

Cheltenham Borough Council
Cabinet – 18 June 2013
Community Infrastructure Levy

Accountable member	Councillor Steve Jordan, Leader
Accountable officer	Tracey Crews – Head of Planning
Ward(s) affected	All
Key Decision	Yes
Executive summary	<p>The purpose of the Community Infrastructure Levy (CIL) is <i>“to ensure that costs incurred in providing infrastructure to support the development of an area can be funded (wholly or partly) by owners or developers of land”</i> (Section 205, Planning Act 2008). CIL enables the local planning authority to charge a tariff on most new development. This goes into a locally-held fund it administers and uses to pay for infrastructure which is needed as a result of permitting development in its area.</p> <p>The principal expression of CIL is via a statutory Charging Schedule that is subject to formal public consultation and examination. The Charging Schedule sets out the amount to be levied from various types of development together with a list of infrastructure schemes that may require CIL funding.</p> <p>This report seeks authorisation in principle for officers to begin preparation of a draft CIL Charging Schedule for Cheltenham and to continue to work collaboratively with all Gloucestershire districts to consider solutions for the delivery of strategic infrastructure priorities.</p>
Recommendations	<p>That Cabinet authorises in principle the preparation of a draft CIL Charging Schedule for Cheltenham to be produced having regard to the provisional timetable set out in the report; and</p> <p>That Cabinet agree in principle to investigating options for the delivery of strategic priorities which have implications beyond the administrative boundaries of Cheltenham Borough.</p>
Financial implications	<p>CIL is a statutory process subject to formal consultation and public examination. The cost of this process is estimated by CLG to be around £100,000 initially and around £75,000 annually thereafter (see report). However, there is provision in the CIL regulations for recovery of administrative costs arising from preparation of the Charging Schedule. This provision, moreover, allows for the recovery of the costs of ongoing operation, monitoring, maintenance, and review. Whilst initial financial investment clearly is required, it appears that Government intends CIL to be largely self-funding once it is operational.</p> <p>Contact officer: Paul Jones – Head of Finance, paul.jones@cheltenham.gov.uk, 01242 775154</p>

<p>Legal implications</p>	<p>The statutory process is outlined at paragraph 2.1 of the report.</p> <p>Once a charging schedule takes effect planning obligations may not constitute a reason for granting planning permission for development to the extent that the obligation provides for funding or the provision of “relevant infrastructure”. If the Council has published a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL “relevant infrastructure” will be those projects or types of infrastructure. Otherwise, it will be any infrastructure.</p> <p>“Infrastructure” is defined as including (a) roads and other transport facilities, (b) flood defences, (c) schools and other educational facilities, (d) medical facilities, (e) sporting and recreational facilities, and (f) open spaces.</p> <p>Further, once a charging schedule takes effect or as of 6 April 2014 (or 6 April 2015 should proposed reforms be implemented), which ever is the earlier, a planning obligation may not constitute a reason for granting planning permission to the extent that it provides for the funding of an infrastructure project or type of infrastructure, if five or more planning obligations have been entered into on or after 6 April 2010 that provide for the funding or provision of that project or type of infrastructure. It should be noted that this provision is not by reference to “infrastructure” and not to “relevant infrastructure.”</p> <p>Contact officer: Cheryl Lester - Solicitor cheryl.lester@teWKesbury.gov.uk, 01684 272013</p>
<p>HR implications (including learning and organisational development)</p>	<p>There are no HR implications arising.</p> <p>Contact officer: Sarah Flury, sarah.flurry@cheltenham.gov.uk, 01242 265215</p>
<p>Key risks</p>	<p>April 2014 cut-off for pooling s.106 contributions from more than five developments. May have impact, for example, on being able to provide strategic infrastructure arising out of JCS proposals. The Government is currently reconsidering this date which may be extended to April 2015.</p> <p>If CIL not pursued, Council may lose a significant amount of revenue from development slipping through the s.106 net that would be caught by CIL. Perhaps not a risk as such, but certainly a missed opportunity and one that will have an impact on delivery of infrastructure that could enhance Cheltenham’s “offer” in general terms.</p>
<p>Corporate and community plan Implications</p>	<p>Development of a clear framework to manage and coordinate the community infrastructure levy will enable the council to deliver several outcomes; most notably “Cheltenham is able to balance new development with enhancing and protecting the natural and built environment”, “Carbon emissions are reduced and Cheltenham is able to adapt to the impacts of climate change”, “People are able to lead healthy lifestyles” and “Our residents enjoy a strong sense of community and are involved in resolving local issues.” For example, in terms of the latter outcome, neighbourhoods would be able to allocate some of the levy through their local parish council (point 5.3 below).</p>

Environmental and climate change implications	Poor-quality infrastructure – owing to underfunding or resource constraints - will not assist in mitigating the effects of climate change and may exacerbate existing problems. For example, underprovision of transport infrastructure may increase congestion and exhaust emissions.
Property/Asset Implications	N/A

1. Introduction

- 1.1 Introduced in 2010 and subject to ongoing legislative evolution¹, the Community Infrastructure Levy (CIL) is effectively a local tariff on development “*to ensure that costs incurred in providing infrastructure to support the development of an area can be funded (wholly or partly) by owners or developers of land*” (Section 205, Planning Act 2008). Where it is in force it relates to new buildings and extensions to buildings which have at least 100 square metres of gross internal floor space. In this way money is raised from development to help the Council pay for strategic and local infrastructure such as highways improvements, schools, leisure and other community facilities.
- 1.2 Funding derived from CIL is administered by the local planning authority and used to deliver infrastructure identified as needed to deliver development plan policies. For Cheltenham this would be via the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy and the Cheltenham Plan. This may include;
- Provision of new infrastructure (roads, transport, flood defences, schools, medical facilities, sporting and recreational facilities and open space)
 - Improvements to existing infrastructure if deficiencies will be made worse by the new development; or
 - Increase in capacity of or repair/maintain existing infrastructure needed to support the new development
- 1.3 The Council currently collects contributions from developments or requires developers to enter into planning obligations via s.106 Agreements. This secures, via often protracted negotiation, funding for specific items that enable the development to be implemented and the necessary infrastructure provided.
- 1.4 Unlike Section 106, once it is in force CIL is non-negotiable, so applying and collecting it is largely an administrative process. The charge is calculated at the time the planning permission is granted and becomes due when development commences. Also in contrast with Section 106, very many more developments are potentially required to contribute than currently are subject to obligations.
- 1.5 The main focus of CIL is its Charging Schedule. This sets out the tariff rate and lists infrastructure items that may be funded from revenue collected. The Charging Schedule is discussed in more detail below.
- 1.6 CIL revenue from a particular scheme can be spent by the Council on any community infrastructure required to support growth – it is not tied to a particular project, even where not

¹ *The Community Infrastructure Levy (Amendment) Regulations 2013* came into force on 25 April 2013 and the Government is currently considering making further reforms

listed in the Charging Schedule provided the item is not also subject to s.106 (which would amount to double counting). However, it should be noted that CIL does not relate to the provision of affordable housing. That still needs to be secured via s.106 as does provision of on-site infrastructure - for example, the provision of public open space within a site.

- 1.7 The Council can “top-slice” up to 5% of CIL receipts to pay for administrative costs including the development and adoption of the Charging Schedule and its ongoing running and maintenance.
- 1.8 Finally, whilst CIL is discretionary, the restriction from April 2014 on pooling of s.106 contributions from more than five developments makes it compelling particularly in respect of provision of strategic-level infrastructure. On 15 April 2013 the Government published a consultation document on further reforms to CIL. These potential reforms include allowing councils that have not adopted the levy to continue to pool contributions from different planning obligations for an extra year – April 2015.
- 1.9 As noted above, the potential for CIL to yield exponentially greater revenue than s.106 is self-evident. And it may also emerge where an authority approaches government for funding of an infrastructure item but is *not* operating CIL it may struggle to make a persuasive case.

2. Developing the CIL Charging Schedule – process and procedure

- 2.1 CIL is a statutory process. Preparation of the Charging Schedule must follow Regulations and statutory guidance. The basic steps are:
 - *Preparation of and public consultation on a Preliminary Draft Charging Schedule;*
 - based on appropriate available evidence of infrastructure requirements and viability assessment;
 - statutory consultees, stakeholders and the public consulted
 - no time-period stipulated in Regulations but guidance is at least six weeks required
 - *Preparation of and publication of Draft Charging Schedule:*
 - minimum of four weeks (may be changed to 6 weeks under further reforms) for representations to be made following publication
 - respondents must be heard at the Examination if they so wish
 - *Statement of modifications prior to Examination;*
 - although there is statutory provision, modification of draft Charging Schedule between publication and Examination is discouraged in statutory guidance,
 - should not be used to make significant changes
 - where modifications made, public allowed at least four weeks to make representations starting from the date the Schedule is submitted to the Examiner
 - *Examination in Public;*
 - examiner focuses on compliance with statutory procedures; that the Charging Schedule is supported by appropriate evidence; that proposed rates are consistent with and informed by the viability assessment; evidence shows that the proposed rate would not put at serious risk the overall development of the area
 - examiner must recommend either approval, modification or rejection of the Charging Schedule culminates in Examiner’s Report
 - *Approval by full Council.*
 - The Council may not approve a charging schedule if the examiner recommends rejection
 - If the examiner recommends modification to remedy non-compliance the Council may only approve if it does so with modifications that are sufficient and necessary to remedy non-compliance (whether these are the modifications recommended by the examiner or not)
 - No other modification, save any additional ones recommended by the examiner may be made should the draft be approved

- 2.2 CIL regulations require authorities to set rates, which strike “*an appropriate balance*” between the desirability of funding CIL infrastructure and the potential effects on “*economic viability of development across its area*”. Robust evidence is required at examination to show how economic viability has been assessed. Rates should not be set so high as to put development at risk.
- 2.3 In addition to viability assessment, a key requirement is that the Charging Schedule rests upon a sound and appropriate available evidence base. In most cases this will be an Infrastructure Delivery Plan (or its equivalent) accompanying an up-to-date development plan. The IDP will set out matters including what infrastructure is needed to deliver the plan, the timescale for delivery, where it is needed, who will provide it and how much it will cost. Consultants ARUP are currently commissioned on behalf of all Gloucestershire districts to deliver this evidence base.

3. Costs of developing a CIL Charging Schedule

3.1 While bearing in mind the ability to recover administrative expenses, an impact assessment relating to the preparation of CIL carried out by the Department of Communities and Local Government indicates that principal costs are:

- Viability Assessment – between £25,000 and £70,000;
- Consultation – between £10,000 and £20,000;
- Examination – between £30,000 and £40,000; and
- Printing – between £500 and £1,500.

Clearly this does not take account of officer time or the use of consultants (other than in respect of viability assessment) if deemed necessary. It also does not take into account the possibility of cost savings by, for example, joint Examination of two or more Charging Schedules.

The following table is extracted from the CLG assessment:

Community Infrastructure Levy charging scenario	Year 1 – outside London	Year 2 onwards - outside London
Set-up costs	£91,000	n/a
On-going costs	£16,700	£75,700
Total	£107,700	£75,700

Source: CLG January 2011

4. The Cheltenham CIL Charging Schedule – provisional timetable

4.1 As detailed above, the Charging Schedule must be based upon evidence. Inevitably therefore, it is neither sensible nor feasible to take preparation forward in advance of that evidence becoming available. It follows therefore that progress of the Charging Schedule through its public consultation and examination phases must be more or less conjoined with the very similar process governing preparation of the development plan. The current JCS timetable is as follows:

Preferred Option Plan agreed	August 2013
Preferred Option Plan Consultation	September – November 2013 (6 weeks)
Pre-Submission Plan consultation	Spring 2014
Submission for Examination	Autumn 2014

Taking this as the lead, and bearing in mind the need for the evidence base to be stable (i.e. arguably therefore not before the development plan has reached submission stage), the Cheltenham CIL Charging Schedule timetable would theoretically be:

Preparation of Preliminary Draft Charging Schedule	Winter 2013/14
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Preliminary Draft Charging Schedule consultation	Spring 2014
Draft Charging Schedule consultation	Summer 2014
Submission for Examination	Autumn 2014

5. CIL in Gloucestershire

- 5.1 There is no statutory provision for joint preparation or joint adoption of a single Charging Schedule. Consequently each Charging Authority must act independently (although note the statutory facility to hold joint Examinations). Whilst all the Gloucestershire charging authorities are working together to develop a common methodology, none of them has as yet begun preparation of a CIL Charging Schedule. At time of writing it is understood that only Tewkesbury Borough Council and Cotswold District Council formally have undertaken to begin that process.
- 5.2 There are several advantages to developing a common CIL methodology for Gloucestershire:
- there is strength in having a consistent approach in the county;
 - the need to demonstrate at Examination that development plans are sound in terms of their ability to deliver strategic development;
 - the Duty to Co-operate; and
 - the need, on the basis that the county council is not a Charging Authority, to take into account the funding of strategic-level infrastructure for the good planning of the county.
- 5.3 In looking for a CIL methodology that would satisfy these requirements, an officer working group was set up some time ago reporting to the County Strategic Planning Issues Group. The working group developed an approach that is being described as a “layer cake” methodology. In basic terms this means that each Charging Schedule would comprise three “layers” – neighbourhood, local and strategic.
- 5.4 The neighbourhood level is relatively straightforward. Charging Authorities will soon be required under amended Regulations to pass 15% (capped) of revenue to Parish and Town Councils where CIL is operating and 25% where CIL is operating *and* a Neighbourhood Plan is in place. There naturally are other criteria relating to the implementation and administration of this that need not be dwelt upon here².
- 5.5 The local level is straightforward too in the sense that it would be the “default” position - taking what remained from allocations at the levels above and below it.
- 5.6 However, whilst there is consensus that there needs to be provision at strategic level the method by which this can be achieved is yet to be agreed and discussion is ongoing. On 20th March 2013 the County Strategic Planning Issues Group met to further consider a more strategic approach to CIL. The following recommendations were agreed to be presented to Leadership Gloucestershire:
- There was a high degree of urgency for starting work on a model for CIL given the risks of not having a CIL in place after April 2014 and the lead times.
 - It would be sensible to ensure an integrated approach between the infrastructure delivery plan work and the work on building up a CIL.
 - It was agreed that there was a benefit in having a common contractor for CIL development work across Gloucestershire possibly costing around £80,000 but

² see for instance paragraphs 6 and 9 of Explanatory Note accompanying *The Community Infrastructure Levy (Amendment) Regulations 2013* <http://www.legislation.gov.uk/ukdsi/2013/9780111534465/contents>

recognising that the cost will depend on how much councils were prepared to do themselves rather than relying on the contractor.

- It was felt that there would be a benefit in a commonly agreed structure for CIL across Gloucestershire with district specific content and charging schedules.
- A proposal would be put to Leadership Gloucestershire that a common approach to CIL is taken and that the County Planning Officers Group works up a specification for engaging consultants, a timetable for the CIL work and a proposal for splitting the fee.
- Finally that consideration should be given at the appropriate time to the layer cake approach to CIL i.e. addressing strategic, local and neighbourhood requirements where funding can be pooled for shared priorities across Gloucestershire and/or individual local authorities.

5.7 Subsequently, Leadership Gloucestershire met and agreed the following:

(1) County Strategic Planning Issues Group be asked to prepare a presentation for Leadership Gloucestershire in June on the strategic principles/options.

(2) County Strategic Planning Issues Group also be asked to advise on a timetable to develop a common approach to CIL.

5.8 As set out in paragraph 2.3 above, in determining CIL, evidence will be drawn from the emerging Infrastructure Delivery Plan (IDP) currently being prepared by ARUP. This will pull together all requirements for infrastructure provision, including strategic infrastructure. The process is therefore in place to identify the genuinely strategic nature of significant elements of infrastructure, however what is not in place is the apportionment of the costs arising.

5.9 There is still much more work to do in considering the practical application of the 'layer cake' methodology and the practicalities of dealing with the strategic layer in respect of identifying strategic priorities which relate to two or more districts and proportionality of contributions across the County. However, in informing the recommendation by the County Strategic Planning Issues Group to Leadership Gloucestershire, Cabinet is asked to agree to the principle of working collaboratively and providing officer support to help find an appropriate solution to the delivery of strategic infrastructure.

6. CIL nationally

6.1 At time of writing the position is:

	Number of Local Authorities
Local Authorities already charging CIL	12
CIL plans at examination stage	18
Draft charging schedule published for consultation	12
Preliminary draft charging schedule published for consultation	80+

Source: Planning Resource April 2013

7. Reasons for recommendations

7.1 Officers consider that the case for preparing a CIL Charging Schedule is persuasive. Whilst it may take some time to deliver a Charging Schedule for the reasons set out in the report, officers consider it is important that the Council signals its intent and commits now to the process. That will allow this major piece of work to be properly programmed alongside other workstreams.

8. Alternative options considered

- 8.1 Operation of CIL is discretionary. One option is simply not to pursue it. However, for the reasons set out above officers advise that this risks failure to provide sufficient infrastructure to ensure the impact of development on existing facilities is minimised. It also would mean that a potentially significant amount of money available as a result of new development is not being captured.

9. Consultation and feedback

- 9.1 Strategic Leadership Team and Planning Liaison Scrutiny Task Group have considered and commented upon this report. The draft report also has been circulated to partner JCS authorities and the County Planning Officers Group. Recommendations from this report will be reported to County Strategic Planning Issues Group and Leadership Gloucestershire.

10. Performance management –monitoring and review

- 10.1 CIL will be required to be closely monitored and the Charging Schedule kept up to date.

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Appendices	1. Risk Assessment 2. Some advantages & disadvantages of CIL
Background information	https://www.gov.uk/government/uploads/system/uploads/attachmentdata/file/36743/Community_Infrastructure_Levy_guidance_Final.pdf https://www.gov.uk/government/uploads/system/uploads/attachmentdata/file/6037/1829714.pdf http://www.parliament.uk/briefing-papers/SN03890

CIL would constitute a new commitment for the council and, as such, there is no extant corporate risk assessment.

The report above together with Appendix 2 below does touch upon some risks that may be associated with CIL. It may be suggested at this stage that these are largely:

- Financial – in the sense, for example, that preparation of CIL does involve some initial outlay (although recoverable) but that not adopting CIL may also carry the risk of significant amounts of revenue not being captured; and relatedly
- Environmental – in the sense, for example, that not expecting all qualifying³ developers to pay for mitigation of the infrastructural impacts of their schemes may exacerbate environmental degradation specifically and/or generally.

³ i.e. those developments that would be “caught” by CIL

Advantages	Disadvantages
<p>CIL requires contributions from <u>all</u> development which is not exempt or over a certain size threshold. Whilst no figures are readily available, it can be assumed that many developments that metaphorically would be caught in the CIL net are currently getting through the wider s.106 mesh. The reasons for this may be complex and vary from case to case</p>	<p>CIL is statutory process that culminates in public examination of the Charging Schedule prior to adoption. It is subject to similar tests of evidence and soundness. If it is envisaged along similar lines to producing a development plan document, this means that CIL may be:</p> <ul style="list-style-type: none"> • expensive to produce; • lengthy from inception to adoption – it includes formal public consultation, for example; and • vulnerable to change or derailment during the preparation/adoption process. <p>However, bear in mind top-slicing to recover development costs</p>
<p>CIL is a more equitable way of ensuring that all qualifying development contributes to mitigation of cumulative impact on existing infrastructure</p>	
<p>CIL is likely to yield considerably greater revenue from contributions than s.106.</p>	
<p>It is possible to stipulate what infrastructure items are to be included in the CIL Charging Schedule – for example, cross-boundary “big ticket” items such as major road schemes or education facilities may be prime candidates – it does not necessarily have to deal with everything.</p>	<p>CIL rests upon a dynamic set of development and economic circumstances. It is not a “once and for all” exercise. It will be critical that it is kept up to date. This means that the evidence base it rests upon will need to be regularly reviewed to ensure that the calculations underpinning the charging schedule and tariff remain legitimate. It may be necessary to undertake formal periodic reviews. Failure to do so may undermine the credibility of the CIL and render it vulnerable to challenge. The danger here is that a discredited CIL will potentially fail universally or over an entire area rather than simply in one isolated case – as in a single s.106 agreement for instance. The implications of that are self-evident.</p>
<p>CIL is not “tied” to a particular development and is not subject to the restrictions in that regard applying to s.106. The tariff is pooled and can be used to fund infrastructure provision anywhere within the relevant area</p>	
<p>CIL can be used retrospectively to reimburse costs already incurred through funding infrastructure that has been delivered to “unlock” development.</p>	
<p>Whilst there is a degree of flexibility, a CIL tariff, once set, is less vulnerable to hard negotiation in the development process because it has passed through formal Examination and adoption.</p>	