

BRECKLAND DISTRICT COUNCIL

Report of Mark Kiddle-Morris, the Executive Member for Assets and Strategic Development

To: Overview and Scrutiny Commission 18th July

(Author: Sarah Robertson, Planning Policy Officer (Capita Symonds))

Subject: Breckland Community Infrastructure Levy

Purpose: The purpose of this is to provide Members with an update on the Community Infrastructure Levy following the consultation on the Preliminary Draft Charging Schedule

Recommendation:

For Overview and Scrutiny Commission to note the contents of this report along with any observations.

1. Background

- 1.1 Members will be aware that following agreement from Cabinet on 26th March the Preliminary Draft Charging Schedule for the Community Infrastructure Levy (CIL) was published for public consultation between 15th April and 28th May. This report seeks to inform Members not only of the public consultation, but also of the work which has previously been undertaken on CIL. As such, part of the report contains information which was presented to Cabinet in relation to the premise and evidence base for CIL. It also reports on the work undertaken since the Cabinet report.
- 1.2 Briefly, CIL represents a tax on new developments over 100sqm and is intended to produce a fairer system for the funding of community infrastructure than the existing use of section 106 (s106) agreements. Furthermore, the role and use of s106 agreements is being scaled back through national planning regulations which are currently timetabled to take effect from April 2014. Due to these changes to the s106 process, the production and implementation of a CIL for Breckland has become more imperative.
- 1.3 Members are reminded that CIL rates need to be set having regard to the general viability of development versus the desirability of funding for infrastructure from CIL. Therefore, it may be that the imposition of CIL in the District may unfortunately render some specific development sites unviable. However, that is not to mean that the approach is unsound providing that it can be demonstrated that the majority of a particular form of development will still remain viable.

Viability Assessment – Implications for the approach to CIL

- 1.4 CIL rates need to be determined based on viability evidence. The approach taken in the viability assessment was to consider a range of notional development scenarios that aim to demonstrate whether there are variances in viability across the district for particular development types. The approach adopted in Breckland accords with best practice and has been adopted in other Local Authority CIL viability assessments that are further along the process, and relevant independent Examinations. It also represents a pragmatic way of dealing with viability considerations without trying to replicate a specific scheme.
- 1.5 The viability of the scenarios was assessed using the residual valuation method. The residual land value for a site forms the sum which is left over to pay for the land once all the other associated costs have been deducted from the gross development value of the scheme. The costs include materials costs, finance and professional fees, as well as the

cost of delivering the Council's full policy requirement for affordable housing (currently 40% on site). If a CIL is applied to the development, this would see a reduction in the residual land value to accommodate the cost. In order for a development to be able to support a CIL and see the land sold for development, the residual land value must be greater than the existing use value or an alternative use value.

- 1.6 Evidence found that there are variations in the sales values for for a variety of development types within Breckland (sales values are crucial to determining the Gross Development Value of a scheme). The variations are particularly notable for the approach to residential development. This was confirmed in the latest viability assessment from a review of residential sales data (supplied from the Council's Hometrack system). This established that when looking solely at sales values there are, in effect, three residential zones in Breckland. The first zone includes the market town of Attleborough and the majority of the rural parishes within the District. These have the highest residential sales values within the District and consequently, proposals would result in a greater overall development value. The viability assessment concludes that there is a sufficient residual land value within this zone to charge a CIL rate.
- 1.7 The second residential sales value zone includes the market towns of Dereham, Swaffham and Watton, a number of the rural parishes located to the south west of the District and some of the rural parishes to the west of Dereham. In this area the viability assessment concludes that development conditions are less positive, and that there is currently insufficient evidence of viability that would indicate that the majority of development in this area could support a CIL charge. This is due to the fact that the residual land values are below a benchmark level (£371,000 per hectare) at which land would reasonably transact for.
- 1.8 The third residential sales value zone which can be clearly identified using the recent sales value data is Thetford. Residential sales values within the town (for all property types) are lower than seen in the rest of the District. Whilst land values within the town are reflective of the lower sales values, the assessment concludes that there is not sufficient viability to support a CIL charge for the town. In effect the viability assessment therefore establishes two residential CIL charging zones. A higher value zone as identified in paragraph 1.6, where a CIL rate of £60 per sqm is proposed, and a £0 per sqm rate for residential development in the rest of the District.
- 1.9 The viability assessment has taken into account the Government expectation that the imposition of CIL will exert a downward pressure on land values. Furthermore, sensitivity testing has been carried out looking at carrying the costs associated with external works. This included lower rates for external works (i.e. local access roads and connection of utilities etc) as a percentage of development costs which reveals that CIL could potentially rise to £170 in the higher value zone. However, having regard to the earlier issue of 'general viability', caution should be exercised if considering setting a CIL rate at the very upper limit of what may be viable in a notional example. This might make a greater amount of development unviable.
- 1.10 Different Levels of affordable housing were also sensitivity tested for interest as affordable housing remains a 'policy decision', unlike CIL. However, in calculating the level of CIL, guidance indicates that this should be based on delivering the Council's full policy requirements which at the present time equate to 40% affordable housing on sites over 0.17ha or proposed more than 5 dwellings and this should be borne in mind in Members deliberations. The following map shows the two residential CIL charging zones proposed within the Preliminary Draft Charging Schedule. Zone A on the map represents the higher sales value zones, where a CIL rate of £60 per sqm is proposed. Zone B represents the medium and lower value zones described above, where no residential CIL rate is proposed.

Viability Assessment Findings

- 1.11 Residential development – Results find that in the highest value zone, zone A, CIL could be charged at £60 per m2. In the second and third sales value zones (as described in paragraphs 1.7 and 1.8), the results indicate that there is insufficient viability to support any residential CIL charge.
- 1.12 Commercial development – the assessment finds that no development within the ‘B class’ uses (manufacturing, warehouses, offices) is viable in Breckland. This is not unsurprising given current economic conditions in the UK at this time and is coterminous with the results of other CIL viability assessments locally and nationally. Therefore, it is considered that for commercial development, the commercial CIL zone should extend to the whole district and a rate set at £0 per m2.
- 1.13 However, there are certain forms of commercial development that are viable within Breckland. In particular, the assessment indicates that retail stores outside town centre boundaries (as defined on adopted LDF Policies Map) are viable to the extent that they could support CIL. Based on sensitivity testing the assumptions for external works costs, retail developments in class A1 could support CIL at a rate between £150 and £240 per m2. It is proposed to include a CIL rate of £150 per sqm within the PDCS.
- 1.14 Other viable forms of development include residential care homes, holiday accommodation and hotels. Viability evidence cannot practicably consider all forms of development, but it is unlikely that there is sufficient evidence of viability to enable CIL to be levied on other forms of development that are not specifically listed in the Preliminary Draft Charging Schedule. The Preliminary Draft Charging Schedule included the following CIL rates:

Use Class	Rate (£ per square metre)	
	Zone A	Zone B
Residential Dwelling Houses (C3)	£60	£0
Commercial Development (B1, B2 and B8)	£0	
Out of Centre Retail Development (A1)	£150	
Other Retail Developments (A1 in town centre, A2, A3, A4 and A5)	£0	
Hotels (C1)	£140	
Residential Care Homes/Institutions (C2)	£90	
Holiday Accommodation (C3) – where subject to a planning condition or legal agreement restricting occupation to holiday accommodation	£30	
All other development	£0	

- 1.15 The assessment has also considered the potential impacts on viability of introducing an instalment policy as part of the councils approach to CIL. An instalment policy needs to be triggered by a period of time rather than an amount of development completed. This is due to the fact that CIL is effectively administered in the same way as other taxes/ levies, and as such, the Council will need to take into account the fact that development could stall and income not be received for some time. There is also a need to secure funds swiftly in order to ensure that funds can be secured to the CIL ‘pot’ to enable delivery. Without introducing an instalment policy, the liability would otherwise be due shortly after notice of commencement by the developer.

Infrastructure Funding Gap

- 1.16 The stage 1 outline study (2011) indicated that there was expected to be an infrastructure cost of £209million to deliver the planned growth agenda. There is currently committed funding of £16.2million from public and other sources. This left a funding gap of £193million. Of this, the stage 1 study estimated that £149million would come from S106 and other identified funding, leaving a net funding gap of **£59.9million** to be funded from CIL or other sources (grants etc).

- 1.17 The CIL infrastructure funding paper seeks to understand what the level of funding arising from CIL could be based on the conclusions of the viability assessment. The paper also updates the infrastructure costs and funding sources in accordance with updates to the recent evidence base. The paper shows a slight increase in the total infrastructure cost within the District to £233million. However, the main difference is the cost of infrastructure which the Council expects to come forward through S106 agreements on the identified Urban Extensions (Attleborough and Thetford) which has risen to £195million. Committed public and utility company funding of £15.2million has also been identified, which leaves a funding gap of £22.3 million. The paper at Appendix C estimates that CIL could generate £9.09million gross, based on the expected level of growth in Council's current adopted DPDs and assuming an annual rate of rural windfall development equivalent to the level achieved in 2011/12.
- 1.18 Therefore, there is likely to remain a funding gap (after potential CIL income and s106 requirements) of £13.21million. However, this funding gap may further increase due to a meaningful proportion of the money raised from CIL going to local communities, which might not be spent on the items of infrastructure that the Council has identified or if items identified as being funded through s106 are not provided through this mechanism. However, the Government has recently published further draft amendments to the CIL Regulations which seek to ensure that communities spend their proportion of CIL monies on infrastructure to support the development of their areas.

Meaningful proportion for communities

- 1.19 The Department for Communities and Local Government released guidance in January 2013 for Local Authorities on the level of CIL receipts which will be payable to the local community. Communities without a Neighbourhood Plan will receive 15% of the CIL receipt, however this will be capped at a maximum amount of £100 per Council tax paying dwelling.
- 1.20 In locations with an adopted Neighbourhood Plan, 25% of CIL generated in those areas will be given over to communities, with the amount uncapped. Currently within Breckland there are no adopted Neighbourhood Plans.
- 1.21 The above provides an additional income for Town and Parish Council's to spend on infrastructure to support their areas. However, this may also have the effect of reducing the amount of CIL generated for the Local Authorities CIL 'pot' which may be required for wider strategic infrastructure.

2. Preliminary Draft Charging Schedule Consultation (April – May 2013)

- 2.1 The consultation was carried out in accordance with the requirements of the Community Infrastructure Levy Regulations 2010 (as amended 2011, 2012 and 2013). This represented the first opportunity for the public, developers and key stakeholders such as the Town and Parish Councils to comment on the charging schedule. An additional drop-in session was also held for town and parish council to discuss the implications of CIL on themselves. There was limited attendance at the drop-in session however a list of the town and parish council who did attend is included within Appendix A.
- 2.2 In total 18 representations were received during the consultation from a range of stakeholders, developers and agents. The representations were received in regards to the charging schedule, the viability assessment and the draft regulation 123 list, and represented both support for the charging schedule and objections to it. The key themes raised within the representations were:
- Concern regarding the use of zones for residential development. This also included objections based on whether parishes were included within zone A or B, and how infrastructure would be funded/provided in those areas where no CIL charge was proposed.
 - The County Council raised issues in regard to the potential renegotiation of existing section 106 agreements within the £0 per sqm zone. This particularly relates to contributions already secured for education.
 - The role of/continued use of s106 agreements in conjunction with CIL.

- The loading of the CIL charging schedule towards a limited range of development types (use classes).
- The assumptions used within the viability assessment, particularly in regards to residential and retail scenarios.
- The infrastructure items which would be funded through CIL.
- The benchmark land values which were used to assess the residual land valuations for the individual scenarios.
- The need for an instalment policy, and the timings for when the CIL charge should be collected.

2.3 It is not considered that the representations received against the Preliminary Draft Charging Schedule fundamentally undermine either the premise of CIL within the District or the viability evidence which has been produced. It does however show that there is the need for further viability evidence to be carried out, particularly in regards to the retail scenarios and on residential development. Some further explanation within some sections of the viability assessment to improve the clarity of the document may also be of assistance for later stages in the process.

2.4 A further review of any new or updated sources of data may also be required to determine whether the proposed residential CIL zones need to be amended prior to next consultation.

3. Government Consultation on reforms to the CIL Regulations (2013)

3.1 The Department for Communities and Local Government consulted on proposed changes to the CIL regulations over the same time period as the Council's Preliminary Draft Charging Schedule was out to consultation. There is not currently a timetable for the implementation of the proposed changes to the regulations, however if they are implemented it could have an impact on the amount of money collected through CIL in Breckland.

3.2 The following is a summary of the key reforms proposed to the CIL regulations:

- The extension to the transition period prior to the limitations of pooling planning obligations from April 2014 to April 2015.
- Introducing relief from the levy for self build homes, this includes relief from the levy for those either building or commissioning their own home to become their principal house.
- Changing the way the infrastructure list is examined and reviewed.
- Allowing payment in kind through provision of both land and infrastructure either on-site or off-site.
- Allowing phased payments for all types of planning applications, including outline, full and hybrid applications.
- Allowing authorities to apply the discretionary relief from CIL for social housing to discounted market housing.

3.3 The reforms to the CIL regulations set out above have the potential to impact on the collection of CIL within Breckland. Whilst the extension to the transitional period would allow the Council more time to implement CIL in Breckland, there is currently no guarantee if this change will come into force or when.

3.4 A potentially significant reform would be to exempt self-build properties from CIL. A key difference of CIL from section 106 agreements is that it can be collected on smaller schemes including individual properties. A number of the individual windfall properties built within Breckland's rural parishes have the potential to be classified as self-build. Whilst the exact amendments to the regulations are unclear at present, it has the potential to further reduce the amount of money available for collection from CIL to fund infrastructure within the District. Further analysis of the financial impact of such a change may therefore be required in due course.

Next Steps

3.5 The next stage in the preparation of the CIL is the publication of the Draft Charging Schedule, for a six week period. As detailed within paragraph 2.3, further work will be needed to address the representations received during the consultation on the Preliminary

Draft Charging Schedule. There is the potential need for further viability evidence to be undertaken, prior to the Draft Charging Schedule being published. This work could include further retail assessments to include section 106 and section 278 costs within the assumptions. The current anticipated timetable for the publication of the draft charging schedule for consultation is for October 2013.

4 EXPECTED BENEFITS

- 4.1 The expected benefits are that the Council will progress the preparation of a CIL prior to the end of the prescribed period in the CIL regulations after which, the ability of the Local Authority to pool s106 contributions from 5 or more obligations towards infrastructure projects will cease.
- 4.2 CIL will also allow the authority to collect contributions towards infrastructure from a greater range and scale of developments than would have been possible under the existing S106 regime.
- 4.3 However, should certain proposed changes to the CIL regime be implemented, some of the expected benefits in terms of the amount of contributions from CIL may be reduced.

5 IMPLICATIONS

5.1 Legal

- 5.2 There are no direct legal risks resulting from the contents of this report; however, Local Planning documents need to be prepared in accordance with relevant Local Planning Regulations (particularly the CIL Regulations, as amended) and Acts of Parliament, having regard to relevant considerations and case-law.

5.3 Risks

- 5.4 There are risks associated with the funding of community infrastructure following the scaling back of s106 agreements from April 2014, if the Council does not develop and implement CIL.

5.5 Financial

- 5.6 Although this report does not have a direct financial implication, there are indirect financial implications. These are effectively considered in two parts. Firstly there will be costs associated with the preparation adoption, examination and adoption of the CIL, and secondly the costs associated with the implementation and charging of a CIL. The costs associated with the preparation of the CIL will principally include engagement methods, and the Charging Schedule will also be subject to an Examination in Public, which will incur costs from engaging a suitably qualified person (which could be a Planning Inspector).
- 5.7 As council has already committed to preparing CIL, the other indirect financial implications are principally centred on the resources to deal with implementation, administration and enforcement of CIL which could include the need to consider additional IT software to aid in the administration of CIL. The CIL regulations provide the ability for the Charging Authority to retain 5% of CIL receipts to cover administration costs, and these could assist with any additional financial burdens.

5.8 Timescales

5.9 Equality and Diversity

- 5.10 There are not considered to be any equality or diversity considerations as a result of this report.

5.11 Stakeholders / Consultation

- 5.12 This report provides updates on the recent consultation on the Preliminary Draft Charging Schedule

5.13 Contracts

- 5.14 There are no contract implications arising from this report

5.15 Section 17, Crime & Disorder Act 1998

5.16 There are no Crime and Disorder Act implications arising from this report.

6 WARDS/COMMUNITIES AFFECTED

All wards in Breckland

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Appendices attached to this report:

Appendix A: Summary of Responses

Appendix B: Preliminary Draft Charging Schedule

Appendix C: Community Infrastructure Levy Viability Assessment

Appendix D: CIL Revenue and Gap Funding Paper

Appendix E: Draft Regulation 123 List