



**REPORT of
DIRECTOR OF STRATEGY, PERFORMANCE AND GOVERNANCE**

to
**PLANNING AND LICENSING COMMITTEE
5 SEPTEMBER 2019**

COMMUNITY INFRASTRUCTURE LEVY UPDATE

1. PURPOSE OF THE REPORT

- 1.1 To provide Members with an update on the work previously completed to introduce a Community Infrastructure Levy (CIL) and to set out next steps toward the implementation of a CIL for the District.

2. RECOMMENDATIONS

- (i) That the progress to date in implementing a Community Infrastructure Levy (CIL) be noted;
- (ii) That a review of the viability evidence base commissioned in 2018 be undertaken to establish whether additional Evidence Base is required to support the implementation of CIL and, if required, Officers in consultation with the Chairman of Planning and Licensing Committee commission further work on the Charging Schedule and Evidence Base for consideration at Examination;
- (iii) That, subject to the conclusions of the updated viability evidence, a Draft Charging Schedule be brought back to Committee for approval for public consultation;
- (iv) That recommendations for corporate governance arrangements for prioritising CIL expenditure are brought back to Committee if and when approval is sought to submit CIL for Examination.

3. SUMMARY OF KEY ISSUES

3.1 Background

- 3.1.1 The Community Infrastructure Levy (CIL) is a planning charge introduced by the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 as amended. It is a tool for local authorities to help to deliver infrastructure to support new development.
- 3.1.2 The CIL came into effect in April 2010. It allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their area.

Councils must spend the income on infrastructure that is needed to support new development.

- 3.1.3 CIL can fully fund or provide a contribution toward the infrastructure needed to facilitate growth and development. It is unlikely that CIL will, on its own, fully fund either the entire necessary infrastructure within the area or those critical infrastructure projects that support and enable the delivery of the adopted Local Development Plan and therefore further funding is also likely to need to be secured. The money collected through CIL can be used to fund a wide range of infrastructure, such as transport schemes, flood risk mitigation schemes, schools, community facilities, parks and leisure facilities, which are needed as a result of new development.
- 3.1.4 CIL funds are not ring fenced for specific schemes in the same way that Section 106 monies are, so the Council has more flexibility in deciding how to prioritise spending on infrastructure. Section 106 would still be used for site specific mitigation and affordable housing contributions and would operate alongside a CIL Charging Schedule.
- 3.1.5 The Council on 11 September 2014 considered a report providing background information on the CIL and seeking approval for the submission of the Draft Charging Schedule for Examination. The report also contained further details on the evidence base used to inform the Draft Charging Schedule at that time. Maldon District Council submitted the Draft Charging Schedule on 12 September 2014 for Examination. The Examination for the CIL was scheduled by the Planning Inspectorate to take place following the Examination into the Local Development Plan. However, with the delay to the approval of the Local Development Plan, the Council decided to review whether its evidence base and CIL Draft Charging Schedule was sufficiently up to date to provide a robust foundation for the CIL Examination.
- 3.1.6 In 2017 the Examiner that had been appointed to examine the Local Development Plan and CIL requested from the Council an update regarding its evidence base for CIL and whether the Council was relying on the evidence base submitted to the Inspectorate for Examination in 2014. A report to the Planning and Licensing Committee on 2 March 2017 recommended that prior to the CIL Examination, a review of the CIL Charging Schedule be undertaken to test its suitability for Examination and, if required, further work on the Evidence Base be commissioned. The recommendation was approved and some further updating work was commissioned in 2018. However, the CIL Examination did not proceed as the Council was awaiting the outcome of the Community Infrastructure Levy (Amendment)(England)(No.2) Regulations 2019. The work undertaken in 2018 now needs to be reviewed by Officers to establish whether the evidence base is complete and will be robust and up to date in supporting the implementation of a CIL Examination going forward.
- 3.1.7 Since 2014 the following circumstances have changed. The role of developer contributions continues to be subject to evolution and further regulation. The CIL Regulations were introduced in 2010 and have been updated several times. The Government has made it clear that CIL, as a floorspace charge for infrastructure, is the preferred method of obtaining contributions from development towards infrastructure costs. In addition, the economy has changed since the previously

published evidence base was completed in 2013-2014, and the Local Development Plan has now been adopted. Taking these changes into account, updated viability evidence will assess whether there is scope to introduce a CIL within the District and the rates that could be charged on development.

- 3.1.8 It is recommended that, subject to the outcome of updated viability evidence, a Draft Charging Schedule be brought back to Committee for consideration and approval for public consultation. Public consultation will allow the Council to seek the views of the community and development professionals in the District and allows further consideration of the implementation of a CIL for the District.

3.2 **What are the benefits of implementing CIL?**

- 3.2.1 CIL remains discretionary for the Local Planning Authority. In bringing forward the CIL regime the Government has clearly set out its intention that it expects all local planning authorities to fully understand the realities of infrastructure delivery and economic viability. Charging authorities need to strike an appropriate balance between the need to capture funds for infrastructure and the potential effects of the CIL rates upon the economic viability and delivery of development, taken as a whole across the authority's area.
- 3.2.2 The economic evidence on the potential to capture potential land value forms the basis for setting CIL charges. Viability is tested at a District wide level in setting CIL rates, compared to site by site negotiation under Section 106. It is expected that CIL will capture more of the land value uplift that results from development than Section 106 contributions are able to capture.
- 3.2.3 The updated viability evidence will focus on the rates of CIL that can be viably afforded by development across the District (including a Viability Workshop with key developers which is intended to share and to test the viability assumptions used in the evidence), not on the infrastructure that the money is spent on. In considering options to set CIL rates, the affordable housing rate is the factor that makes the most difference to the viability of setting CIL rates and small adjustments to the affordable housing rates can make significant changes to the CIL rates and potential CIL receipts. The viability evidence will set out rate setting options that balance potential CIL income with affordable housing.
- 3.2.4 CIL differs fundamentally from Section 106 obligations in that the funds collected are not tied to a specific development or to the provision of specific infrastructure. Unlike infrastructure provided through Section 106 obligations, which must be necessary to mitigate the impacts of a particular development and used only for that specific purpose, CIL funds can be used flexibly by the local planning authority to fund any infrastructure as defined within the regulations. CIL funds are also collected from a greater number of individual development schemes and once adopted, the CIL charge is a non-negotiable charge on all qualifying development. Although changes to the Section 106 process from September 2019 will remove the limit to the pooling of Section 106 contributions for the infrastructure that is needed to support new development, it is still likely that the Council could capture more of the land value uplift if it introduced a CIL, subject to updated viability evidence.

3.2.5 In accordance with the Community Infrastructure Levy (Amendment) Regulations 2013 a specific proportion of CIL receipts would be passed to town and parish councils in relation to development within their areas and as set out in the regulations. In locations with an adopted Neighbourhood Plan, 25% of CIL receipts would be passed to local communities to help fund local infrastructure in the location of the chargeable development. In all other locations, 15% of CIL receipts would be passed to local communities subject to annual limits as defined in the CIL Regulations (15% up to a maximum of £100 per dwelling per annum where there is no neighbourhood plan).

3.3 **What is the process for implementing CIL?**

3.3.1 There is a defined process for preparing and adopting a CIL including an independent examination to test the rates and robustness of the evidence. The process for preparation and approval of the Charging Schedule is set out in legislation (Planning Act 2008 part 11, the Community Infrastructure Levy Regulations 2010, the Community Infrastructure Levy (Amendment) Regulations 2011, the Community Infrastructure Levy (Amendment)(England)(No.2) Regulations 2019). This involves evidence gathering, consultation and testing at a public independent examination. Authorities wishing to implement CIL must produce a Charging Schedule setting out the levy rates for their area.

3.3.2 Charging authorities need to strike a balance between the need to capture funds for infrastructure and the potential effects of the CIL rates upon the economic viability and delivery of development, taken as a whole across its area. The evidence must demonstrate both that there is an infrastructure funding gap and that the proposed CIL rates are viable. An Infrastructure Delivery Plan was produced in 2014 as part of the evidence base for the Local Development Plan. It clearly shows that a funding gap exists between what is needed to support the delivery of the Local Development Plan and the identified funding.

3.3.3 The steps required to implement CIL are summarised below:

- Prepare Draft Charging Schedule;
- Public consultation;
- Revise Charging Schedule (if required) taking into account comments received;
- Submit Draft Charging Schedule for Examination;
- Examination in Public;
- Adoption by Council of CIL Charging Schedule.

3.3.4 Once approved, the Charging Schedule does not form part of the development plan but does support and enable delivery of the development strategy.

3.4 **Administration and monitoring costs**

3.4.1 As well as the preparation and approval of CIL, the administrative process to collect CIL if implemented will also need to be established. This will enable CIL to take effect as soon as possible after adoption. The CIL Regulations 2010 allow for 5% of

CIL income collected in the first three years of CIL to be used for set up costs incurred during those three years and/or for costs incurred before the Charging Schedule is published. From year 4 onwards, 5% of CIL income can be used for administrative costs incurred in the same year.

- 3.4.2 From September 2019 councils will be required to publish annual Infrastructure Funding Statements by December 2020 to include CIL and Section 106 receipts and expenditure and a list of projects that the Council intends will be funded by CIL.

4. CONCLUSION

- 4.1 The implementation of a CIL supports the delivery of the Local Development Plan. With the change in circumstances since 2014, an updated CIL viability evidence will demonstrate whether there is scope to implement a CIL within the District, which would enable the Council to maximise the collection of funding from development to contribute towards infrastructure costs.

5. IMPACT ON STRATEGIC THEMES

- 5.1 CIL has the potential to support the Council in providing excellent services and value for money, in being financially independent and sustainable, and in providing sustainable growth and new infrastructure, by enabling the Council to maximise the funding that it collects from development to contribute towards infrastructure funding.

6. IMPLICATIONS

- (i) **Impact on Customers** – The adoption of a CIL Charging Schedule for the District would provide Maldon District Council and Parish / Town Councils with greater certainty over the amount of financial contributions which can be gained from new development. CIL provides the opportunity for the District Council to have greater flexibility over the use of infrastructure funds and to prioritise investment as needed.
- (ii) **Impact on Equalities** – CIL is designed to make the process of obtaining contributions from development towards infrastructure fairer, faster and more transparent.
- (iii) **Impact on Risk** – There are no significant risks in updating the viability evidence base and identifying options for taking forward CIL charges. Risks may arise at later stages, when Council is asked to approve the submission of the final charging schedule for Examination. The risks will be minimised by proposing CIL rates that align with the viability evidence.
- (iv) **Impact on Resources (financial)** – The costs of implementing CIL will be met from the 5% of CIL income that the Council is allowed to keep for administration purposes in the long term. In the meantime it is being funded through the agreed departmental budget of the Strategy, Policy and Communications Team.

There will be a requirement to consider how CIL is administered internally and the governance around how it is to be spent. It is proposed that discussions are held internally, and recommendations are brought to this Committee when approval is sought to submit CIL for Examination.

Once adopted, CIL will be payable on all qualifying development and this may impact on Council owned land in terms of being a consideration in sales negotiations and in being levied when developing the Council's own schemes. However, the viability evidence undertaken to inform CIL charging rates will test the value at which rates can be set taking into account land values at an appropriate market value.

- (v) **Impact on Resources (human)** – The Strategy, Policy and Communications Team currently has interim resource in place until mid – October 2019. There is a risk that permanent resource will not be in place longer term, and an extension of the interim resource may be required. It is anticipated that Local Development Plan reserves will be used to fund the CIL Examination, but if necessary a supplementary estimate will be provided. Consideration will need to be given as to whether resources are sufficient to manage the collection of CIL, once adopted. If additional resource is required, this can be funded through the 5% of CIL monies that local authorities are allowed to keep to administer CIL.
- (vi) **Impact on the Environment** – CIL provides the opportunity for the Council to obtain a greater amount of contributions from development to be used for the provision of infrastructure in the District. This has the potential to have a positive impact on the environment as monies can be used towards providing infrastructure required to support new development.
- (vii) **Impact on Strengthening Communities** – CIL has the potential to strengthen communities through the funding of infrastructure required to support new development.

Background Papers:

Report to Maldon District Council 11 September 2014 (Maldon District Council Community Infrastructure Levy Draft Charging Schedule Consultation Update and Submission)

Report to Maldon District Council Planning and Licensing Committee 02 March 2017 (Community Infrastructure Levy)

National Planning Policy Framework (Ministry of Housing, Communities and Local Government (MHCLG), 2019)

The Community Infrastructure Levy Regulations (2010, 2013 amendments, 2014 amendments, 2019 amendments)

Enquiries to: Georgina Button, Strategy, Policy and Communications Manager,
georgina.button@maldon.gov.uk