

Appendices: 4



**NORTHAMPTON**  
BOROUGH COUNCIL

## CABINET REPORT

<b>Report Title</b>	<b>Community Infrastructure Levy – Examiner’s Report</b>
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**AGENDA STATUS: PUBLIC**

**Cabinet Meeting Date:** 9<sup>th</sup> September 2015

**Key Decision:** YES

**Within Policy:** YES

**Policy Document:** YES

**Directorate:** Regeneration, Enterprise and Planning

**Accountable Cabinet Member:** Cllr Tim Hadland

**Ward(s)** All

### 1. Purpose

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- 1.1 The purpose of this report is to highlight the findings of the Examiner’s report of the Draft Community Infrastructure Levy Charging Schedule (CIL) and seek a way forward in respect of implementing CIL.

### 2. Recommendations

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- 2.1 Cabinet recommends to Council that:
- 2.2 The CIL Charging Schedule is approved in accordance with Regulation 25 of the CIL Regulations 2010 (as amended) to take effect from 1<sup>st</sup> April 2016 (Appendix 1)
- 2.3 The CIL Regulation 123 List attached at Appendix 2 be approved
- 2.4 Exceptional circumstances relief be not applied to Northampton Borough
- 2.5 CIL policy on payments in kind and the Instalment Policy attached at Appendix 3 be approved

- 2.6 The Interpretative Note to the CIL Charging Schedule attached at Appendix 4 be approved
- 2.7 Delegated authority be given to the Council's Monitoring Officer to amend the Constitution to allocate requirements outlined in the report to resource the operational functions to facilitate the implementation of CIL

### 3. Issues and Choices

#### 3.1 Report Background

- 3.1.1 The Community Infrastructure Levy (CIL) is a new charge on development that came into force through the Community Infrastructure Levy Regulations in 2010. CIL is intended to fund a range of infrastructure that is needed as a result of development and will run alongside Section 106 agreements.
- 3.1.2 CIL provides a charge per square metre for additional floorspace and is charged for applicable development that meets the legislative requirements. Further details are provided below in respect of Northampton's Charging Schedule. The implications in respect of Section 106 of the Town and Country Planning Act 1990, (Planning Obligations) are also addressed in this report in respect of approving a Regulation 123 List.
- 3.1.3 The Council has been working jointly with Daventry District and South Northamptonshire Councils over the past 2 years to provide evidence for setting a levy that will help strike an appropriate balance in securing infrastructure, whilst not putting the overall development of the area at risk.
- 3.1.4 CIL is required to progress through separate stages of consultation, before it can be submitted for examination. Previous key milestones and the background to CIL consultation, through the Preliminary Draft and Draft Charging Schedules, have been reported to Cabinet. The last report was considered at 10<sup>th</sup> December 2014 meeting, which provided details of previous stages of consultation and resolved to submit the Charging Schedule for examination. The Schedule was subsequently submitted for examination in January 2015, and the rates proposed by the Council in line with supporting evidence are laid out in Table 1 below;

Table 1 Northampton Borough Draft Charging Schedule:

<b>Development Type</b>	<b>Levy per sqm</b>
Residential (excluding Sustainable Urban Extensions)	£50
Residential SUEs	£50
Retail (excluding central zone within ring road)	£100
All Other Uses	£0

3.1.5 The Charging Schedule is based on viability (ie what development can afford to pay) and as shown on the above table relates primarily to residential development, although retail provision outside the central area would be required to provide for CIL, this would include for example out of centre supermarkets and retail warehouses. Proposals for employment provision within the Borough would not be CIL liable. CIL has the ability to be reviewed in the future, as appropriate for example, as economic conditions and viability change. The rates would also be indexed each year to reflect changes in construction costs in line with CIL Regulations. The Full Charging Schedule is appended to this report (Appendix 1).

3.1.6 The Charging Schedule for Northampton was subject to an independent examination held on 13<sup>th</sup> May 2015. The final report has been published on the Council's website and can be accessed through the following link:

<http://www.northampton.gov.uk/info/200205/planning-for-the-future/2001/community-infrastructure->

#### Examination of the Charging Schedule

3.1.7 Following examination the report was issued in July. A series of background documents were also submitted to the examination in support of the proposed Charging Schedule, and included the Regulation 123 List and an instalment policy. (Appendices 2 and 3 refer). Whilst the background documents were not examined in their own right by the Examiner, they provide support in evidencing the viability of the Charging Schedule.

3.1.8 The Examiner's report concluded that the Council's CIL Charging Schedule provides an appropriate basis for the collection of the levy in the Borough. Further, that the Council had provided appropriate evidence to support the schedule and could show that the levy was set at a level that would not put at risk development within the area. Consequently, the Examiner is satisfied that the rates shown in Table 1 can be applied to qualifying development upon the implementation of CIL.

#### Policies and Supporting Documents

3.1.9 A number of supporting documents were submitted to the Examiner as supporting evidence to the Draft Charging Schedule. The Examiner has not specifically referred to these policies in his report, however, they do not form part of the formal examination process. These policy documents are considered as follows;

#### The Regulation 123 List

3.1.10 The Council is required under Regulation 123 of the CIL Regulations to publish a list of infrastructure types or specific infrastructure schemes that will be wholly or partially funded by CIL. The Regulations prohibit the use of CIL and S106 monies funding the same piece of infrastructure and seek to limit the application of S106 by introducing pooling restrictions referred to below (para 3.1.20).

- 3.1.11 The Draft Regulation 123 List considered at the examination is set out at Appendix 2 to this report. Comments submitted during the consultation process were taken into consideration in respect of submission.
- 3.1.12 Following the Examination of the Draft Charging Schedule further discussions were held with Northamptonshire County Council Officers to address the County Council's outstanding objection to the inclusion of primary education in the Draft Regulation 123 List. The County Council re-emphasised its concern that the inclusion of primary education in the Draft Regulation 123 List would have the potential to jeopardise the provision of primary schools as there is a significant total infrastructure funding requirement on the Draft Regulation 123 List, with no current means of ensuring that CIL receipts will be used to pay for primary school places. Instead the County Council would prefer to continue the current, successful approach of using Section 106 agreements to fund primary schools. The County Council has confirmed that it will provide details of specific school schemes for inclusion in all Section 106 agreements to ensure that the pooling restrictions are eased. It has been agreed with the County Council that this approach will be kept under review and if necessary changes made to the Regulation 123 List in the future.
- 3.1.13 It is therefore proposed that the Draft Regulation 123 List be amended to specifically exclude primary schools and that the Regulation 123 List attached at Appendix 2 is approved.
- 3.1.14 The Council's Planning Obligations Supplementary Planning Document (SPD) sets out the Council's position on seeking contributions via S106. The SPD was adopted in 2013 and is up to date in the context of current national policy. However, amendment will be required to reflect the implementation of CIL. In particular it will need to be clarified that infrastructure items on the Reg 123 List will no longer be able to be sought via planning obligations.

#### Instalment Policy

- 3.1.15 A charging authority has the ability to set out an instalment policy that allows payment of CIL to be made over a longer period of time. This can be particularly important for larger schemes where phased payments provide the opportunity for managing cash flow as a site progresses, and assists the prospect of development taking place. Cabinet resolved to agree the content of the instalment policy at its meeting of 14<sup>th</sup> December 2014, and subsequently submitted the draft instalment policy for consideration alongside the Draft Charging Schedule. It is proposed that the Instalment Policy is adopted as set out in Appendix 3.

#### Exceptional Circumstances

- 3.1.16 The CIL Regulations allow a charging authority to decide if it wishes to offer exceptional circumstances relief, where the amount of CIL does become negotiable based on the viability of a particular development. If a charging authority does not choose to put exceptional circumstances relief in place, it cannot be used.

3.1.17 During the consultation prior to submission, some respondents suggested the Council should offer exceptional circumstances relief. It was concluded at that time there was no pressing case to do so, and that sites eligible for relief are likely to be few in number. Further, introducing the proposal would undermine some of the key benefits of CIL – its clarity and simplicity of application, and the confidence it would give to all involved in development about what their obligation would be. This remains the case, and accordingly it remains recommended that the Council does not offer exceptional circumstances relief.

#### Payment in Kind

3.1.18 The CIL Regulations allow a charging authority to accept land or infrastructure in lieu of the CIL charge. Valuation of this land and/or infrastructure and procedures for this are set out in the CIL Regulations. The Council will consider this form of payment in the appropriate circumstance.

#### Implementation of CIL

3.1.19 With the finding that the proposed Charging Schedule is legally compliant, is supported by background evidence justifying the need for CIL and is economically viable, the Council has the ability to adopt CIL. The Charging Schedule must be formally approved by a resolution of the full council of the charging authority, and should include an appropriate commencement date.

3.1.20 The advantages of implementing CIL can be considered as follows:

- It is a fair and transparent charge which helps set expectations of landowners, developers, and should help ensure that developers do not in future commit to paying excessive amounts for land
- It is payable by the majority of all new development which relies on infrastructure, not just the larger development schemes
- Part of the funds raised can be used by local communities to address the impacts of new development in their neighbourhood (essentially 15% of receipts to Parish Councils and 25% where a Neighbourhood Plan is made)
- The Council has greater control over how and when CIL is spent compared to Section 106
- Without CIL the ability to manage the impact of development would be substantially weakened, due to restrictions on the pooling of S106 planning obligations, as Councils can no longer pool more than five S106 obligations together for a single infrastructure project or type of infrastructure

3.1.21 In addition to the above it has become clear through the preparation work for implementing CIL that there is a need to provide as much clarity as possible as to the types of development that are included within the various categories of the charging schedule. The submission Charging schedule

refers to residential and retail uses. The definitions of these uses require reference to the planning use classes which they include.

3.1.22 It is therefore proposed that the Charging Schedule be accompanied by an Interpretative Note setting out the Council's definitions of development type, as set out in Appendix 4.

3.1.23 As reported above a resolution to approve CIL should include an appropriate commencement date. The implementation, collection and governance of CIL are complex and will involve resources from the Council and the Local Government Shared Service (LGSS). There are a number of issues that require consideration prior to implementing CIL; these are set out below together with a proposed date for implementation.

### **3.2 Issues**

3.2.1 In addition to the matters outlined in this report, the Council needs to agree a practical implementation date from which to commence charging, and ultimately collecting, CIL. There are a further number of issues to consider;

#### Staffing and resourcing

3.2.2 A CIL Implementation Group has been set up to co-ordinate the implementation of CIL; this involves staff from a number of services areas (including LGSS) to deal with the various aspects of CIL. To take this forward will require a refresh of resources and the establishment of a project lead. CIL is a complex process and additional training will be required to familiarise staff with the workings of CIL.

#### Validation of Planning Applications

3.2.3 A number of authorities, which have implemented CIL, have made the submission of CIL Additional Information Forms a Validation requirement for all planning applications. The indication in the NPPG is that authorities can legitimately refuse to validate applications that are not accompanied by this information without going through a process of formal consultation on changes to its Local Validation List.

3.2.4 The submission of this information is considered to be essential to considering the application and the expedient processing of CIL. Accordingly all planning applications received by the Council from the CIL implementation date, to be properly registered, should be required to provide additional information to enable the Council to calculate levy liability.

#### CIL Software

3.2.5 The Council has recently purchased new planning software to improve efficiencies within its Planning section; this software includes a module to assist with the implementation of CIL. The new software is in the process of being fully installed and training for staff has yet to be finalised.

#### Publicising CIL

3.2.6 Proactive engagement with planning applicants, parishes, forums (particularly in relation to the Neighbourhood proportions of levy payable through CIL in relation to Neighbourhood Plans) and the wider development industry will be required prior to implementation to ensure the process is properly understood.

#### Constitution

3.2.7 There is a need to make a number of amendments to the Council constitution to enable various services to undertake key CIL tasks. The main tasks and responsibilities are as follows:

Table 2 CIL key tasks

Task	Responsibility
Review and make alterations to the CIL Charging Schedule and Associated Policies	Regeneration, Enterprise and Planning
Report of CIL Collection and Expenditure	Regeneration, Enterprise and Planning
Assessing the amount of CIL Liability including determining applications for CIL relief	Regeneration, Enterprise and Planning
Issue Liability Notices	Regeneration, Enterprise and Planning
Demand Notices for CIL.	Finance
Collection and Administration of CIL payments	Finance
Processing and determining applications for Payment in Kind	Regeneration, Enterprise and Planning
Enforcement against non-payment of CIL	Finance
Enforcement of CIL functions – Stop Notices	Planning Enforcement

3.2.8 It is recommended that final and detailed changes to the Council constitution to incorporate these tasks and the general processing of CIL are delegated to the Council’s Monitoring Officer.

3.2.9 The approval of new Charging Schedules, changes to the Regulation 123 List and Council CIL policies together with decisions over the spending of CIL will remain subject to the approval of Council.

Spending arrangements, including in relation to agreements for:

- Cross boundary infrastructure and
- Neighbourhood CIL income

3.2.10 Further work is required to address the governance of any future CIL spending, this would also apply cross boundary in respect of the strategic infrastructure projects required to support growth, and would also require focused discussions with local communities in respect of potential spend

## Conclusions

3.2.11 It is recommended that Cabinet agree to progress to the formal adoption of the Draft Charging Schedule and implement CIL from 1<sup>st</sup> April 2016, and that the Draft Regulation 123 List and supporting documentation also be approved and that the recommendation be forwarded for resolution by Full Council.

### 3.3 Choices (Options)

3.3.1 The Council could choose to implement CIL (from effect from 1<sup>st</sup> April 2016) this would provide an opportunity to resource the issues raised in the report, provide a clear timetable for implementation, and the address the need to provide further publicity of the levy requirements with planning applicants.

3.3.2 The Council could choose not to implement CIL. The opportunity to realise the benefits outlined in para 3.1.19 of the report would be lost. In particular planning applications for residential development under 15 units do not tend to provide funding towards the Borough's infrastructure needs, this would continue to represent a missed opportunity without the implementation of CIL. Further, the pooling restrictions will limit the Council's ability to secure planning obligations as time advances.

## 4. Implications (including financial implications)

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### 4.1 Policy

4.1.1 The adoption of CIL would support the strategic policy objectives in seeking to assist the delivery of strategic infrastructure requirements for delivering future growth. In particular it would assist in addressing cross boundary issues within West Northamptonshire, relating to infrastructure delivery and remove the barrier relating to pooling restrictions referred to in this report.

### 4.2 Resources and Risk

4.2.1 Resources for implementing CIL are to be provided from within existing officer resources. A CIL implementation group consisting of officers from appropriate service areas has been in place for some time, which will ensure the required resources are planned into service delivery.

4.2.2 New planning software which is currently being implemented by the Council's planning service takes into account the requirements of charging CIL. The costs of developing CIL have been borne by the Joint Planning Unit (which is funded by Northampton, Daventry and South Northants Councils). 5% of the costs of administering CIL, including set-up costs, can be met from CIL income by the charging authority.



- 4.2.3 An instalment policy has been proposed to assist viability in striking a balance between infrastructure delivery and setting a charging rate.
- 4.2.4 To enable a CIL to be taken forward requires an infrastructure funding gap to be evidenced. This has been established, it should however be recognised that it is not the intention of CIL, to fully meet this funding gap. The Council will continue to need to work actively with partnering organisations in pursuing funding opportunities and initiatives in order to help provide towards future infrastructure requirements

### **4.3 Legal**

- 4.3.1 The CIL Regulations 2010 (as amended), together with the Planning Act 2008, provide the legislative requirements for implementing CIL; these will be required to be followed in implementing the Charging Schedule.
- 4.3.2 Generally CIL is intended to be used for off-site infrastructure provision, whilst S106 planning obligations are to be used for site-specific mitigation measures arising from new development.
- 4.3.3 The duties created through the implementation to CIL will require amendments to the Council's constitution as highlighted in this report.

### **4.4 Equality and Health**

- 4.4.1 There are no equality/health issues directly relating to the recommendations of this report.

### **4.5 Consultees (Internal and External)**

- 4.5.1 There are clear legislative requirements to be followed in implementing CIL. In addition this Council forms part of the Charge Setting Working Group, which is West Northamptonshire wide in its approach (and includes all the Councils operating within this area) and has engaged with utility providers, the development industry and parish councils as appropriate. More general engagement has been undertaken with the wider population and stakeholders through consultation as required through the CIL Regulations, required independent examination. In addition workshops have been undertaken with stakeholders and infrastructure providers.

### **4.6 How the Proposals deliver Priority Outcomes**

- 4.6.1 CIL will provide towards supporting infrastructure in assisting the delivery of future growth proposed through plan making. It will assist in all aspects of the Corporate Plan.

## **4.7 Other Implications**

4.7.1 None

## **5. Background Papers**

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5.1 Report of the Examination of the Draft Northampton Borough Council CIL Charging Schedule (July 2015)

Appendix 1 – Draft CIL Charging Schedule

Appendix 2 – Draft CIL Regulation 123 List

Appendix 3 – Draft Instalment Policy

Appendix 4 – Interpretive Note to the Charging Schedule

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