

## **CIL GOVERNANCE**

### **Local Planning and Environment Advisory Committee – 25 March 2014**

Report of Chief Planning Officer

Status: For Consideration

Key Decision: No

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#### **Executive Summary:**

The Council adopted the Community Infrastructure Levy (CIL) Charging Schedule on 18 February 2014. Under the Council resolution qualifying developments permitted on or after 4 August 2014 will be liable to pay CIL. As part of the process of adopting the CIL Charging Schedule, Cabinet tasked Local Planning and Environment Advisory Committee with developing the CIL governance arrangements. The purpose of this report is to begin to explore some of the issues and decisions the Council faces in determining how CIL funding will be prioritised amongst the many different competing infrastructure projects. It is recommended that the arrangement of a CIL workshop would ensure that the development of governance arrangements by the committee is a Member-led process and would enable Members to debate the issues that the Council will need to consider in greater detail.

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**Portfolio Holder** Cllr. Ian Bosley

**Contact Officer(s)** Steve Craddock (7315)

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#### **Recommendation To Local Planning and Environment Advisory Committee:**

It is recommended that a separate CIL workshop, consisting of all Local Planning and Environment Advisory Committee Members that wish to attend, is arranged in Summer 2014 to consider CIL governance issues in more detail and to begin to develop recommendations for how the spending of CIL should be prioritised and be brought back to a future meeting of the Local Planning and Environment Advisory Committee for consideration.

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#### **Reason for recommendation:**

The CIL workshop would ensure that the development of governance arrangements by the committee is a Member-led process and would enable Members to debate the issues that the Council will need to consider in greater detail. The lack of a date allows for the meeting to be agreed after the Council meeting timetable and committee memberships for next year has been agreed.

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#### **Introduction and background**

- 1 The Council adopted the CIL Charging Schedule on 18 February 2014. Under the Council resolution qualifying developments permitted on or after 4 August 2014 will be liable to pay CIL.
- 2 As part of the process of adopting the CIL Charging Schedule, Cabinet tasked Local Planning and Environment Advisory Committee with developing the CIL governance arrangements. The purpose of this report is to begin to explore some of the issues and decisions the Council faces in determining how CIL funding will be prioritised amongst the many different competing infrastructure projects.
- 3 In order to prepare the CIL Charging Schedule, the Council was required to prepare a Draft CIL Infrastructure Plan to identify the scale of the funding gap for delivering infrastructure necessary to support development. This Draft Plan may provide a useful indication of the infrastructure required and the priorities of partner organisations (including town and parish councils). However, the document is largely based on information provided approximately 2 years ago and will need to be refreshed. The Draft Infrastructure Plan does indicate how important and challenging it will be for the Council to prioritise the allocation of funding to infrastructure projects. Whilst it is estimated that between now and 2026 the delivery of the Core Strategy housing targets would lead to the Council receiving approximately £5-6 million, the costed projects currently identified sum to approximately £33,000,000.

#### **Infrastructure that can be funded through CIL**

- 4 The share of CIL that SDC will control must be spent on infrastructure to support the development of the District. It is important to note that, unlike Section 106 agreements, there is no need for the use of CIL to be directly linked to the development that pays it.
- 5 There is no definitive list of infrastructure that can be funded through CIL. However, the Planning Act 2008 provides the following indicative definition:

*“Infrastructure” includes-*

- (a) road and other transport facilities,*
- (b) flood defences,*
- (c) schools and other educational facilities,*
- (d) medical facilities,*
- (e) sporting and recreational facilities,*
- (f) open spaces.*

Generally, other mechanisms exist to ensure that developers and utility companies provide sufficient connections to new properties and so this would not need to be provided through CIL.

- 6 It should be remembered that CIL is intended to largely replace s106 agreements as the mechanism that local planning authorities use to secure funding for infrastructure. Therefore, whilst the provision of new school places, greater library capacity, improved GP surgeries or improved bus services have previously been

secured through s106 agreements, these types of projects will in the future need to be funded through CIL.

- 7 The Council submitted a list of the types of projects to be funded through CIL and those to be funded/provided through s106 agreements to the CIL examination. This list follows Government regulations on the use of s106 agreements, which suggests that they should be used to secure site-specific infrastructure, whilst CIL should be used for strategic projects. Given that this list formed part of the basis for the Charging Schedule being found sound, there is little scope for the Council to change this without reviewing the Charging Schedule (appendix A). What flexibility does exist allows for projects that the Council previously indicated would be funded through s106 agreements to be funded through CIL, rather than increasing the burdens placed on developers through s106 agreements. Following the discussions on governance arrangements, the Council will need to consider the adoption of this list.

### **Payments to town and parish councils**

- 8 Under the CIL Regulations, town and parish councils will receive 15% of the CIL collected from development in their area (capped at £100 per existing Council Tax dwelling per annum) if they do not have a Neighbourhood Plan and 25% of the CIL collected from their area (uncapped) if they do have a Neighbourhood Plan. This money must be spent on supporting the development of an area.
- 9 The Council resolved when it adopted the Charging Schedule that town and parish councils will receive an equal amount when a CIL-paying residential development occurs in their areas. As such, town and parish councils will receive £18.75 per sq m (15% of £125 per sq m) of the CIL payment if they do not have an adopted Neighbourhood Plan at the time the development is permitted to spend on infrastructure or £31.25 per sq m (25% of £125 per sq m) if they do have an adopted Neighbourhood Plan. As the charge for supermarkets, superstores and retail warehouses is a standard £125 per sq m across the District, town and parish councils will receive 15% or 25% of the same sum if a development of one of these types happens in their area. This does not preclude additional funds being passed to town or parish councils if the projects proposed are given sufficiently high priority under the governance arrangements that will be developed.
- 10 In order to ensure that the town or parish council and SDC is compliant with the legislation, town and parish councils in £75/m<sup>2</sup> charging areas will need to spend the 'top up funding' (equivalent to £7.50 per sq m or £12.50 per sq m of CIL-paying residential development, depending on whether the area has a Neighbourhood Plan) on infrastructure. They are also able to pass their CIL contributions to other organisations. Officers will brief and liaise with town and parish councils on this, as part of the implementation process.

### **CIL Governance Issues for SDC to consider**

- 11 There are a number of issues that the Council will need to consider in respect of how it prioritises CIL funding. Some of these issues are introduced below. It is recommended that a separate CIL workshop, consisting of all LPEAC Members who wish to attend, is arranged in Summer 2014 to consider these issues in more

detail and to begin to develop recommendations (to be considered in public at a formal meeting of the committee) to Cabinet for how the spending of CIL should be prioritised. Officers will investigate how other authorities are currently prioritising CIL expenditure and, if examples are available, will provide these prior to the workshop. In addition, Officers are in discussion with the Planning Advisory Service and the Planning Officer's Society to identify what support may be available to the Council in developing governance arrangements. Officers are considering joining a CIL Implementation Group run by the Planning Officers Society and will be able to feedback information from this to Members. Issues that Members may like to consider include:

#### What Types of Infrastructure should be given highest priority?

- 12 The Council will need to consider how it goes about prioritising different types of infrastructure, given the competing needs for the CIL pot. It is considered that the Council could do this by ranking the types of infrastructure that it considers to be the most important (schools or roads, for example), it could identify criteria for prioritising schemes (for example, will the CIL contribution be matched by another funding sources) or through a combination of the two approaches. The Council should also consider whether there would be benefit in consulting local residents on this.

#### Funding Pots

- 13 Members may like to consider whether there would be benefit to separating CIL payments into 'local' and 'strategic' funding pots. Whilst local funds could be spent on infrastructure in the areas where development occurs, for example new open space or play areas, the strategic funds could be pooled for things like school extensions and substantial transport schemes. The proportion of funding transferred to each pot would need to be influenced by discussions on priorities. Clearly spending more money on local projects would limit the amount available for 'strategic' projects and vice versa.

#### How should the Council balance the benefits of proactively planning infrastructure delivery with need to react to unexpected developments

- 14 Especially in the case of more strategic infrastructure developments, such as school extensions, the providing organisation is likely to need certainty over the funding that will be made available from CIL to support planned new developments. Whilst the Allocations and Development Management Plan provides a good indication of what development the Council expects to come forward and when, unexpected windfall developments continue to make an important contribution to housing development in the District. An example of this would be the Bramblefields development in Longfield, which will provide 71 dwellings (approximately half of the annual Core Strategy housing target) despite not being promoted through the Allocations and Development Management Plan and not considered in the Draft CIL Infrastructure Plan. Whichever way the Council decides to govern the expenditure of CIL, it will need to ensure that it can react to these 'windfall' developments.

#### Advance Funding

- 15 Linked to the issue above, the Council will need to consider whether it is willing to enter into formal agreements to transfer a certain amount or proportion of CIL per annum (subject to agreed limits and conditions) to partner organisations to deliver named projects. A situation could arise where a new GP surgery, for example, is required immediately but is partly justified on planned development in that area. Without the Council committing to provide further funding the development of the infrastructure would need to be undertaken in a piecemeal fashion or would rely on funding being allocated by the providing organisation or through it securing a loan.

#### Who should have the power to make the final decision on how CIL money is spent?

- 16 Options to consider might include:

- The relevant Portfolio Holder;
- Cabinet;
- A specific CIL committee;
- The relevant Chief Officer; or
- The Chief Executive.

Different arrangements could also be put in place for different funding pots, if it is considered that their creation is appropriate.

#### How often should funding allocation decisions be made?

- 17 CIL funds will usually be received 60 days after a development is commenced. Organisations are likely to want to receive funding as soon as possible after a development is commenced in order that infrastructure can be provided to support development before it is completed or as soon as possible afterwards. There will be a need for the Council to balance the workload of Members and Officers with this desire.
- 18 The Council will also need to consider whether it would like organisations to bid for CIL funding, which would also impact on the workloads of partner organisations, depending on the information that the Council expects in order to rank schemes.

#### **Instalment Policies**

- 19 In most circumstances, a developer must pay CIL in full 60 days after commencement, unless the Council adopts an instalments policy. This would apply regardless of the size of the development, which could lead to a developer having to pay a substantial CIL before it has had the chance to sell any of the dwellings. It is recommended that the Council adopts an instalment policy to help maintain the viability of these developments. An initial proposal for an instalment policy is set out in Appendix B and it is recommended that this is also debated through the governance workshop.
- 20 The CIL regulations 2010 provide that each phase of a development has a separate charge associated with it. Therefore, only once the developer commences a particular phase does the 60 day payment period (or instalment policy) begin. This effectively provides an instalments policy for larger

developments (over 100 dwellings, for example), which are unlikely to be built out in one phase.

- 21 The instalment schedule (from appendix B) provides different payment timetables depending on the overall level of the CIL charge. The different charging levels are presented below alongside the estimated numbers of dwellings that these charging levels would apply to in the £75/m<sup>2</sup> charging area. This assumes that the proportion of affordable housing (which must be offered 100% relief from CIL) on-site is consistent with Core Strategy Policy SP3 and that the average dwelling size is 76m<sup>2</sup> (consistent with CABE advice).

Total CIL liability	Number of instalments	Number of dwellings in £75/m <sup>2</sup> area
Amount less than £50,000	Payable as one instalment	Less than approximately 15 dwellings
Amount of £50,000 or more but less than £100,000	Payable in two instalments	Approximately 15 to 30 dwellings
Amount of £100,000 or more but less than £200,000	Payable in three instalments	Approximately 30 to 60 dwellings
Amount of £200,000 or more	Payable in four instalments	Approximately 60 dwellings or more

### Timetable

- 22 The proposed timetable for developing CIL governance arrangements is set out below:

Initial discussion and agreement to arrange a governance workshop of LPEAC members	25 March 2014
LPEAC CIL Governance Workshop	Summer 2014
Officers to prepare a report with recommendations on governance arrangements following the workshop	August & September 2014
LPEAC to further debate governance recommendations	September / October 2014
Cabinet to debate and agree/reject governance arrangements	October / November 2014

### Flexibility to make further changes to Governance Arrangements

- 23 Governance arrangements for CIL do not need to be published for consultation or independent examination. As the Council appears to be something of a ‘front-runner’ in this area, there may be opportunities to learn from experiences elsewhere. It is recommended that arrangements should be set up on the basis that they will be reviewed after 1-2 years. This will provide the opportunity to reflect on any lessons learnt, either from the Council’s experience or the experience of other authorities. If, however, it is found that there is a fundamental problem with the arrangements put in place then the Council can review them at any stage.

### **Other Options Considered and/or Rejected**

LPEAC could request that Officers work up CIL governance proposals that the committee will then debate. This option is not recommended by Officers on the basis that it would make it more difficult to ensure that the process is Member-led.

### **Key Implications**

#### Financial

There are no financial implications of this recommendation.

#### Legal Implications and Risk Assessment Statement.

Governance arrangements that are consistent with the CIL regulations must be agreed. If they are not then the Council runs the risk of challenges from developers over the use of CIL to the Ombudsmen being upheld.

#### Equality Impacts

Consideration of impacts under the Public Sector Equality Duty:		
Question	Answer	Explanation / Evidence
a. Does the decision being made or recommended through this paper have potential to disadvantage or discriminate against different groups in the community?	No	The recommendation relates to an approach that the LPEAC should take to resolving issues of CIL governance rather than agreeing any fixed approach to the governance itself. There will be further opportunities for LPEAC to debate these issues in a public meeting.
b. Does the decision being made or recommended through this paper have the potential to promote equality of opportunity?	No	
c. What steps can be taken to mitigate, reduce, avoid or minimise the impacts identified above?		n/a

## **Conclusions**

It is recommended that the arrangement of a CIL workshop would ensure that the development of governance arrangements by the committee is a Member-led process and would enable Members to debate the issues that the Council will need to consider in greater detail.

## **Appendices**

Appendix A – List of infrastructure types to be funded through CIL and S106 Agreements

Appendix B – Draft Instalments Policy

## **Background Papers:**

Draft CIL Infrastructure Plan (July 2013)

**Richard Morris**  
**Chief Planning Officer**