

# Scrutiny Committee



Report of Head of Planning

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To: The Scrutiny Committee

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## Community Infrastructure Levy (CIL) Draft Charging Schedule

### RECOMMENDATION

To consider this report and the Community Infrastructure Levy (CIL) Draft Charging Schedule, and make any comments to the cabinet member for Planning.

### Purpose of Report

1. To present an overview of the responses received on the Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule following public consultation and to seek views on the subsequent changes to the Charging Schedule.
2. As part of the formal process to adopt a CIL charging schedule, following consideration by Scrutiny and Cabinet, the Council will consider the CIL Draft Charging Schedule together with associated documents and, if agreed, publish them for public consultation (Regulation 16) and thereafter submit them to the Secretary of State for independent examination in support of the Vale Local Plan 2031 Part 1.

### Background

3. The Vale of White Horse CIL Charging Schedule, when adopted, will enable the council to continue pooling contributions from new development across the district to offset a proportion of the costs of delivering local and strategic infrastructure. From April 2015, the Council will be severely limited in its ability to use the existing mechanism of pooling contributions i.e. planning obligations (generally referred to as Section 106 agreements). The use of Section 106 agreements will largely be limited to securing site-specific infrastructure and affordable housing.

4. CIL is a tariff which will allow funds to be raised from new developments. Unlike funds received through Section 106 agreements, CIL revenue does not have to be spent in relation to the site on which it was levied. CIL can be spent on a wide range of infrastructure (e.g. schools, transport, healthcare, open space, leisure, biodiversity). Affordable housing will continue to be paid for through Section 106 agreements. CIL is not intended to fund all infrastructure, nor is it to replace main stream funding. For instance, matters such as sewage treatment, water supply and electricity supply are financed directly by developers, infrastructure providers and their customers, and not through the planning process.
5. As part of establishing a CIL, the council is required to prepare a Regulation 123 infrastructure list, which sets out all those projects or types of infrastructure that it intends to fund, or may fund, through the levy. The Regulation 123 List does not identify priorities for spending within it, or any apportionment of the CIL funds across the district and it does not signify a commitment from the Council to fund the projects listed through the CIL. The spending of CIL is a decision for the Council and is outside of the scope of the CIL Examination. Details on governance arrangements and spend will be presented for consideration later this year.
6. Three key pieces of evidence are required to develop a CIL Charging Schedule. These are:
  - a. An up-to-date local development plan<sup>1</sup> - the submission draft Local Plan 2031 Part 1 sets out the growth and distribution of new development to be built in Vale up until 2031. CIL is intended to be spent on infrastructure to support this growth.
  - b. An infrastructure delivery plan<sup>2</sup>, which identifies the infrastructure required to support this growth. In addition, work has been undertaken to identify the infrastructure funding gap (the gap between the total cost of the infrastructure required and the funding available from other alternative sources). For the purposes of meeting the CIL regulations, it is necessary to demonstrate that a funding gap exists in order to justify charging CIL.
  - c. An economic viability study<sup>1</sup>, which assesses the effect of implementing a CIL charge on the economic viability of different types of development across the District. The council's viability study is part of a suite of viability assessments which support the Local Plan 2031 Part 1.
7. In setting the Levy, legislation<sup>3</sup> requires the council to strike an appropriate balance between the desirability of funding infrastructure to support development and the potential effects of imposing a charge on the economic viability of development as a whole. Therefore, a charge must not be imposed which prevents the delivery of the planned growth.

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<sup>1</sup> [www.whitehorsedc.gov.uk/thelocalplan](http://www.whitehorsedc.gov.uk/thelocalplan)

<sup>2</sup> [www.whitehorsedc.gov.uk/infrastructure](http://www.whitehorsedc.gov.uk/infrastructure)

<sup>3</sup> The Community Infrastructure Levy Regulations 2010 (as amended) Regulation 14

8. The CIL Regulations<sup>4</sup> allow for different rates to be applied for different types of development or different geographical areas. The setting of different rates for geographical areas must be on the basis of viability e.g. to reflect different land and property values which impact on the ability of development to bear the CIL charge. Different rates cannot be set on the basis of different infrastructure needs, costs or other policy objectives.
9. The stages for the preparation of a Charging Schedule are set out in statute, and include two stages of public consultation and an examination by an independent examiner. National Planning Policy Guidance advocates the preparation of CIL alongside the Local Plan. In October 2014 Council agreed the Local Plan 2031 Part 1: Strategic sites and Policies for Pre-Submission public consultation for a period of six weeks<sup>5</sup> and thereafter to submit it to the Secretary of State for Examination. A concurrent period of public consultation on both the Local Plan and CIL Preliminary Draft Charging Schedule took place between 7 November and 19 December 2014.
10. The timetable below sets out the process of both the Local Plan and CIL Draft Charging Schedule from consultation through to adoption. As CIL refers to infrastructure set out in the Local Plan 2031, the CIL examination will take place after the Local Plan examination.

<b>CIL Charging Schedule</b>	<b>Local Plan 2031 Part 1</b>	<b>Timetable</b>
Preliminary Draft Charging Schedule Consultation	LPP1 Pre Submission Consultation	7 November – 19 December 2014
Draft Charging Schedule Consultation		23 February – 23 March 2015
Draft Charging Schedule Submission for examination	LPP1 Submission for examination	March 2015
Examination	Examination	Summer 2015
Adoption of Charging Schedule	Adoption of LPP1	Winter 2015
Implementation, and start of CIL collection		Spring 2016

## **Main Considerations**

11. On 7 November 2014 the council published its CIL Preliminary Draft Charging Schedule and supporting evidence base. Over a period of six weeks representations were invited on the proposed rates and evidence base. In total 54 responses were received during the consultation period. A Consultation Statement (Appendix 4) has been produced which details the representations received during the consultation, together with officer responses to the issues raised. In summary, the main issues raised were:

- concerns over the proportion of CIL revenue to be allocated to local communities;
- effects of CIL on development delivery;

<sup>4</sup> The Community Infrastructure Levy Regulations 2010 (as amended) Regulation 13

<sup>5</sup> Under Regulations 19 and 22 of the Town and Country Planning (Local Planning) Regulations 2012

- the need to maximise CIL revenue to support infrastructure;
- concerns over the methodology and assumptions used within the economic viability study;
- the effect of CIL on small residential developments;
- concerns over the use of CIL rather than S106;
- clarity over the relationship between S106 and CIL following adoption; and
- how CIL will be spent.

12. Many of the responses cited the need for infrastructure to be delivered alongside development. A series of alternative approaches and rates were suggested including, proportioning the total infrastructure costs across all development as a pro-rata cost; the continued use of S106; applying CIL to commercial and office development; and increasing the proposed residential rates to the margins of viability i.e. from £85 to £100 for Wantage, Grove and Faringdon, and from £120 to £140 for the rest of the District.

13. As stated, from April 2015, the Council will be severely limited in its ability to use the existing S106 mechanism to pool contributions. The continued use of S106 beyond April 2015 will limit the number of S106 agreements to five which can be entered into for an infrastructure project, or type of project. Securing developer contributions towards larger infrastructure items such as highway and secondary schools will become difficult should the council not seek to introduce CIL. S106 will still be used for securing Affordable Housing and site-specific infrastructure requirements following adoption of CIL.

14. The viability assessment has identified that there is evidence to support differentiated residential CIL rate based on geography. Sites in and adjacent to the built up areas of Faringdon, Grove and Wantage could support a CIL of between £85 and £100 with all other areas could support a CIL between £120/m<sup>2</sup> and £140/m<sup>2</sup>. CIL rates must be set with regard to the CIL Regulations (2010, as amended) and both the National Planning Policy Framework and National Planning Guidance. While the CIL Regulations advise of the importance of not setting the CIL rates up to the margin of viability there is no prescribed discount or viability cushion that should be applied to CIL rates. However, as more authorities progress to CIL examination, Examiner's Reports provide additional insight.

15. Opportunities to maximise CIL income has been explored, including as suggested by a respondent, a district wide rate of £140 and Farringdon, Grove and Wantage rate of £100. While this option would result in the higher CIL income there are risks associated with setting rates with a reduced viability cushion and challenges demonstrating that the rates will put the delivery of the local plan at risk. The risks are that development would not come forward as planned, so no contribution to infrastructure would be secured and the district five year housing land supply could be jeopardised.

16. At the higher rates, suggested CIL contributions on some sites would also be above 25% of residual value<sup>6</sup> and above 3% of Gross Development Value (GDV). Both are recognised indicators of the appropriate level of CIL rates.
17. In addition to a residential viability assessment, separate assessments of the viability of non-residential development in the district have been undertaken, using different models that take into account different uses. In the current market business uses (including offices, industrial and distribution) were found not to be able to support a CIL in the short or medium term, this is not uncommon with many other charging authorities. Where appropriate such uses will contribute towards infrastructure through S106.
18. There are many other types of uses which may get developed over the plan period, including agriculture, community use, surgeries, day nurseries, hospitals, cinemas, leisure centres, petrol stations, etc. For the most part such uses would not produce revenue which outweighs the cost of the service and at a level which would enable a CIL to be included whilst the schemes remain viable. This is because they are often not built to generate profit, but to facilitate a service.
19. The representations received during the recent consultation do not require significant changes to be made to the charging schedule, and the CIL rates as proposed comply with the relevant legislation and guidance. Where appropriate additional sensitivity testing has been carried out to further demonstrate the suitability of the CIL rates as proposed, this has been undertaken by the Council's retained viability consultant; HDH Planning and Development.
20. In light of representations on both the Preliminary Draft Charging Schedule and pre-submission draft Local Plan 2031 Part 1, where new or updated infrastructure details are available, the Infrastructure Delivery Plan will be updated (it is a 'live' document). Officers will seek again to meet with developers who submitted specific comments in relation to the Preliminary Draft Charging Schedule.

#### Changes to Affordable Housing policy

21. During consultation on the Preliminary Draft Charging Schedule, the Government introduced a change to the National Planning Practice Guidance (NPPG) on 28 November 2014<sup>7</sup>. Local Authorities can no longer require affordable housing or S106 tariff-style contributions on small development sites of 10 units or less (and which have a maximum combined gross floor space of 1000 sq m), however in designated rural areas or AONB where there is a lower 5 unit threshold, contributions can be sought (see para.23). Affordable housing or S106 tariff-style contributions can also no longer be sought on residential annexes and extensions.
22. Core Policy 24 of the emerging Local Plan 2031 Part 1 seeks 35% affordable housing on all sites capable of a net gain of three or more dwellings (sites of at least 0.1 hectare). The NPPG change means that affordable housing can only be sought from developments of 11-units or more, or from schemes of 10 or fewer

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<sup>6</sup> Planning Inspectorate report to the Greater Norwich Development Partnership – identifying that CIL rates which are less than 25% of residual value are an indication of the appropriateness of rates

1. <sup>7</sup> <http://planningguidance.planningportal.gov.uk/revisions/23b/012/>

units that exceed 1,000 sqm gross floorspace. Core Policy 24 will require modification, this will take place through the Local Plan Examination in Public and we can recommend this to the Inspector as a minor modification as part of the submission process.

23. The council could seek to apply a reduced threshold whereby affordable housing contributions would be due on developments of more than 5 units in designated rural areas, although this would now have to be collected in the form of cash payments which are not commuted until after completion of the units within the development.
24. Within the housing trajectory sites of 6-10 units have contributed around 15 units per annum in the past five years (all tenures), and are projected to deliver around 20 units per annum in the next five years. Beyond 2020 the affordable threshold change would impact on our windfall housing supply element of 900 homes (all sites under 10 homes). Taken together the policy changes could at worst reduce affordable housing supply by around 400 homes to 2031. If we accept sites of 10 or fewer make no contribution to affordable housing the council could still meet in full its objectively assessed need for 4914 homes for the plan period up to 2031. At 35%, on every eligible site remaining, we require 5061 affordable homes. We also have 1300 affordable homes in the planning pipeline, providing a significant margin.
25. For these reasons a lower rural affordable housing threshold is not being pursued.
26. CIL has to be set in the context of the local planning policies and with regard to viability. A removal of affordable housing requirements on sites of 10 or fewer will increase the viability of these schemes, and the amount of CIL which can be captured. Following additional viability testing evidence has shown that a higher CIL rate for sites of 10 or fewer homes could be applied.
27. As well as the results it is also necessary and appropriate to consider the rationale behind the Government's introduction of the threshold, which is to simplify the planning system enabling small sites to come forward quickly. In this context it is important to note that the result of lifting the threshold, will result in developers being able to pay more for development land than they are able to where affordable housing is provided.
28. As stated, the CIL Regulations are clear that rates should not be set at the limits of viability. Considering the results of the viability assessment together with the rationale behind the introduction of the threshold we recommend that CIL be set at £260/m<sup>2</sup> in Zone 1 and £200/m<sup>2</sup> in Zone 2. Such rates would still allow for residual values well in excess of £1,000,000/ha for residential development, higher than the residual values with a 35% affordable housing requirement and lower CIL rate as and where applicable on larger schemes (£85/£120 per sqm). Developers would therefore remain incentivised to pursue small sites due to a combination of higher residual values, increased certainty through having a standard CIL rate and the removal of the need to negotiate individual S106 agreements on small sites.
29. We estimate that this increased CIL rate for schemes under 11 units will generate an extra £13m of CIL over the plan period. This benefit for infrastructure provision

is of greater value to the district than more significantly overproviding against the objectively assessed need for affordable housing in the district.

### Rural exception sites

30. Core Policy 25 (Rural Exception Sites) of the pre-submission draft of the Local Plan Part 1 identifies the circumstances in which affordable housing can be provided on 'exception sites' in the rural areas, where residential development would not normally be permitted. In certain cases, where robust evidence establishes that viability issues would prevent the delivery of an exception site, the minimum level of market housing required to make the development viable would be permitted. As this element of market housing is only required to enable the delivery of the affordable housing based on viability evidence, these schemes would not be able to sustain a CIL as well and it is proposed that within the Draft Charging Schedule that all homes on exception sites are exempted from CIL.

### Extra-care Housing

31. Further viability work has tested the sheltered independent living (use class C3) where we would seek affordable housing and the evidence confirms such development can sustain some form of a CIL charge. We suggest the rate is similar to open market housing but this could be reduced to account for development that provides greater communal areas which increase build costs and generally has a more specialised market which takes longer to sell.
32. However, housing for the frail or disabled where ongoing care by a registered provider which is subject to the Care Standards and is provided on site (use class C2) cannot support a CIL charge. We do not seek affordable housing in these developments, as from our experience they are not deliverable. The value of these developments is based on weekly charges rather sales values, therefore the viability is unlikely to vary widely across the district. We receive limited applications for this type of development and conclude that the administrative charge would become a burden against the potential captured revenue. Therefore we recommend a nil rate.

### **Draft Charging Schedule and next steps**

33. The CIL rates set out below will form the basis of the second stage of consultation for Vale's CIL Charging Schedule, and Council approval will be sought to consult upon.

Development type	CIL Charging Rate (per square metre of chargeable floorspace)		
	Zone 1	Zone 2 (Faringdon, Wantage and Grove)	Zone 3 (Crab Hill, Monks Farm and Grove Airfield strategic site allocations)
Residential development on sites of 11 + net new dwellings (including self-contained, independent living accommodation, acting outside the	£120	£85	£0

registered Care Standards - use class C3 or sui generis)			
Residential development on sites of 1-10 net new dwellings(except as excluded below)	£260	£200	Not applicable
Housing for the frail or disabled where ongoing and regular care is provided (by registered provider and Care Standards) on site (use class C2)	£0	£0	£0
Residential development which is required to enable a rural exception site under Core Policy 25	£0	£0	£0
Development type	District Wide		
Supermarkets and retail warehousing exceeding 280m2 (gross internal area)	£100		
All other development	£0		

34. The next stage in the preparation of CIL is the publication of a Draft Charging Schedule for public consultation and submission for examination. As required the Draft Charging Schedule is in adoption format and is included as Appendix 1. Upon adoption the CIL Charging schedule will comprise the following three documents, each are included as appendices (1-3).

- CIL Charging Schedule
- Regulation 123 List
- Instalment Policy

35. The consultation is scheduled for a period of four weeks commencing 23 February 2015. Following the consultation, responses will be considered before the Draft Charging Schedule and associated documents and evidence base, along with all representations, are submitted to an independent examiner who will conduct a public examination into the Draft Charging Schedule. If necessary based on recommendations in the Examiner's report, a further consultation on a 'Statement of Modifications' to the Draft Charging Schedule would be held following examination.

## How the Draft Charging Schedule meets CIL Regulations

36. To comply with the relevant legislation and guidance, the council has to submit a charging schedule that sets an appropriate balance between helping to fund necessary new infrastructure and the potential effect of the proposed rates on the economic viability of development across its area.

37. The council has undertaken a robust review of infrastructure necessary to support development within the district<sup>8</sup> as outlined within the Local Plan 2031. The review has taken into account other actual and expected sources of funding and a 'funding gap' has been identified. This is required to justify the introduction of a

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<sup>8</sup> Infrastructure Delivery Plan (IDP)



CIL<sup>9</sup>. The potential effects of the imposition of CIL on the economic viability of development across the district have been carefully considered and levy rates set accordingly<sup>10</sup>. Two rate setting workshop with Cabinet Members, senior officers and representatives from Oxfordshire County Council have examined the options for striking an appropriate balance between maxing CIL receipts and ensuring development can viably proceed even if circumstances change. The rates have been set in accordance with the CIL Regulations 2010 (as amended), and have been informed by the National Planning Policy Guidance and recent inspector findings from examination of draft charging schedules within the south east.

## Rates in other areas

38. For information CIL charges for neighbouring Districts and Vale are tabulated below.

Charging Authority	Approach (all rates per square meter)
Oxford City	Residential £100, Retail £100, Standard Charge for all other uses £20
Swindon	Residential £0-55 (£0 on strategic sites), Retail out of Town Centres £100, all other uses £0
West Oxfordshire	Residential of more than five units £100-200
West Berkshire	Residential £75-£125, Retail £125
Wiltshire	Residential £55-85 (lower for strategic sites), Retail in town centres £70, Retail outside of town centre £175
South Oxfordshire	Residential: Zones 1 at £150, Zone 2 Didcot/Berinsfield - £85 (some strategic sites £0) Retail warehousing/supermarkets) £70, Offices/R&D/Science parks - £35
Cherwell	Have not as yet proposed any CIL rates
Vale of White Horse	Residential: £85 (11+)/£200 (1-10) in Grove, Wantage and Faringdon, £120 (11+)/ £260 (1-10) rest of district, £0 Crab Hill and Monks Farm Retail warehousing/supermarkets £100

39. The above table provides details of the CIL charges for Local Authorities within the wider area. Of the above authorities only Oxford City has an adopted CIL charging schedule and has been charging CIL since October 2013. Swindon is at an advanced stage of preparation and held its CIL examination in November 2014, at the time of writing this report the Examiner's Report was still pending.

40. Direct comparisons between CIL rates must be done with caution. CIL rates are informed by local viability assessments which factor in a series of local and site specific assumptions. These assumptions include land value; residual site specific S106 requirements (the amounts of S106 still to be sought following the adoption

<sup>9</sup> Funding Gap Assessment – See Appendix 5

<sup>10</sup> VoWH CIL Viability Study, HDH Planning & Development Ltd, October 2014

of CIL); local planning policy requirements such as affordable housing; and, the type and nature of development.

41. A local authority's affordable housing requirement is one of the most significant factors in varying a CIL. South Oxfordshire District Council is progressing CIL on a similar timetable as Vale. Vale's residential CIL rate for the Didcot area is £120 psm while for South the rate is £85 psm. This difference can be accounted for as a result of South seeking a higher Affordable Housing requirement of 40% rather than the proposed affordable housing requirement of 35% for Vale. Similarly, Oxford City's single residential CIL rate of £100 psm factors in an affordable housing requirement of 50%, and the viability evidence supporting this rate predates the viability study undertaken for Vale's CIL when market conditions are weaker.

## **Financial Implications**

42. Funding for the preparation of CIL will be met through existing budgets. The Regulations<sup>11</sup> allow for up to five per cent of CIL collected each year to be spent on the administration of CIL, including any expenses incurred before the charging schedule was published.

## **Legal implications**

43. Once adopted CIL is a mandatory cost of development. Proposed collection and governance arrangements including the management and implementation of CIL will be subject to a separate report. It is considered that the legal requirements, as set out in the CIL Regulations 2010 (as amended) for the preparation and examination of a Charging Schedule have been met, allowing for pre-submission public consultation and submission for examination.

## **Other implications**

44. In line with our public sector equality duties of the Equality Act 2010, we have reviewed our CIL documentation and officers do not believe the charging schedule discriminates against any groups of people by the virtue of their protected characteristic.
45. Officers recognise that it is important to ensure any infrastructure provided through CIL is accessible to meet the needs of all groups. We will work to ensure that the S106 SPD and Local Plan encourages infrastructure to be built to best practice guidance.

## **Risks**

46. There is no statutory duty placed on the council to prepare a CIL so it has the option at any time to cease work, and post adoption to cease charging. However, restrictions on the future use of Section 106 agreements post April 2015 will reduce the council's ability to pool developer funding towards essential infrastructure using Section 106. The National Planning Policy Framework (NPPF) emphasises the

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<sup>11</sup> The Community Infrastructure Levy Regulations 2010 (as amended) Regulation 67

interconnection between CIL and the Local Plan, specifically the role of CIL to support the planned development set out in the Local Plan.

47. Although these restrictions will come into force before the Council has an adopted CIL, our timetable ensures the progression of a CIL alongside the Local Plan. The Local Plan provides assurances on the provision of necessary infrastructure to facilitate the level of development planned within the Local Plan. Following the CIL examination, Council will consider the Examiner's report and whether to adopt CIL. Delays in the examination of the Local Plan will impact on the council's ability to adoption CIL.
48. The council and Oxfordshire County Council are undertaking a review of secured Section 106 since 6 April 2010 to ensure that Section 106 agreements entered into post 6 April 2015 will be compliant with the regulations. It will be necessary in many situations to refer to particular projects much more specifically than is the case at present.
49. Seeking to charge higher rates of CIL have been considered, however to do so is at the risk of jeopardising the Local Plan examination and risking the deliverability of strategic sites (e.g. Valley Park). Officers consider that the rates proposed are based on local viability evidence and will not undermine the deliverability of sites within the Local Plan. Seeking to secure higher rates would run the risk of being found unsound at a CIL examination leading to delays for the council of up to a year in introducing CIL. Delays in implementing a CIL increases the risk to the council being able to secure necessary infrastructure funding following the restrictions in use of S106 post April 2015. Progressing CIL at the rates proposed will ensure the council will continue to secure funding towards necessary infrastructure. The CIL Regulations allows the council to revisit its rates should viability changes, to do so would involve further consultation and an examination.

## **Conclusions**

50. Following feedback from recent consultation, sensitivity testing of our viability report, the suggested CIL rates in the proposed Draft Charging Schedule are believed to be an appropriate balance between securing funding for infrastructure and the potential effects of imposing a charge on the economic viability of development as a whole.
51. Scrutiny is requested to consider this report and the Community Infrastructure Levy Draft Charging Schedule and make any comments to the Cabinet Member for Planning.

**Liz Fay**  
Community Infrastructure Officer  
February 2015

## **Background documents and appendices**

<b>Appendix 1:</b>	CIL Draft Charging Schedule
<b>Appendix 2:</b>	Regulation 123 List
<b>Appendix 3:</b>	Instalment Policy
<b>Appendix 4:</b>	Consultation Statement
<b>Appendix 5:</b>	Infrastructure and Funding Report
<b>Appendix 6:</b>	Draft Charging Schedule Background Document
<b>Appendix 7:</b>	CIL Frequently Asked Questions
<b>Appendix 8:</b>	CIL Viability Study