staff who will carry out the Charging Authority functions for all three authorities in the first year of operation has already been agreed and is funded through the pooled JCS Budget.

These staff costs, along with other set-up costs incurred prior to commencement, will be recouped from the maximum 5% of CIL Income that Regulation 61 allows Charging Authorities to retain for administrative costs (and in the first three years also set-up costs).

Any surplus from the, 5% allowed for administrative costs must be retained in the re-investment fund for use on the provision of infrastructure.

Set-up costs for the three JCS authorities combined total £229,149, and in the further report to Cabinet on Governance, recommendations will be made on how these should be funded along with the ongoing costs.

Income projections for the first three years, based on planned development in the JCS and three District Level Plans is estimated to be approximately £15 million\*.

Resource implications will also include the participation of front line, support and development management staff, member and committee services staff, finance staff, community engagement staff and the support required of One Legal.

*\*This figure does not include income generated from windfall applications and as such is a cautious estimate which relies on development commencing in line with our projections.*

**Contact officer: Andrew Knott, Business Partner Accountant (Deputy Section 151 Officer) [andrew.knott@cheltenham.gov.uk](mailto:andrew.knott@cheltenham.gov.uk)**

<p><b>Legal implications</b></p>	<p>The power to charge CIL is contained within Part 11 (Section 205-225) of the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended). CIL is defined as the imposition of a charge; the overall purpose of which is to ensure that costs incurred in supporting the development of an area can be funded (wholly or partly) by owners or developers of land in a way that does not make development of the area economically unviable (Section 205(1) and (2) of the Act).</p> <p>The recommendations are in conformity with the requirements of the 2010 CIL Regulations (as amended).</p> <p><b>Contact officer: Cheryl Lester, Solicitor, One Legal</b>  <a href="mailto:Cheryl.lester@tewkesbury.gov.uk">Cheryl.lester@tewkesbury.gov.uk</a></p>
<p><b>HR implications (including learning and organisational development)</b></p>	<p>New staff requirements identified as financial implications, above.</p> <p><b>Contact officer: Clare Jones, HR Business Partner, Publica</b>  <a href="mailto:clare.jones@publicagroup.uk">clare.jones@publicagroup.uk</a></p>
<p><b>Key risks</b></p>	<p>Whilst there is no requirement on local authorities to adopt or implement CIL, and Section 106 contributions can continue to be sought, the delivery of infrastructure has been heavily constrained since April 2015 when Section 106 pooling limitations came into force, which risk undermining the ability to deliver the level of economic development planned.</p> <p>Once adopted the charging, collection, distributing, spending, monitoring and reporting of the charge becomes a statutory obligation. Should the measures being put in place to collect, spend and monitor CIL prove to be inadequate, and as a consequence collection is delayed or ineffective, spending poorly targeted or a lack of monitoring results in reduced receipts, this will be monitored by a governance structure which will be recommended to Cabinet to receive reports on performance.</p> <p>Should experience prove the CIL rates to have been set too high, and as a consequence development is unviable and does not happen or other policy requirements such as affordable housing are placed at risk then future planned periodic reviews will allow rates to be reviewed in light of not only current economic conditions but also that experience. However this is highly unlikely based on the Examination of the viability evidence and opinion of the Independent Examiner.</p>
<p><b>Corporate and community plan Implications</b></p>	<p>Potential positive implications are anticipated as a result of this new income stream for the Borough Council in infrastructure delivery outcomes.</p>

<b>Environmental and climate change implications</b>	<p>In choosing to adopt the CIL the JCS councils are promoting all 3 dimensions of sustainable development set out in the National Planning Policy Framework (NPPF):</p> <ul style="list-style-type: none"> <li>• Economic – contributing to building a strong, responsive and competitive economy.</li> <li>• Social – supporting strong, vibrant and healthy communities.</li> <li>• <i>Environmental – contributing to protecting and enhancing our natural, built and historic environment.</i></li> </ul>
<b>Property/Asset Implications</b>	<p>Not relevant for this report.</p> <p><b>Contact officer:</b> <a href="mailto:Dominic.stead@cheltenham.gov.uk">Dominic.stead@cheltenham.gov.uk</a></p>

## 1. Background

- 1.1 The district authorities of Gloucester City Council, Cheltenham Borough Council, and Tewkesbury Borough Council have together developed and adopted a Joint Core Strategy (JCS) which forms the upper, strategic level of their Local Plans to 2031. Alongside this each of the three 'JCS authorities' are also developing their own district level plans which will sit underneath the JCS and, along with any Neighbourhood Development Plans made in the three areas, complete their Local Plans.
- 1.2 To support the delivery of development identified in the JCS and the district level plans the three 'partner' authorities have prepared an Infrastructure Delivery Plan (IDP) this formed part of the examination of the JCS and is being kept under review to guide delivery of strategic infrastructure. In addition, the three councils are developing individual IDPs to support their emerging district level plans.
- 1.3 Following the adoption of the Joint Core Strategy (JCS) in December 2017 and the work progressing the Cheltenham Plan, the challenge is now to deliver the development and critical infrastructure required. The introduction of a Community Infrastructure Levy (CIL) to part-fund new infrastructure would be a key step towards this. This report sets out the detail of the preparation of a Cheltenham CIL and seeks adoption of the charging schedule and related policies.
- 1.4 Whilst Cheltenham has worked closely with Gloucester City and Tewkesbury Borough in developing CIL, each authority, as defined by the CIL regulations is a statutory 'Charging Authority' in their own right and are therefore being asked to adopt their own Charging Schedule, Supporting Policies and approve their Regulation 123 list for publication.

1.5 This report provides the background and information to support the recommendation for adoption.

### 1.6 WHAT IS THE COMMUNITY INFRASTRUCTURE LEVY

- 1.6.1 The Community Infrastructure Levy (CIL) is a charge levied on new buildings and extensions to buildings according to their floor area. In this way money is raised from development to help pay for strategic and community infrastructure. This could include schools, leisure centres, older peoples care accommodation, roads and other facilities to ensure the demands arising from the JCS are accommodated sustainably.
- 1.6.2 CIL replaces only the section 106 "tariff" approaches which have previously been used for this purpose. Section 106 must continue to be used for affordable housing and will be used for site specific infrastructure needed to make a specific development site acceptable in planning terms.
- 1.6.3 CIL is calculated on the net increase in gross internal floor area (GIA) provided any existing floor area is in lawful use. That is, a credit is allowed for any existing GIA which is demolished.
- 1.6.4 Whilst CIL may be levied on most buildings that people 'normally go into' there is a national definition of liable development and a number of mandatory and discretionary exemptions:

#### Definition of Liable Development

- More than 100sqm of new floorspace

- Less than 100sqm of new floorspace if one or more new dwellings are created
  - Conversion of a building no longer in lawful use
- 1.6.5** CIL income is not subject to the pooling restrictions imposed upon Section 106 agreements in April 2015 and can therefore provide contributions towards infrastructure that arises as a result of development but is not directly related and therefore cannot be attributed to any one development site.

## **1.7 HOW MUCH FUNDING COULD THE CIL GENERATE FOR CHELTENHAM**

- 1.7.1** CIL will provide a new way for the Borough Council, JCS partner authorities and Parish Councils to fund infrastructure needs arising from development in their areas. Regulations require 15% of CIL from developments in a Parish to be paid to the Parish Council, subject to a cap of £100 per existing property, rising to 25% if they have adopted a Neighbourhood Development Plan. Where no Parish Council exists, in Cheltenham's Wards, the Borough Council must spend the 15% 'Neighbourhood Fund' in their area not covered by a Parish Council, in consultation with the community to support the development occurring in the Wards.
- 1.7.2** Whilst the exact amount of CIL Income to be raised in Cheltenham, and when this will be received, is difficult to forecast accurately, based on the Council's forecast of housing growth over the period of the JCS, to 2031 £28.7m could be received. It should be noted that this income is not 'new money' in that this would have been investment negotiated via Section 106 Agreements in the past, with the exception of some smaller sites.
- 1.7.3** CIL income generated is anticipated to accrue gradually over the course of the first year of the scheme. For this reason, the governance arrangements to be put in place in relation to the expenditure of CIL income, retained by the Charging Authorities, will be considered by the JCS partners over the course of the first 6 months of the programme. These arrangements will be presented to Cabinet for decision.

## **1.8 THE RELATIONSHIP WITH PLANNING OBLIGATIONS**

- 1.8.1** Section 106 contributions can continue to be sought, however, the delivery of strategic infrastructure in particular has been heavily constrained since April 2015 when Section 106 pooling limitations came into force allowing only contributions from up to five developments to be pooled to fund an individual infrastructure project.
- 1.8.2** Because CIL income is not subject to these pooling restrictions it can provide contributions towards infrastructure whose need arises as a result of the cumulative impact of many developments but is not 'directly related' to any one.
- 1.8.3** Section 106 must continue to be used for affordable housing and will be used for anything required just for a specific development site to make it acceptable in planning terms.

## **1.9 HOW THE LEVY WAS SET**

- 1.9.1** Expert Evidence of the viability of CIL commissioned by the JCS authorities from the District Valuer Services (DVS) in 2014 and 2015, Peter Brett Associates (PBA) in 2016 and Porter Planning Economics (PPE) in 2017.

- 1.9.2** Expert Evidence of the need for infrastructure to deliver the growth proposed in the JCS, professional cost estimates and the identification of sources of funding and the gap, or shortfall in funding, which CIL will help to address was prepared by Arup in August 2014 and updated in an addendum to the IDP in December 2017.
- 1.9.3** On the basis of the above evidence a Preliminary Draft Charging Schedule was prepared for statutory consultation.
- 1.9.4** Formal Public Consultation: The CIL Charging Schedule has been developed through the Preliminary Draft Charging Schedule, the Draft Charging Schedule and the modifications stages, which were published for consultation between: May and June 2015; May and June 2016; and July and September 2017, respectively.
- 1.9.5** Formal Public Examination: The Draft Charging Schedule was submitted to the Planning Inspectorate for Independent Examination on the 26th July 2016. Hearings were held from the 15th to the 17th May 2018.
- 1.9.6** The Planning Inspectorate Examiner's Report was received by the Council on 31st July 2018 (attached to this report as Appendix C). The report concludes that the Draft Charging Schedule passes all of the statutory tests and recommends approval subject to certain modifications related to:
- Adding another category of residential development, namely 450 dwellings and over; charged at £35 per square metre in Cheltenham and Tewkesbury and nil rated in Gloucester;
  - Restricting the 11 plus dwelling category to between 11 and 449 dwellings;
  - Reducing the out of centre retail rate from £100 per square metre to nil pending the outcome of the JCS review of retail and the gathering of further evidence; and
  - Adding West Cheltenham to the Tewkesbury charging schedule.
- 1.9.7** The modified Charging Schedule (attached to this report as Appendix A), incorporating the Examiner's recommendations (Appendix C) is now being brought before Council to seek adoption in line with recommendation 1 of this report.

## **1.10 CIL IMPLEMENTATION AND PAYMENT**

- 1.10.1** It is recommended that an implementation (commencement) date for the Charging Schedule to take effect is set for 1st January 2019. This will mean that all relevant planning applications granted permission on or after this date will be liable to pay the relevant charge. Applications for Reserved Matters determined from that date will also be liable for CIL except where they relate to Outline Permissions that were determined prior to the 1st January 2019.
- 1.10.2** Two officers have been jointly employed on two year fixed term contracts since early in 2018 by the three JCS partner authorities to work with each of the three Planning Authorities to ensure they are ready to implement CIL. Members and Officers are being briefed and engagement with development industry representatives and parish councils is planned. IT software has been purchased and is now being put in place and the two officers are preparing to initially undertake the CIL Charging Authority functions of the three JCS partner councils jointly.

**1.10.3** Additional resources will be required in due course to operate the Charging Authority functions for the JCS partner councils and these will be funded, as permitted by the regulations, from the 5% of CIL income allowed for this purpose.

## **1.11 EXEMPTIONS AND RELIEF**

**1.11.1** The CIL Regulations allow for a number of exemptions from CIL that may be claimed, some are mandatory and set nationally whilst some are discretionary and can be set locally by the Council as CIL Charging Authority.

**1.11.2** The CIL Regulations also allow for other policies, on 'exceptional relief' and 'requests to accept land and infrastructure in-kind', to be implemented at the discretion of the Local Authority. Whilst these policies were discussed at the Examination Hearings they were not included in the Examiner's recommendations. It is therefore proposed that periodic reviews of CIL and relief policies, which take account of economic conditions, property values and development costs are carried out. This would also provide an opportunity to review whether the Council considers any of the discretionary policies are necessary.

## **1.12 THE CHARGING SCHEDULE**

**1.12.1** Following recommendations made by the Independent Examiner, Cheltenham Borough Council's Charging Schedule comprises residential CIL rates differentiated by scale, type and geographical location which is set out in Appendix A to this report.

## **1.13 THE REGULATION 123 LIST**

**1.13.1** Local authorities adopting CIL are required to publish a list of the specific infrastructure or types of infrastructure to be funded by CIL and those which will continue to be funded by Section 106 agreements. This is known as the Regulation 123 list. A draft of this list was published with the Draft Charging Schedule and considered at the Examination Hearings as part of the process. During the Examination Hearings changes were made to address the Examiner's concern that the list was not explicit enough to ensure 'double dipping' or paying for the same infrastructure projects from both CIL and Section 106 would not occur, as the regulations specifically prohibit this. Following the hearings and receipt of the Examiners report, in consultation with the County Council, further modifications have been made to ensure clarification on the uses to which CIL will be put and those to which Section 106 agreements will be required. The resulting Regulation 123 list is attached to this report as Appendix F. It is recommended that the Regulation 123 list is approved for publication by Council.

## **1.14 LOCAL POLICIES FOR ADOPTION**

**1.14.1** Instalment Policy: Whilst the CIL regulations require payment in full within 60 days of commencement of development and receipt of the demand notice they also allow the authorities to introduce an instalment policy. An instalment policy will assist the viability and delivery of developments by allowing phased payments to take account of the likely rate of development. The instalment policy, attached as Appendix D, is recommended to be introduced at the same time as CIL comes into effect on 1st January 2019.

**1.14.2** Request for Review and Appeals Policy: Regulation 113 allows the request for a review of the chargeable amount. Regulations 114, to 119 allow appeals against the chargeable amount, apportionment of liability, a decision on charitable relief, a decision on exemptions for residential

extensions and self-build housing, a surcharge, the deemed commencement date and the issue of a CIL stop notice. The Request for Review and Appeals Policy, attached as Appendix E, is recommended to be introduced at the same time as CIL comes into effect on 1st January 2019.

## **1.15 NEXT STEPS**

### **1.15.1 Commencement:**

- A commencement date must be set on adoption and therefore the recommendation is that a commencement date is set, in line with our JCS partners, for the 1st January 2019.
- Configuration, user training and deployment of the CIL IT management system.
- Publication of statutory notices and notification of individual applicants and the wider development industry the change being introduced.
- Completion of legal agreements negotiated under the former system of securing developer contributions.

**1.15.2** It is proposed to submit to Cabinet, in due course, recommendations as to an appropriate mechanism for prioritising spending on qualifying infrastructure projects through the establishment of a Governance Structure that ensures delivery of infrastructure identified as critical in the JCS Infrastructure Delivery Plan (IDP) and efficient administrative arrangements for the charging and collection of the levy across the three JCS authorities.

## **2. Reasons for recommendations**

- 2.1** Adoption of the CIL Charging Schedule(s) enables each JCS Council to ensure that new development contributes proportionately to infrastructure provision, supporting the delivery of new development and economic growth identified in the adopted JCS (2011 to 2031) and the emerging district level plans, whilst taking into account the need to strike an appropriate balance which does not threaten viability.
- 2.2** Adoption of optional supporting policies ensures that larger developments are able to commence their developments before full and final settlement of their CIL obligation in line with the regulations.
- 2.3** Publication of the Regulation 123 list is a legal requirement which sets out the infrastructure on which CIL may be spent.
- 2.4** Setting a commencement date in line with JCS partner authorities provides certainty and coherence to applicants, provides a short period of notification of the change being introduced and allows the completion of legal agreements negotiated under the former system of securing developer contributions.
- 2.5** Council should bear in mind that CIL accruing from development in Cheltenham will not generate the total of funding required to deliver all of the Borough's infrastructure needs. For this reason it is important that the Council continues to work in partnership with the other JCS authorities, ensuring that the necessary infrastructure that will serve Cheltenham's existing and new communities is funded through the new CIL arrangement.
- 2.6** Members should also be aware that the total CIL income to be generated is unlikely to be

sufficient to fund all of the area’s infrastructure needs. It is, however, a mechanism to part fund that infrastructure, and efforts will need to continue to secure external and additional funding.

**3. Alternative options considered**

**3.1** The Council could choose to not adopt CIL and, instead, continue to rely only on income from Section 106 agreements. However, the restrictions put in place which limit the ability to pool receipts from Section 106 agreements, in April 2015, are likely to result in a loss of resources to fund, in particular, strategic infrastructure needs identified through the process of preparing the JCS. The use of CIL would address this loss of resources towards the funding gap for future infrastructure.

**4. Consultation and feedback**

**4.1** During the preparation of CIL a number of rounds of informal and statutory consultation began:

- The principles of CIL were considered by the Planning and Liaison Member Working Group in Summer 2014, a Developer Workshop in Autumn 2014, Preliminary Draft Charging Schedule from May to July 2015, Draft Charging Schedule from May to June 2016 and the Statement of Modifications from July to September 2017. Members have been regularly updated via the Planning and Liaison Member Working Group, engagement on final steps for the drafting of this report with Cabinet on 18th September 2018 and workshop with all Members invited 1st October 2018.

**5. Performance management –monitoring and review**

**5.1** Once CIL is implemented the council must publish an annual report setting out CIL receipts and expenditure.

**5.2** In order to be able to demonstrate that ‘double dipping’ has not occurred, that is spending CIL receipts on infrastructure projects that have also been funded through Section 106 contributions, which is explicitly prohibited by Regulation 123, new monitoring arrangements will need to be put in place for the Council’s own Section 106 agreements. Work will also need to be undertaken with the County Council, who currently enter into their own Section 106 (and Section 278 of the Highways Act 1980) agreements, to provide detailed monitoring information.

**5.3** The evidence base for the CIL will be kept under review and updated as required.

<b>Report author</b>	<b>Contact officer: Paul Hardiman, CIL Manager</b> <a href="mailto:paul.hardiman@cheltenham.gov.uk">paul.hardiman@cheltenham.gov.uk</a>
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<b>Appendices</b>	<ul style="list-style-type: none"> <li>A. Cheltenham Borough Council Charging Schedule</li> <li>B. Policy Maps</li> <li>C. Examiner's Report (31<sup>st</sup> July 2018)</li> <li>D. Supporting Policies: Payment by Instalments</li> <li>E. Supporting Policies: Request for Review and Appeals</li> <li>F. Cheltenham Borough Council Regulation 123 List</li> <li>G. Risk Assessment</li> </ul>
<b>Background information</b>	<ul style="list-style-type: none"> <li>1. None</li> </ul>