

BRECKLAND DISTRICT COUNCIL

Report of: Mark Kiddle-Morris, Portfolio Holder for Assets and Strategic Development

To: Cabinet 1st July 2014

Author: Sarah Robertson, Planning Policy Officer (Capita)

Subject: Breckland Community Infrastructure Levy Draft Charging Schedule

Purpose: The purpose of this report is to present options on the progression of a Community Infrastructure Levy Charging Schedule for Members

Recommendation(s):

It is recommended that Members agree option 3 and halt the production of CIL at the present time.

1.0 BACKGROUND

1.1 Members will recall that the Draft Charging Schedule for the Community Infrastructure Levy (CIL) was presented to Cabinet on 29th October. At that Cabinet meeting Members were advised of the forthcoming amendments to the CIL regulations, and at that stage it was recommended that consultation on the Draft Charging Schedule be delayed until these regulations came into force in order to understand their implications on the value and implementation of CIL in the District. These amendments represent the 7th change to the Community Infrastructure Levy Regulations since they were published in 2010. This report sets out the work to date which has been carried out on CIL and the implications of the latest amendments to the regulations.

Work to Date: Preliminary Draft Charging Schedule Consultation (April-May 2013)

1.2 The work to date on CIL in Breckland has included a six week public consultation on the Preliminary Draft Charging Schedule, which was carried out in April-May 2013. The consultation was carried out in accordance with Regulation 15 of the Community Infrastructure Levy Regulations 2010 (as amended). In total 18 representations were received during the consultation from a range of stakeholders, developers and agents. A full summary of the responses received during this consultation is included at appendix E of this report, however the key themes raised within the consultation responses were:

- Concern regarding the use of different charging zones for residential development. This also included objections based on whether parishes were included within either zone A or B, and how infrastructure would be funded/provided in those areas where no CIL was proposed.
- Norfolk County Council raised issues in regard to the potential renegotiation of existing s106 agreements within the £0 per sqm zone. This particularly relates to contributions already secured for education and concern these could be lost.
- The loading of the CIL charging schedule towards a limited range of development types (use classes).
- The infrastructure items to be funded through CIL.
- The role of/continued use s106 agreements in conjunction with CIL.
- The assumptions used within the viability assessment, particularly in regards to the residential and retail scenarios.

- 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.

1.3 Since the Preliminary Draft Charging Schedule was consulted upon, further viability evidence has been undertaken in response to some of the representations received. This work particularly aimed to address the concerns of Norfolk County Council. The work looked to exclude education contributions from CIL and instead fund them through s106. However the additional viability work showed that it was not viable within Breckland to seek a larger s106 agreement to fund education in addition to a CIL charge for individual dwellings.

Amendments to Regulations

1.4 The amendments to the CIL regulations came into force on 24th February and it has now been possible to review these amendments and consider their impact upon the potential of CIL in Breckland. A full report considering these amendments and impacts is included at Appendix A. The key amendments are:

- Delaying the restrictions on pooling of S106 agreements from April 2014 to April 2015
- Exemptions from CIL for Self-Build properties. This includes both traditional self-build dwellings and those commissioned by individuals to use as their sole or main residence
- Allowing the phasing of CIL
- Allowing CIL to be set by size of development, not just by type (or Use Class)

1.5 In addition to the amendments to the CIL regulations listed above, the Government has also committed to a full review of all the CIL Regulations in 2015. They have stated that there will be no further amendments to the regulations prior to this review, in order to assess the effectiveness of these latest amendments.

1.6 The report at Appendix A to this report shows that the amendments to the CIL regulations are likely to lead to a reduction in the amount of money Breckland Council can expect to raise through the charge. The reduction to the CIL 'pot' primarily relates to the exemptions for self build dwellings. These dwellings will predominantly relate to windfall schemes for individual dwellings. Overall this could lead to a reduction in the CIL pot by up to 39.8% over the remainder of the plan period to 2026. The money raised through CIL over the remainder of the plan period would be £6.86 million.

1.7 It is not considered that the other amendments to the CIL regulations which came into force on 24th February, are likely to have a particular financial implication on the amount of money which can be raised through CIL.

Draft Charging Schedule

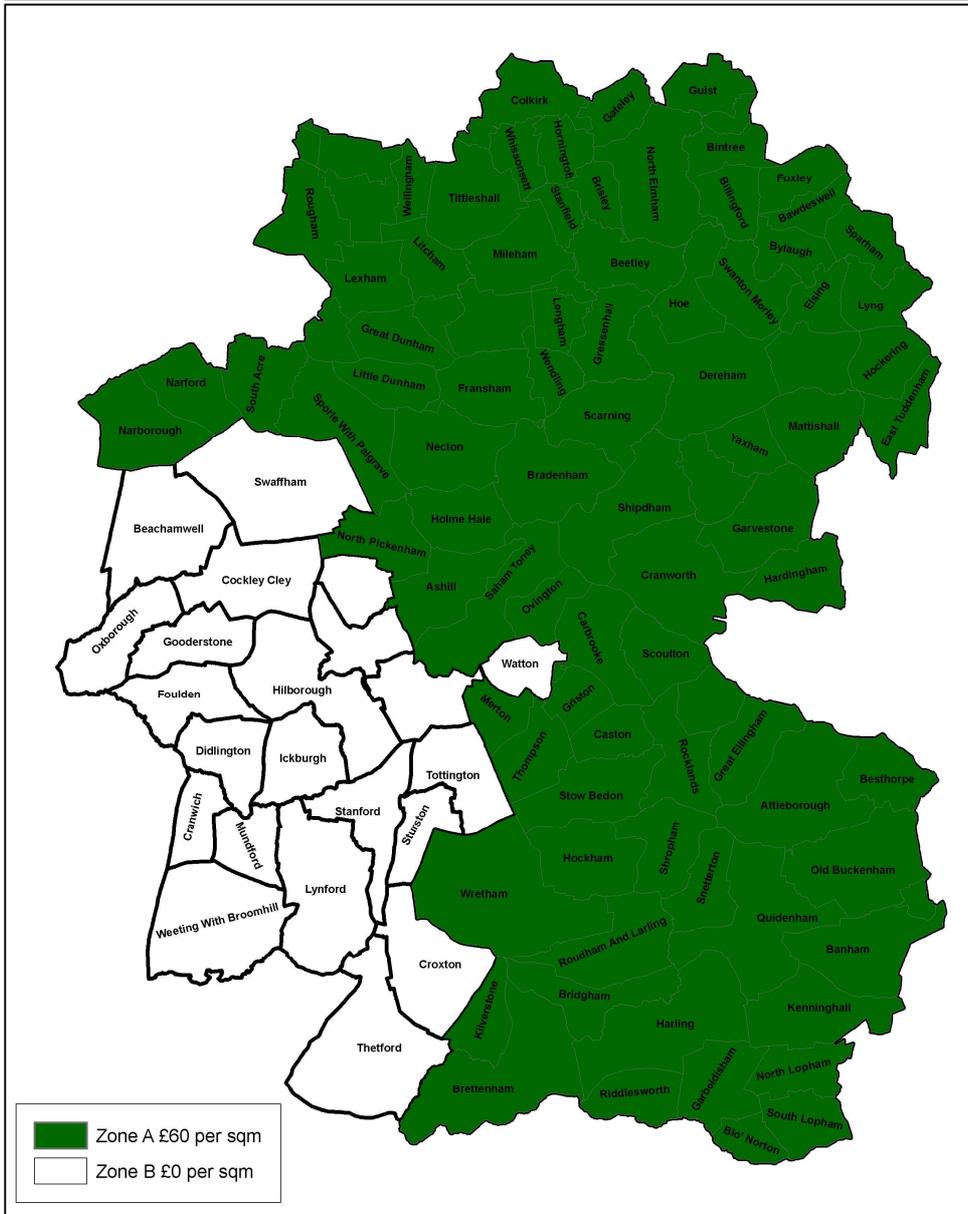
1.8 The Draft Charging Schedule which was presented to Cabinet in October proposed the following charging rates:

Use Class	Rate (£ per square metre)	
Residential Dwelling Houses (C3)	Zone A £60	Zone B £0
Commercial Development (B1, B2 and B8)	£0	
Out of Centre Retail Development (A1) excluding retail warehouses	£150	

Out of Centre Retail Warehouses (A1) – where subject to a planning condition or legal agreement restricting use to bulky goods.	£100
Other Retail Developments (A1 in defined 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

- 1.9 It is considered that these charges remain appropriate and there is not currently a need for further viability evidence. The residential charge retained the two zones as can be seen within figure 1. However a change has been proposed to the Zone A boundary. Further assessment of the residential sales values was undertaken. This work reflected the discussion from the Overview and Scrutiny Commission to re-consider the charging zones and it looked at the most recent housing sales values from the Council's Hometrack system. This further review also considered the role of new build premium on properties within the District.
- 1.10 The additional work on housing sales values focussed on the parishes to the west of Dereham, including Scarning, Wendling, Longham, Gressenhall, Fransham and Necton. The more recent Hometrack data (including information up to April 2013) showed little change in the housing sales values. However, when looking specifically at new build properties within this zone, the values are significantly above those being achieved for second hand properties, suggesting that there is a premium for new build properties in the area. This is significant as CIL will be charged on new build and would suggest that these parishes could be included within the higher value zone. Similarly, information for Dereham would suggest that there is also a new build premium within the town, with prices more closely aligned to those being achieved on new build in Attleborough. This would indicate the inclusion of Dereham within the high sales value zone, and could be charges the residential CIL rate.

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Breckland Council  Elizabeth House Walpole Loke Dereham NR19 1EE Tel. 01362 656870 - Fax. 01362 656297	Title Residential CIL Charging Zones		Scale 1:230,548
	Project / Details		Date
			Drawn by / Department
		Drawing / Reference Number	

Figure 1 Residential CIL Charging Zones

National and Local Picture on CIL implementation

1.11 The implementation of CIL across the Country has been slow. In Norfolk, Broadland, South Norfolk and Norwich City Councils all have a charging schedule in place and are charging CIL. North Norfolk took the decision in July 2013 to suspend work on CIL at the present time, whilst Kings Lynn and West Norfolk and Great Yarmouth Borough Councils are

considering their ways forward. The national take up of CIL has also been sporadic. Currently just 44 Local Authorities in England and Wales have a CIL in place. This equates to just 12% of eligible Local Authorities having a CIL in place.

Section 106 agreements compared to CIL

- 1.12 In April 2015 the use of s106 agreements will be scaled back to limit them to 5 obligations per item of infrastructure. However, this does not mean that s106 agreements will not be able to be used following April 2015. If the Council decide to proceed with CIL, the regulations allow the Council to exempt planning applications from CIL if a planning obligation is entered into where the obligation would be greater than the value that would have been charged under CIL. This approach is likely to be favourable where on-site infrastructure is needed to make the application acceptable in planning terms and where these would meeting the tests as set out in Regulation 122. This approach is proposed for the urban extension in Attleborough.
- 1.13 The amended regulations also include additional restrictions to section 278 agreements. These are agreements which secure contributions to for work to the highway. The restrictions to s278 agreements will prevent more than five contributions being pooled for a single piece of infrastructure. This amendment to the CIL regulations brings s278 agreements into line with s106 agreements.
- 1.14 Research undertaken to consider the potential money which could be raised through CIL, which accompanied the Preliminary Draft Charging Schedule provided a comparison in regards to the money which could have been raised through a s106 agreement. Norfolk County Council provide a set of standards in regards to education, library provision, community services, fire services, green infrastructure and household waste recycling facilities which is used for comparison.
- 1.15 Norfolk County Council's charges extend to £7,033 per dwelling with other elements of the charge to be negotiated on a site by site basis. This amount is a higher rate per dwelling than what is likely to be achieved by implementing CIL in Breckland. Furthermore, it should be noted that whilst a CIL charge would only be applied to all new dwellings within zone A, planning obligations sought through s106 agreements could be secured across the District. However, CIL charges would be applied to all new dwellings regardless of site size if they meet the criteria. S106 agreements are normally only secured against larger schemes.
- 1.16 As has already been stated, the latest amendments to the CIL regulations are likely to lead to a reduction in the amount of money which can be raised through CIL. This is likely to lead to the need for the Council to further prioritise the infrastructure required to support development as set out within the Regulation 123 list. The existing viability evidence base to support the charging schedule was prepared when housing sales values were recovering. However, should the housing market continue to improve, subject to viability assessment this could have an impact upon the overall CIL rate and areas where a CIL rate could be charged. However, this would result in the need for a full-scale review of the CIL Charging Schedule and assumes a stable set of Regulations.
- 1.17 It should be noted that the Government are currently consulting on changes to the role of s106 agreements. This consultation seeks to restrict the use of planning obligations to secure affordable housing contributions for sites of less than 10 dwellings. The consultation also includes a wider question on whether these restrictions to planning obligations should be extended to all obligations rather than just affordable housing. If these changes which are currently being consulted upon come into force, this could have implications on the level of contributions raised through s106 agreements.

Impact upon Infrastructure Delivery

- 1.18 The purpose of CIL is to fund key infrastructure requirements associated with development in Breckland. A requirement of CIL is for Local Authorities to demonstrate an infrastructure funding gap in order for them to charge CIL. Due to the amount of money which would be raised through CIL in Breckland there is concern regarding the satisfactory provision of critical infrastructure to support development if the Council continue with CIL. Due to the further reductions in the amount of money to be raised via CIL, this has implications on the amount of money available to fund infrastructure. Section 106 agreements would still allow negotiations to occur on an individual scheme basis and would therefore retain a degree of flexibility within the planning system. The reduction in the amount of money which could be raised through CIL is likely to lead to the Council having to make a number of decisions in regards to the prioritisation of infrastructure provision in Breckland.

Continued use of Section 106 in the absence of CIL

- 1.19 As previously mentioned from April 2015 the use of s106 agreements will be restricted to five or less obligations for any single type of infrastructure. Most of the infrastructure which is required to meet the existing allocated growth set out within the Local Development Framework is site specific. Subject to economic considerations there is a reasonable prospect that the Council can deliver this infrastructure via the Section 106 process.
- 1.20 Infrastructure which is unlikely to be site specific would predominantly include contributions for the County Council in the form of education contributions and also highways contributions under Section 278 agreements. The CIL regulations are clear that the pooling restrictions on planning obligations relate to either projects or types of infrastructure. Therefore, if a decision is made not to continue with CIL, s106 agreements will need to ensure that they are written specifically to individual projects (for instance this could refer to a classroom extension for an individual school, which has a known capacity issue).
- 1.21 If the Council decide not to progress further with CIL, the Council could take the decision to enter into a memorandum of understanding with the County Council. This would detail the way in which s106 agreements would be detailed. It would specify that identifiable Infrastructure schemes would be needed to meet the pooling obligations. For instance, this could include specifying classroom extensions to schools. This approach still presents risk factors. However, discussions have occurred with both Breckland's legal team and also the County Council to minimise any risk points and ensure s106 agreements meet the requirements set out within the CIL regulations.

Implication of not continuing with CIL on Town and Parish Councils

- 1.22 As Members will be aware, a key difference between CIL and section 106 agreements is the meaningful proportion of CIL which would go to Town and Parish Council's. If Cabinet take the decision to not progress CIL in Breckland, town and parish councils will not receive a meaningful proportion of the money to put towards infrastructure within their parish.
- 1.23 The meaningful proportion that town and parish councils would receive through CIL, relates entirely to money raised within the individual parish. Parishes with an adopted Neighbourhood Plan would receive 25% of the CIL receipts from their parish. Whilst parishes without a Neighbourhood Plan would receive 15% of the CIL receipts in their parish, however this would be capped at £100 per council tax paying dwelling per year. The amount of money individual parishes would receive would therefore be dependent on the level of development within their area. For parishes to the south-west of the district in the

£0 per sqm residential charging zone, they would not receive money through a meaningful proportion as residential development would not be charged CIL. For rural parishes in the chargeable CIL zone the level of money they receive through the meaningful proportion is likely to be limited. In these rural parishes new developments tend to be limited to small scale residential developments, typically for single dwellings. Other developments relate extensions and alterations to existing buildings. These forms of development are likely to be exempted from CIL due to the self build legislation. Therefore the total CIL receipt for the parish is likely to be limited. On this basis the level of money these parishes received through the meaningful proportion is also likely to be limited.

1.24 Section 106 agreements do not provide parishes with a meaningful proportion to spend on local infrastructure. However, section 106 agreements do need to meet the tests of section 122 of the CIL regulations. These are that the obligation is:

- Necessary to make the development acceptable in planning terms
- Directly related to the development
- Fairly and reasonably related in scale and kind to the development.

1.25 All money collected through section 106 would be spent on infrastructure required for that development and therefore it would go towards infrastructure within the parishes affected by the development. However, with CIL funds would be held in a single pot and could be spent on infrastructure provision on across Breckland.

2.0 OPTIONS

2.1 There are three options available to Members in regards to the Community Infrastructure Levy. A summary of the advantages and disadvantages of each option is also included below.

2.2 **Option 1:** Cabinet agree the publication of the Draft Charging Schedule and Regulation 123 list for the statutory six week publication. Further to this Members also agree for the Charging Schedule and any minor modifications to be submitted for public examination with an Independent Examiner following agreement from the Council Leader and the Executive Member for Assets and Strategic Development.

- **Advantages** – This option would see the Council continuing the preparation of CIL. To continue with this option reducing the risks associated with the restrictions on the pooling of s106 agreements that will take effect from April 2015.
- **Disadvantages** – This option commits the Council to continuing with a CIL charging schedule and needs to be weighed against the amount of money which will be raised by CIL to support infrastructure. The recent changes to the regulations have seen reductions in the amount of money to be raised to approximately £6,857,535 over a 13 year period. This represents a reduction in 39.8% from previous estimates. Furthermore, there are also risks associated with the review of the CIL regulations in 2015 and the potential for further changes depending on the outcome of Parliamentary elections. Notwithstanding this, the reduced CIL pot will also have implications on the provision of critical infrastructure to support planned development in Breckland. It is likely to lead to the need for the Council to make decisions regarding the prioritisation of infrastructure provision and may lead to the delay in some infrastructure being provided.

2.3 **Option 2:** Cabinet agree the Draft Charging Schedule and Regulation 123 list for public consultation and to bring back the Charging Schedule to Members before submitting it for examination.

- 2.4 The advantages and disadvantages for this option are the same as for option 1; however the following additional advantages and disadvantages have also been identified.
- **Advantages** – All Members of Cabinet would be able to consider any representations received in regards to the charging schedule and review their implications on the charging schedule.
 - **Disadvantages** – This option has the potential to delay the timetable for the production of CIL which could lead the adoption of CIL to be beyond the April 2015 deadline for the pooling of s106 agreements.

2.5 **Option 3:** Members agree to halt the production of a Community Infrastructure Levy for Breckland for the present time. The Draft Charging Schedule would not be agreed for public consultation.

- **Advantages** – Halting the production of CIL and continuing with a negotiated S106 approach provides greater assurances on the deliverability of key infrastructure. This approach avoids having to wait for funds to build up in the CIL ‘pot’ before infrastructure can be funded/ delivered. The implementation of CIL is likely to incur additional costs to the Council. These costs include a public examination, provision of new ICT systems/adaptations of existing ICT systems and potentially new staff resources to facilitate the collection of CIL receipts. S106 agreements would still be needed to secure affordable housing and also in circumstances where developments are exempted from CIL due to the level of on-site infrastructure needed. The CIL regulations allow the Council to retain 5% of CIL receipts to cover administrative costs. This needs to be considered against a potentially diminishing level of CIL receipts over the plan period to 2026. When considering the cost of implementing, undertaking and monitoring CIL, the 5% is unlikely to meet all of this. As such, any additional cost above the 5% would need to be borne by the Council.
- **Disadvantages** – The restrictions to the pooling of s106 agreements in April 2015 has the potential to reduce the amount of money raised through s106. If the Council decide not to continue with the implementation of a CIL charging schedule this could lead to a reduction in funding for infrastructure. If the Council decide not to implement a CIL charging schedule, this will have implications for parish council’s within Breckland. The CIL regulations see 15% of the total CIL receipt being past onto parish councils. This rises to 25% if the parish council have a neighbourhood plan in place. Parish councils are not however eligible for a proportion of money raised from s106 agreements.

3.0 REASONS FOR RECOMMENDATION

3.1 It is recommended that Members agree option 3, which would halt the production of CIL at the present time. Endorsing this option would not preclude Members from reconsidering CIL at a point in the future should the housing and commercial markets improve. Furthermore, this option reduces the cost to the Council of setting up and implementing CIL for a limited potential return for infrastructure provision. Option 3 also reduces the risks associated with the reductions in funds from CIL to provide critical infrastructure.

4.0 EXPECTED BENEFITS

4.1 The advantages and disadvantages of for each of the options, including option 3 are set out in section 2 above.

5.0 IMPLICATIONS

5.1 Carbon Footprint / Environmental Issues

5.1.1 It is the opinion of the Report Author that there are no implications.

5.2 **Constitution & Legal**

5.2.1 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 **Contracts**

5.3.1 It is the opinion of the Report Author that there are no implications.

5.4 **Corporate Priorities**

5.4.1 This report aligns with the Council's corporate priority to support our local economy.

5.5 **Crime and Disorder**

5.5.1 It is the opinion of the Report Author that there are no implications.

5.6 **Equality and Diversity / Human Rights**

5.6.1 It is the opinion of the Report Author that there are no implications.

5.7 **Financial**

5.7.1 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, examination and adoption of the CIL. Secondly, there are 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).

5.7.2 As the Council has committed so far 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 the administration of CIL. The CIL regulations provide the ability for the Charging Authority to retain 5% of CIL receipts to cover administrations costs and this could assist with any financial burden.

5.8 **Risk Management**

5.8.1 There are risks associated with the funding of community infrastructure following the scaling back of S106 agreements from April 2015, if the Council does not develop and implement CIL. The review of CIL next year has the potential to be a risk area. Following discussion with the Department for Communities and Local Government the scope of the review remains to be determined. It has been indicated that it is likely however to focus on the impact the community infrastructure levy on local authorities and the ability to fund and provide infrastructure. The review is also likely to consider the complexity of the legislation. At the present time, CLG have advised that the findings of this review are unlikely to be concluded prior to the general election.

5.9 **Staffing**

5.9.1 There are no direct implications on staffing associated with this report. If Members decide to progress with CIL, there may be a staff resource implication to administer and enforce CIL.

5.10 **Stakeholders / Consultation / Timescales**

5.10.1 If Members agree to either options 1 or 2 presented within this report, a six week public consultation will occur on the Draft Charging Schedule. The consultation would occur in accordance with the Community Infrastructure Levy Regulations 2010 (as amended) and Breckland's adopted Statement of Community Involvement.

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 All wards in Breckland are affected by the Community Infrastructure Levy.

7.0 **ACRONYMS**

7.1 CIL: Community Infrastructure Levy

Background papers:-

Lead Contact Officer

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Director / Officer who will be attending the Meeting

Name and Post: Sarah Robertson, Planning Policy Officer
Phil Mileham, Deputy Planning Manager

Key Decision: Yes

Exempt Decision: No

Appendices attached to this report:

Appendix A: Community Infrastructure Levy Amended Regulations 2014: Impact upon Breckland's Charging Schedule
Appendix B: Breckland's Draft Charging Schedule
Appendix C: Breckland's Regulation 123 List
Appendix D: CIL Revenue and Funding Gap Paper – Revised version
Appendix E: Summary of Responses to the Preliminary Draft Charging Schedule Consultation