



The Community Infrastructure Levy

Report by the Executive Head of Planning, Regeneration and Wellbeing

1.0 Summary

- 1.1 The Community Infrastructure Levy (CIL) is intended to act as a transparent justifying means of securing money to fund the infrastructure required to support growth through a standard charge levied on new developments according to their size and type.
- 1.2 In November 2010 the Government confirmed that the CIL, introduced by the previous Government, would be continued with some amendments. The Government consider CIL to provide a fairer system for funding new infrastructure than the current use of obligations under Section 106 of the Planning Act 1990. Although the use of the levy is at the discretion of local authorities, the reality is that changes in legislation mean that it will no longer be an option but a necessity. The view of officers is that adoption of the levy would be of benefit to Worthing and Adur Councils and communities.
- 1.3 This report provides Members with a briefing on the Community Infrastructure Levy. It seeks to get Members agreement to progress the levy as the principal means by which developer contributions towards infrastructure should be collected within Adur and Worthing. It also seeks the agreement for work to be undertaken to inform the setting of a levy charging schedule (with this being implemented for Worthing in the first phase and later for Adur following the adoption of its Core Strategy in 2013).

2.0 Background

- 2.1 The delivery and management of essential infrastructure is funded through a variety of public and private sector sources in a number of ways. Although most infrastructure delivery is actually funded from existing spending streams (e.g. government grants) contributions made through development also provide an important element of this funding. This is particularly the case for infrastructure requirements related directly to a development. At present, developer contributions towards infrastructure provision come through Planning Obligations (Section 106 agreements / unilateral undertakings) attached to planning permissions. Although Planning Obligations will continue to play a role, the main mechanism for securing financial contributions from development is now set to be CIL.

- 2.2 CIL came into force on 6th April 2010. It was expected that to reflect pre-election statements the in-coming Coalition Government would replace CIL with a similar tariff based system. For this reason, very few local authorities put a significant amount of resources into progressing CIL. However, in November 2010 the Government unexpectedly announced that CIL would be retained but reformed slightly to ensure that more power is given to Councils and communities and that the development industry could benefit from a more flexible system. Therefore, in the coming years the levy will form a key mechanism for collecting money from development to help fund local and sub-regional infrastructure.

3.0 What is the Community Infrastructure Levy?

- 3.1 Officers have prepared a detailed Community Infrastructure Briefing Paper (May 2011) which supports this report – this is available to view in the Members Rooms. The Briefing Paper provides an overview of CIL - what it is, who collects it, who pays it and how it relates to planning obligations. It also provides the context for Adur and Worthing Councils in relation to each Council's respective Local Development Framework. The key elements of this Briefing Paper are summarised below.
- 3.2 The Community Infrastructure Levy is a new levy that local authorities can choose to charge on new developments in their area. The money can be used to fund a wide range of infrastructure that is needed as a result of new development, for example, new or improved road schemes, park improvements or a new health centre. The levy applies to most new buildings and charges are based on the size and type of the new development.
- 3.3 The Government has decided that a tariff-based approach provides the best framework to fund new infrastructure. CIL is considered to be fairer, faster and more certain and transparent than the current system of planning obligations (S106 agreements) which are generally negotiated on a 'case-by case' basis. Levy rates (that will be set in consultation with local communities and developers) will provide developers with much more certainty 'up front' about how much money they will be expected to contribute. Use of the levy is encouraged because it would:
- Deliver additional funding for local authorities to carry out a wide range of infrastructure projects that support growth and benefit the local community.
 - Give local authorities the flexibility and freedom to set their own priorities for what money should be spent on; as well as a more predictable funding stream that allows them to plan ahead more effectively.
 - Provide developers with more certainty 'up front' about how much money they will be expected to contribute which, in turn, will encourage greater confidence and higher levels of inward investment.
 - Ensure greater transparency for local people, because they will be better able to understand how new development is contributing to their community.
 - Amendments to the regulations will enable local authorities to allocate a share of the levy raised in a neighbourhood to deliver infrastructure identified by the local community itself.
 - A greater number of developments (particularly smaller developments) will contribute towards the delivery of necessary infrastructure.

- 3.4 The levy, expressed as a rate of pounds per square metre, will be charged on most new developments that involve a net increase in floorspace. Although ultimate liability to pay the levy rests with the landowner, the regulations allow for other parties to come forward and assume liability.
- 3.5 There is a discretionary power to grant relief from liability to pay the levy in exceptional circumstances, subject to a formal notification process by the charging authority. Social housing and developments for charitable purposes are exempt. Planning obligations will remain the method for securing Affordable Housing although this element is still under consideration. The Council would be able to pass money to other bodies to help deliver infrastructure within Worthing and Adur e.g. the Environment Agency for flood defences.
- 3.6 There is the ability to charge variable levy rates depending on development type and locality. The key objective for any charging authority will be to strike an 'appropriate balance' between the desirability of funding infrastructure from the levy and the potential effects, taken as a whole of the imposition of the levy, on the economic viability of development across its area. The Charging Schedule will take this into account.

4.0 Adopting CIL

- 4.1 The preparation of a charging schedule should be informed by appropriate evidence regarding the infrastructure funding gap and general development viability. A key element of this evidence is the Infrastructure Delivery Plan which accompany Core strategies. The Government expects the appropriate evidence base to include an up-to-date development strategy, which should normally be set out in an adopted Core Strategy.
- 4.2 The Infrastructure Delivery Plans will act as a base to advance a more detailed infrastructure delivery strategy. Using this strategy to then produce a charging schedule will be a complex process and it is likely that consultancy advice will be sought with particular regard to viability testing.
- 4.3 The Council would have to produce and consult on a Preliminary Draft Charging Schedule and its final Draft Charging Schedule. The formal process leading to adoption of the levy also involves consideration, by an independent examiner, by way of an Examination in Public (EIP). Although there will be costs related to an EIP it should be noted that these are expected to be considerably less than for other documents (such as Core Strategies) as they are likely to be much shorter in duration.
- 4.4 Following the EIP, the Examiner will either approve, modify or reject the Draft Charging Schedule. Once any modifications recommended by the Examiner have been addressed, the charging schedule must be formally approved by a resolution of full Council.
- 4.5 The regulations permit up to 5% of the revenue arising from the levy to be used on administrative expenses. Authorities choosing to adopt CIL must produce an annual report detailing how much revenue has been raised in the previous financial year, how much has been spent, and what infrastructure has been funded. It is

likely that this information will be set out and incorporated within the Council's Annual Monitoring Reports.

5.0 The Relationship between CIL and S106 Agreements

- 5.1 There is no compulsion on local authorities to adopt the levy. However, because it is the Government's preferred vehicle for the collection of pooled infrastructure contributions, the new regulations introduce significant restrictions that will reduce the effectiveness of obligations as a means to secure infrastructure.
- 5.2 From the 6 April 2014 (or upon local adoption of the levy) the pooling of contributions towards an item of infrastructure will effectively be limited to that arising from a maximum of five obligations (5 developments). This will significantly prejudice the delivery of some infrastructure items in Worthing and Adur.
- 5.3 In addition, on adoption of the levy the regulations restrict the use of obligations to ensure that individual developments are not charged for the same infrastructure items through both obligations and levy. A charging authority would need to set out a list of the infrastructure items it intends to fund from levy revenue and separate out any additional / specific elements required by individual developments. These 'additional' items will most commonly relate to larger developments and could include, for example, on-site sports facilities, a community facility and local road improvements. The authority cannot then seek a contribution towards those same items by way of obligations. If the authority does not publish such a list, then this would be taken to mean that the authority was intending to use levy revenue for any type of infrastructure (that could be funded by the levy) and thus could not seek an obligation contribution towards any such infrastructure.

6.0 Issues and Options

- 6.1 The Levy is promoted as being faster, fairer, more certain and transparent than the use of obligations. While these perceived benefits may be debatable in some respects, adoption of the levy should assist in the provision of infrastructure in Worthing and Adur; not least because of the likely increase in total funding that would arise from the application of the levy to many more developments than are currently made the subject of obligations.
- 6.2 A benefit of CIL is that developers and landowners would know with greater certainty how much is liable to be paid under the levy for a particular development. This should reduce those instances of developers abandoning their proposals because they have underestimated the cost of necessary contributions. The processing of planning applications should therefore be more straightforward and quicker to determine.
- 6.3 The Localism Bill includes provisions which, if enacted, would enable levy revenues to be used in connection with the ongoing costs of providing infrastructure. This is distinct from current Circular (05/05) advice relating to the use of obligations. The latter states that obligations should not be used to pay for the maintenance of what are intended to be public facilities beyond initial support. Should these provisions be enacted, it would offer further flexibility to the Council in directing developer funding towards infrastructure.

- 6.4 The levy is intended to provide infrastructure to support the development of an area, rather than to make individual planning applications acceptable in all respects. As a result, there may still be some site specific mitigation measures without which a development should not be granted planning permission. This will be particularly the case for larger more strategic sites. In these instances there would still be scope for obligations (S106 agreements) to address these mitigation requirements.
- 6.5 For these main reasons and benefits set out above it is recommended that the levy be adopted by both Worthing and Adur Councils.

7.0 Timetable

- 7.1 At this stage it is difficult to provide an exact timetable for the progression of this work as this is a new process and guidance is still emerging. However, as stated above, to be effective at an early stage the Councils will need to have adopted CIL by April 2014. Given the respective position of the Worthing and Adur Core Strategies (explained below) it is suggested that a separate timetable is followed. The first phase of work to be undertaken will be for Worthing (since the Council has an adopted Core Strategy) with the second phase to follow for Adur following the adoption of the Adur Core Strategy.

Adur

- 7.2 Before CIL can be adopted the Government expects the appropriate evidence base to be in place. This should include an up-to-date development strategy, which should normally be set out in an adopted Core Strategy. It is currently expected that the Adur Core Strategy will be adopted in 2013 so it would therefore not be appropriate to put significant resource into progressing CIL for Adur until around that time. However, there is no reason why the CIL could not be progressed quickly once the Adur Core Strategy is in place.
- 7.3 The emerging Adur Core Strategy will contain a policy to facilitate the implementation of CIL (and planning obligations where necessary) and an Infrastructure Delivery Plan is being prepared simultaneously which will form the basis of any future charging schedule.
- 7.4 The regulations allow a local authority to charge variable levy rates depending on development type and locality. Unlike Worthing, there is more likely to be some variation within the charging schedules given the specific issues and costs relating to potential development at Shoreham Harbour.
- 7.5 Prior to the adoption of a CIL, it is recommended that Adur Council produces an Interim Planning Guidance Note to clarify the current position and expectations relating Planning Obligations in the District.

Worthing

- 7.6 Worthing Council has an up-to-date Development Plan in place as the Worthing Core Strategy was adopted in April 2011. An Infrastructure Delivery Plan (IDP), which sets the context for infrastructure planning in the Borough, has also been

published (September 2010). Given this, there is no reason why Worthing Borough Council cannot start work to progress CIL in the near future.

- 7.7 Further scoping work and an update of the IDP will now be required following which time consultants could be appointed to assist in producing a draft Charging Schedule and the undertaking of detailed viability assessment work. It is anticipated that the cost of the Consultation would be approximately £15,000 - £20,000 and can be met from the existing LDF budgets.
- 7.8 Adoption of the levy will have implications for the Council's intended Planning Contributions Supplementary Planning Document (SPD). Worthing Council progressed a Draft Planning Contributions SPD in 2007 and this document has been used since to help inform development contributions. However, it should be noted that this guidance document was never formally adopted due to the withdrawal of the previous iteration of the Core Strategy.
- 7.9 The intention was that shortly after the adoption of the Worthing Core Strategy the Council would update the 2007 draft of the Planning Contributions SPD and republish it for further comment. This aim is reflected in the work programme set out in the Council's Local Development Scheme (July 2010). However, given the emphasis that is now being placed on CIL, changes in legislation and the 'cut off' date of April 2014 for the current S106 arrangements it is now proposed that a different approach is taken.
- 7.10 It is considered that it would be inefficient, and potentially confusing for stakeholders, to undertake a significant amount of work on updating the draft Worthing Planning Contributions SPD when it will be largely superseded when CIL is adopted. Adoption of the levy would mean that many of the funding formulae that would otherwise need to be included in the SPD to deal with specific types of infrastructure can be dispensed with. Therefore, it is proposed that efforts and resources are more appropriately focused on progressing CIL to adoption in Worthing. Costs related to this work (consultancy costs / Examination etc) have been budgeted for within the Worthing Planning Policy budget and, as previously explained, this will involve considerably less time and money than for a Core strategy.
- 7.11 Although the 2007 version of the SPD will not now be updated it is acknowledged that as the CIL work progresses the Council will need to produce a new Obligations (S106) SPD to reflect the emergence of CIL as the main mechanism for collecting infrastructure contributions. The new Obligations SPD will also be in a position to deal with those matters that would not fall within the definition of 'CIL infrastructure'. It may be appropriate for this SPD to be a joint one with Adur.
- 7.12 Therefore, until such time that the Council has adopted CIL and associated S106 guidance (estimated to be by the end of 2012) the 2007 draft version of the Planning Contributions SPD will continue to be used to inform discussions relating to the appropriate level of contributions that the Council will expect from developments.

Timetable Summary

- 7.13 Although there would be some efficiencies and savings in having a joint Worthing and Adur Charging Schedule and a joint examination, for the reasons given above, it is not considered appropriate for the Worthing document to be delayed whilst the Adur Core Strategy is progressed and issues relating to Shoreham Harbour are resolved. In addition, it is highly likely that any potential savings that may have been accrued by having a joint document will be more than out-weighed by the 'earlier' collection of CIL on developments in Worthing. Despite the timetable differences, every effort will be made to ensure that a broadly similar approach in terms of application is taken when both the Worthing and Adur Schedules are adopted.

8.0 Next Steps

- 8.1 It is envisaged that further reports be taken to Members in due course, to agree the Preliminary Draft Charging Schedule for consultation, to report on the outcome of that consultation, and to agree a resulting Draft Charging Schedule for consultation and finally Examination. The Local Development Working Groups for each Council will play a key role in this process. Consideration will also need to be given, at a later date, to the method by which spending priorities will be determined.
- 8.2 The Planning Policy team will continue to lead on this project. However, the collection of CIL requires 'corporate ownership' as its collection and delivery will involve a number of services across the Councils. For this reason it is proposed that an internal officers working group will be established to help progress this project and input into the Infrastructure Delivery Plans. In addition, a CIL Working Group made up of officers from each local authority in West Sussex has already been established to help disseminate best practice and ensure that a consistent approach is being followed across the County.

9.0 Legal

- 9.1 The Planning Act 2008 provides for a new discretionary planning charge known as CIL. Part 11 of the Act provides the legislative framework for CIL.
- 9.2 Revised regulations, the Community Infrastructure Levy Regulations 2010 came into force on 6 April 2010.
- 9.3 On 18 November 2010, the government announced its intention to retain and reform CIL. Some of the changes to CIL will require primary legislation and are being introduced in the Localism Bill. Other changes are being made through regulations.
- 9.4 The Community Infrastructure Levy (Amendment) Regulations 2011 (*SI 2011/ 987*) came into force on 6 April 2011 making minor changes.
- 9.5 To ensure that legal procedures are followed correctly an officer from the Council's Legal Team will be invited onto the working group.

10.0 Financial implications

- 10.1 There will be a cost for each Council in setting up and adopting CIL. This will largely relate to the commissioning of consultancy advice to establish a charging schedule and assess viability and the costs related to an Examination in Public. However, as explained previously, it should be noted that once the levy is in place the regulations permit up to 5% of the revenue arising from the levy to be used on administrative expenses.
- 10.2 Once CIL is adopted (alongside new guidance on Planning Obligations) it is expected that the total funding for infrastructure projects will increase as more developments contribute than those currently liable to pay under the current system of planning obligations.

11.0 Recommendations

- 11.1 **Members are recommended to agree to adopt the Community Infrastructure Levy as the principal means by which developer contributions towards infrastructure be collected within Worthing and Adur.**
- 11.2 **That the necessary evidence gathering and viability assessment be undertaken to inform the setting of a Charging Schedule – firstly for Worthing and later for Adur.**
- 11.3 **That further reports be taken to Members, in due course, to agree a Provisional Draft Charging Schedule for consultation, to report on the outcome of that consultation, and to agree a resulting Draft Charging Schedule for consultation and Examination.**
- 11.4 **That new guidance (Planning Contributions SPD) will be progressed alongside CIL so that clear, up-to date advice is provided on Planning Obligations that reflects the emergence of CIL.**
- 11.5 **Prior to the adoption of CIL for Worthing it is recommended that Worthing Borough Council continues to use the draft Planning Contributions SPD (2007) to inform negotiations relating to the appropriate levels of infrastructure contributions from development.**
- 11.6 **Prior to the adoption of CIL for Adur it is recommended that Adur Council produces an Interim Planning Guidance Note to clarify the current position and expectations relating Planning Obligations in the District.**

Local Government Act 1972

Background Papers:

- Community Infrastructure Levy, An Overview - DCLG – May 2011
- Community Infrastructure Officers Briefing Paper – May 2011
- Worthing Infrastructure Delivery Plan – September 2010

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Schedule of other matters

1.0 Council Priority

- 1.1 The efficient collection and distribution of money collected through the Community Infrastructure Levy will help to ensure that infrastructure is delivered alongside development to meet the identified needs of new and existing residents / businesses. This will help to contribute towards meeting many of the Council priorities identified in Worthing and Adur.

2.0 Specific Action Plans

- 2.1 Matter considered and no issues identified.

3.0 Sustainability Issues

- 3.1 CIL will be collected from developments that are brought forward in line with the Core Strategies. The Core Strategies will play a fundamental role in the delivery of sustainable development. The Core Strategy (and other appropriate documents) is the subject of a formal Sustainability Appraisal.

4.0 Equality Issues

- 4.1 The CIL Charging Schedules are expected to be the subject of an Equalities Impact Assessment.

5.0 Community Safety issues (Section 17)

- 5.1 Matter considered and no issues identified.

6.0 Human Rights Issues

- 6.1 Matter considered and no issues identified.

7.0 Reputation

- 7.1 Following on from the recent adoption of the Worthing Core Strategy the 'early' adoption of a CIL for Worthing will further enhance the Council's reputation. Adur District Council will be in a position to learn from the Worthing experience to ensure that a CIL for Adur is successfully and quickly advanced following the adoption of the Adur Core Strategy.

8.0 Consultations

- 8.1 The preliminary and draft Charging Schedules will be the subject of comprehensive consultation with key stakeholders and all interested parties. Any representations received will help to inform changes that will be made to the schedule.

9.0 Risk assessment

- 9.1 If CIL is not adopted by April 2014 then legislation will restrict the use of planning obligations which will effectively reduce the amount and type of planning obligations that can be collected in Worthing and Adur.
- 9.2 After an Examination in Public the Inspector could reject the Council's Charging Schedule which could potentially result in a loss of infrastructure funds, damage to reputation and additional expense. This risk will be mitigated through joint working, the use of best practice and careful scrutiny of the legislation.

10.0 Health & Safety Issues

- 10.1 Matter considered and no issues identified.

11.0 Procurement Strategy

- 11.1 It is expected that specialist viability advice will be sought to help inform the draft Charging Schedules. The appropriate procurement procedures will be followed. This may also be relevant to the appointment of an Inspector for the Examination in Public as this appointment is now made by the respective local authority rather than through the Planning Inspectorate.

12.0 Partnership working

- 12.1 Although there will be variation in the timetables for the progression of the Worthing and Adur Charging Schedules every effort will be made to ensure that the documents are aligned and that they are progressed in an efficient and expedient manner through joint working (See section 7 above).