

REPORT OF THE HEAD OF PLANNING, ECONOMY AND REGENERATION

MID DEVON COMMUNITY INFRASTRUCTURE LEVY

Cabinet Member(s): Cllr Richard Chesterton, Cabinet Member for Planning & Economic Regeneration

Responsible Officer: Mrs Jenny Clifford, Head of Planning, Economy and Regeneration

Reason for Report and Recommendations: To consider options for the Mid Devon Community Infrastructure Levy in light of Government consultation proposals to reform the planning system in its White Paper and a recommendation to Council that the Mid Devon Community Infrastructure Levy draft Charging Schedule is withdrawn from examination and is no longer progressed.

RECOMMENDATION:

That Cabinet recommends to Council that:

The Mid Devon Community Infrastructure Levy draft Charging Schedule is withdrawn from its examination and is no longer progressed

Financial Implications: Withdrawal of the Mid Devon Community Infrastructure Levy (CIL) draft charging schedule will mean it will no longer be examined by an Independent Inspector, and capable of being adopted by the Council as a means to secure monies towards the provision of infrastructure in the district. The Council will continue to be able to seek developer contributions, as currently is the case, through S106 planning obligations.

Budget and Policy Framework: None directly.

Legal Implications: There is no legal requirement for the Council to adopt and implement a CIL for Mid Devon.

Risk Assessment: The Government has indicated in the White Paper of August 2020 'Planning for the Future' an intent to replace the existing arrangements for developer financial contributions via both S106 agreements and CIL. These proposals are subject to consultation. There is a risk associated with a decision to withdraw the Council's CIL draft charging schedule from its examination without the certainty of knowing what the Government's reforms will be to the current system of CIL and planning obligations. However this must be weighed against a draft charging schedule that was submitted in March 2017, and examination during unprecedented current economic uncertainty and if brought into force, a likely short lifespan in the face of reform.

The previous approach to seek to adopt a CIL charging schedule was undertaken at a time where there were pooling limits to the use of S106 agreements. These pooling limits prevented use of more than five obligations to fund the same infrastructure by

project or infrastructure type with the consequential problems in funding and hence delivering infrastructure. These pooling limits have now been lifted.

Equality Impact Assessment: There are no equalities impacts identified.

Relationship to Corporate Plan: The continued use of S106 planning obligations can provide the means for the Council to help fund affordable housing and infrastructure where these are priorities in the Corporate Plan 2020-2024.

Impact on Climate Change: There are no direct impacts on climate change identified. Developer contributions are a method by which the impact of development is mitigated, such impact also being in terms of climate change and sustainability, for example through financial contributions towards footpaths, cycle routes and public transport provision.

1.0 Introduction and background

S106 planning obligations and Community Infrastructure Levy

- 1.1 There are several ways in which a Local Authority can require a developer to contribute towards infrastructure. This is so as to help with the impact of development and make it acceptable in planning terms.
- 1.2 Planning obligations can be sought in accordance with Section 106 of the Town and Country Planning Act 1990. These planning obligations are a legal agreement between the applicant seeking planning permission and the local planning authority.
- 1.3 Local Authorities can also secure funding towards infrastructure through a Community Infrastructure Levy (CIL). The CIL is a flat rate and non-negotiable charge which can be levied on new development in their area and it is a mechanism to use to help deliver the infrastructure needed to support development in their area. The CIL can only apply in areas where a local authority has consulted on, and approved, a charging schedule which sets out its levy rates and has published the schedule on its website
- 1.4 The legislation for the CIL is set nationally through the “The Community Infrastructure Levy Regulations 2010” and subsequent amendments made to these regulations, including “The Community Infrastructure Levy (Amendment) Regulations 2015” and “The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019”.
- 1.5 The Community Infrastructure Levy Regulations 2010 (Regulation 123) introduced a ‘pooling’ mechanism to encourage the adoption of a CIL by local authorities and a move away from securing infrastructure through planning obligations. From 1st April 2015 Regulation 123 limited the pooling of contributions to deliver infrastructure from Section 106 agreements to a maximum of 5 per project or infrastructure type. This ‘pooling’ mechanism was removed by The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 which came into force on 1st September 2019. This change has given local authorities greater flexibility in securing the

contributions needed, including where there is no CIL charging schedule in place.

Mid Devon Draft Charging Schedule

- 1.6 There is currently no CIL in place in Mid Devon and planning obligations are secured through Section 106 agreements. However, the Council has sought to introduce a CIL to secure funding for infrastructure in the district.
- 1.7 The Council on 1st December 2016 adopted the recommendations of Cabinet on 21st November 2016 (minute 97) to approve a draft CIL charging schedule for consultation, with delegated authority given to the Head of Planning and Regeneration in consultation with the Cabinet Member for Planning to agree and submit this to Secretary of State for examination.
- 1.8 The draft CIL Charging Schedule for Mid Devon is intended to supplement rather than replace other infrastructure funding streams, in a regime where from 1st April 2015 there was a national restriction on the pooling of S106 planning obligations. The introduction of this pooling limit to the use of S106 agreements in 2015 was one of the main drivers for this Council subsequently preparing a CIL charging schedule.
- 1.9 The CIL charging area covers the whole of the district, excluding the part situated within the Dartmoor National Park, but with two Charging Zones with different charging rates. In Charging Zone 1, which consists of the strategic sites: urban extensions at Tiverton East, Cullompton North West, Cullompton East, and the Tourism, Leisure and Retail site at J27(M5) allocated in the adopted Local Plan, there will be a zero charge (£0 per square metre gross internal floor space of chargeable development). For these sites, S106 was proposed to continue as the mechanism to fund and secure infrastructure. Zone 2 covers the remainder of the planning authority's area, and chargeable rates are set ranging from £0 to £100 per square metre depending on location and type of development. The draft CIL Charging Schedule sets out which types of new development need to pay CIL and which types of development are exempt or gain relief from paying CIL. A Regulation 123 List sets out the Council's priorities for spending CIL and makes clear that the Council will not require Section 106 contributions for any infrastructure project or type that is included on the Regulation 123 List for funding in part or in whole through CIL.
- 1.10 At the time of preparing and approving the draft CIL Charging Schedule it was forecast that the introduction of CIL at the rates recommended would produce an income of about £9.5m over the remaining period of the local plan (up to 2033).
- 1.11 In accordance with the Localism Act 2011 and the CIL Regulations, a portion of CIL receipts (the 'neighbourhood portion') are passed directly to those Parish and Town Councils where development has taken place (Regulation 59A). The spending priorities for the 'neighbourhood portion' are determined locally by the Parish or Town Council and are not included within Mid Devon's Regulation 123 List. Normally the 'neighbourhood portion' is 15% of the relevant CIL receipts (subject to an annual limit, see Regulation 59A(7)). However, areas that draw up a neighbourhood plan or neighbourhood

development order (including a community right to build order), and secure the consent of local people in a referendum, benefit from 25% of the levy revenues arising from the development that takes place in their area. This 25% portion of the levy is not subject to an annual limit. For the higher neighbourhood portion to apply, the neighbourhood plan or order must have been 'made' before a relevant planning permission or order first permits development.

Examination of the Mid Devon draft charging schedule for the Community Infrastructure Levy

- 1.12 The Council submitted its CIL draft charging schedule and supporting documentation to the Planning Inspectorate on 31st March 2017 for its examination, together with the Proposed Submission Mid Devon Local Plan Review 2013 – 2033 (Local Plan Review).
- 1.13 The Planning Inspectorate appointed Mr Griffiths for the purpose of examining both the CIL draft charging schedule and the Local Plan Review. During the course of the examination of the Local Plan Review the Inspector advised the Council that he would not progress the examination of the CIL draft charging schedule until he had concluded the examination of the Local Plan Review.
- 1.14 The examination of the Local Plan Review concluded with the receipt of the Inspector's report on 26th June 2020. The Council proceeded to adopt the Local Plan Review with the Inspector's recommended main modifications and additional minor modifications on 29th July 2020.
- 1.15 The examination of the CIL draft charging schedule currently remains in abeyance.
- 1.16 The Inspector has indicated to the Council that given the start of the CIL examination has had to await the completion of the examination into the Local Plan Review, the documentation relating to the CIL examination is of some vintage. The most recent documentation that the Council submitted to the Inspector for the CIL examination was the CIL viability update (June 2018). The Inspector has sought confirmation that the documentation does not require any revisiting or updating as far as the Council is concerned. Officers have advised the Planning Inspectorate that this matter is being considered, together with the potential implications that may arise from the Government's consultation on reforms to the planning system and a new national levy to replace the current system of developer contributions. The timing of these reforms could have implications for the introduction of a CIL in Mid Devon. Further uncertainty is also now introduced in terms of examination during unprecedented current economic conditions.
- 1.17 The Inspector is awaiting a further update from the Council. This is an opportunity to review and revisit whether the Council still considers there is a case to continue with CIL, or whether circumstances have changed to the extent that it is no longer appropriate to do so.

2.0 Proposed planning reforms and the need to review the Community Infrastructure Levy

- 2.1 On 6th August 2020 the Government published its White Paper “Planning for the Future” for consultation. This has been the subject of a report considered by the Cabinet on 1st October and the Council’s response to the consultation has been submitted.
- 2.2 The White Paper sets out proposals for a consolidated ‘Infrastructure levy’ that will replace the current twin regime of S106 planning obligations and CIL. The new consolidated Infrastructure Levy could either be charged as a fixed proportion of the development value above a threshold, with a mandatory nationally-set rate or rates and the current system of planning obligations abolished.
- 2.3 The White Paper includes an alternative option where the Infrastructure Levy could remain optional and area specific rates set nationally, or rates set locally by individual local authorities. However, as planning obligations would be consolidated into the single Infrastructure Levy and local authorities would not be able to use S106 planning obligations to secure infrastructure or affordable housing, the Government anticipates a significantly greater update.
- 2.4 The Government’s intent to review the Community Infrastructure Levy has introduced uncertainty about how local authorities may be able to secure funding in the future from development to help pay for infrastructure and affordable housing. This uncertainty needs to be weighed up in relation to the examination of the Council’s draft CIL charging schedule and benefits from bringing this regime into effect.
- 2.5 Indications from the White Paper are that the scope of the intended reform of the systems of developer contributions goes beyond amendment. Instead replacement of the existing systems is proposed. This leads to the conclusion that the introduction of CIL charging in Mid Devon is likely to be short-lived pending that reform.

3.0 Appraisal of options

- 3.1 Officers have undertaken an appraisal of the options available to the Council. These options are considered to be:
 - 1a. Continue with CIL examination, progress to adoption and implement
 - 1b. Continue with CIL examination and reconsider approach following receipt of Inspector’s report
 2. Withdraw the CIL draft charging schedule from examination and do not pursue a CIL for Mid Devon
 3. Put a CIL on hold – don’t proceed with the examination at this stage and reconsider in 6 months

This appraisal is detailed in the following table, where the justification, advantages and disadvantages of each option are set out.

Option 1a	Continue with the CIL examination and progress to adoption and implement	<p><u>Justification</u></p> <p>This is the current route approved by Council</p> <p>Can help provide greater certainty to the development industry</p> <p>Expectation by Neighbourhood Planning groups of a neighbourhood portion of the CIL</p> <p><u>Advantages</u></p> <p>Route to the earliest practicable implementation of a CIL</p> <p>A Mid Devon CIL could be brought into effect by mid-2021. Potential forecast CIL receipts from chargeable housing development in the district (unconsented allocated sites and on forecast windfall sites) may be 2021/22 (£0), 2022/23 (£947,000), after which the Government's potential reforms may come into effect together with any transitional arrangements</p> <p>Mechanism to help provide funding for Neighbourhood Planning groups</p> <p>The implementation of a CIL in Mid Devon would be consistent with Exeter City Council, East Devon District Council and Teignbridge District Council which are already CIL charging authorities. The experience of implementing and resourcing a CIL could help foster the opportunity for a joint CIL and non-statutory infrastructure plan and planning strategy</p> <p><u>Disadvantages</u></p> <p>A Mid Devon CIL would be likely to have a limited life expectancy should Government reforms be made to CIL and the current system of S106 planning obligations.</p> <p>There is a potential need for viability evidence to be updated to inform the CIL examination, which could delay the CIL examination to 2021. If this pointed to a need to revise the charging schedule this could require a withdrawal of the current charging schedule from the examination process, consultation on a revised charging schedule and submission for examination with a potential for significant delay in bringing a CIL regime into effect</p>
Option 1b	Continue with the CIL examination and reconsider following the receipt of the Inspector's report	<p><u>Justification</u></p> <p>This would provide an opportunity to pause to wait for an outcome on the Government's proposed reforms to the community infrastructure levy and the current system of planning obligations</p> <p><u>Advantages</u></p> <p>Provides the Council with the option to implement the CIL or not</p>

		<p><u>Disadvantages</u></p> <p>There is a potential need for viability evidence to be updated to inform the CIL examination, which could delay the CIL examination to 2021. If this pointed to a need to revise the charging schedule this could require the withdrawal of the current charging schedule from the examination process, consultation on a revised charging schedule and submission for examination with a potential for significant delay in bringing a CIL regime into effect</p> <p>Raises expectations that the Council will pursue the implementation of a CIL</p> <p>Examination costs of c£26,000 would be incurred</p>
Option 2	Withdraw the CIL draft charging schedule from examination and do not pursue a CIL for Mid Devon	<p><u>Justification</u></p> <p>Potential forecast CIL receipts will be limited (2021/22 (£0), 2022/23 (£947,000) after which the potential Government's reforms may come into effect together with any transitional arrangements</p> <p>Pooling restrictions on the use of S106 planning obligations were removed from 1st September 2019, and there is now greater flexibility to pool planning obligations towards infrastructure provision that did not exist at the time the Council approved the submission of a draft CIL charging schedule for examination</p> <p>The Council's proposed arrangements for S106 governance will continue to provide an opportunity for Town and Parish Councils to nominate projects to be funded through S106 planning obligations. S106 planning obligations will continue to be secured through significant levels of new housing development on the Local Plan strategic urban extensions at Tiverton East, Cullompton North West, and Cullompton East</p> <p><u>Advantages</u></p> <p>Avoids bringing into effect a new charging regime which would be short-lived, and with limited CIL receipts</p> <p>The current S106 regime for securing planning obligations would continue to remain in place until replaced by the Government's provide national infrastructure levy</p> <p>Examination costs of c£26,000 will not be incurred.</p> <p><u>Disadvantages</u></p> <p>Neighbourhood Planning Groups would not receive a neighbourhood portion of CIL receipts</p> <p>There is uncertainty how the current S106 planning obligations will be replaced by Government's proposed reforms</p>

		Mid Devon’s approach would be inconsistent with Exeter City Council, East Devon District Council and Teignbridge District Council which are CIL charging authorities, and which might affect the preparation of a joint CIL and non-statutory infrastructure plan and planning strategy
Option 3	Put a CIL on hold – don’t proceed with the examination at this stage and reconsider in 6 months	<p><u>Justification</u></p> <p>Pause to wait for an outcome on the Government’s proposed reforms to the community infrastructure levy and the current system of planning obligations</p> <p>The Council’s proposed arrangements for S106 governance will continue to provide an opportunity for Town and Parish Councils to nominate projects to be funded through S106 planning obligations. S106 planning obligations will continue to be secured through significant levels of new housing development on the Local Plan strategic urban extensions at Tiverton East, Cullompton North West, and Cullompton East</p> <p><u>Advantages</u></p> <p>Avoids progressing down a route that will incur examination costs and which may need to be abandoned at a later stage</p> <p><u>Disadvantages</u></p> <p>The Planning Inspectorate may not support a postponement of the examination</p> <p>The Consultant may not agree to protracted consultancy support – may need to review contract</p> <p>Delay to the introduction of a CIL if it is decided it is progressed, with uncertainty until that decision is made</p> <p>Potential need for viability evidence to be updated to inform the CIL examination, which could delay the CIL examination to 2021. If this pointed to a need to revise the charging schedule this could require withdrawal of the current charging schedule from the examination process, consultation on a revised charging schedule and submission for examination with a potential for significant delay in bringing a CIL regime into effect</p>

4.0 Comparison between forecast potential S106 planning obligations and CIL receipts

4.1 Officers have undertaken an assessment of potential S106 planning obligations that might feasibly be secured from forecast new housing development consented on Local Plan site allocations and on windfall sites across the district in the period to 2022. This is based on small sample of planning applications where S106 planning obligations have been secured.

This assessment can help provide a comparison between those forecast potential S106 planning obligations and forecast potential CIL receipts from chargeable housing development in the district. It should be noted that the Council's submitted CIL draft charging schedule identifies public open space as an item of infrastructure that will not be funded in whole or part by a CIL and which would continue to be funded through S106 planning obligations.

- 4.2 The comparison in the following table shows that the sum of forecast potential CIL receipts and forecast potential S106 planning obligations secured for public open space (which will continue to be funded from S106 planning obligations) in 2022/23 could be about the same as the forecast potential total S106 planning obligations secured without a CIL in place. While this comparison is believed to be helpful, the calculations need to be treated with caution, since the assumptions used can be affected by many variables (i.e. development proposals not being submitted for determination, viability considerations, the size of dwellings (floorspace) and number of dwellings subject to a CIL charge and those that would be exempt etc).

	2020/21	2021/22	2022/23
Current regime (without a Mid Devon CIL)			
Forecast potential S106 planning obligations	£1.11m	£1.01m	£1.53m
Regime with S106 and a Mid Devon CIL			
Forecast potential S106 planning obligations for public open space	-	-	£509,000
Forecast potential CIL receipts	-	-	£947,000

5.0 Potential lifespan of CIL collection if introduced

- 5.1 Were a CIL approach to funding infrastructure to continue, it is estimated that it would only be in place for approximately 12 months before any reform is brought in. A draft timescale for CIL implementation is estimated as follows:

Examination of draft charging schedule	*March 2021
Receipt of Inspector's report	*June 2021
Council decision to enact charging schedule	August 2021
6 month preparation period	
CIL charging commences	March 2022

* Note- These dates are determined by the Planning Inspectorate and are estimates only

- 5.2 CIL is due to be paid in full within 60 days of the commencement of the development unless payments are made in accordance with the instalment

policy. Commencement of development is normally within three years of the grant of permission (where an outline and reserved matters approach is taken, this time from initial permission to commencement may be longer). Accordingly there will be a lag time between the date charging starts and when CIL liable development granted after that date commences, thereby triggering the CIL payment.

- 5.3 If the decision is made to continue with CIL, these factors mean that little if any CIL money is likely to be paid for at least two years. This is of relevance given the Government's published intent to reform the system of CIL and S106 and to introduce planning reform as soon as possible. Whilst we can expect transition arrangements to any new system being introduced, it is reasonable to estimate that it could be in place (or in transition) in 23/24. This could give approximately 1 year of CIL charging before reform if the timescale for CIL implementation were as set out above. Members are asked to note that these timescales are estimated, but are considered reasonable assumptions.

6.0 Neighbourhood portion

- 6.1 Paragraph 1.11 makes reference to the 15% neighbourhood portion of CIL receipts, rising to 25% where a neighbourhood plan or neighbourhood development order has been made. At present no neighbourhood development orders are in place and no neighbourhood plans adopted. However there are several neighbourhood plans in preparation, with that for Cullompton currently being the most advanced having received the Examiner's report. There is every expectation that the first neighbourhood plans will be made (subject to referendum results) in 21/22. In these locations 25% of CIL receipts would be then go to the relevant Parish or Town Council to spend on infrastructure. However, in locations such as Cullompton and Tiverton where most planned development is located on strategic sites, these larger allocations are not CIL chargeable, instead remaining subject to S106. Any CIL receipts would be related to non-strategic sites and therefore by their nature more limited in scale and size of CIL payment.

- 6.2 Whilst there will have been an expectation of receiving 15% or 25% of CIL payments by our communities, the amount of funding involved would be limited by its application to non-strategic sites and likely to be only from development over a short period of time until the system is reformed. It is not yet known for sure whether this reform will retain this neighbourhood share. However the Government has recognised it in the White Paper as 'an important incentive to local communities to allow development in their area' and should the approach be to give more freedom to local authorities over how they spend the 'infrastructure levy', the White Paper indicates it would be kept.

7.0 Planning Policy Advisory Group

- 7.1 The Planning Policy Advisory Group (PPAG) was consulted on 18th November 2020 and has supported the recommendation of the report.

8.0 Conclusions

8.1 Based on the appraisal of options available to the Council and informed through the assessment of timescales and likely lifespan, comparison of forecast potential S106 planning obligations and CIL receipts to 2022/23, it is recommended to Members that the CIL draft charging schedule is withdrawn from its examination and that Council no longer pursues a CIL for Mid Devon.

Contact for more Information:

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Circulation of the Report: Cabinet Member

List of Background Papers and relevant links:

Community Infrastructure Levy Regulations 2010
<https://www.legislation.gov.uk/uksi/2010/948/made/data.pdf>

Community Infrastructure Levy (Amendment) Regulations 2015
<https://www.legislation.gov.uk/uksi/2015/836/made/data.pdf>

Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019
<https://www.legislation.gov.uk/uksi/2019/1103/made/data.pdf>

Government guidance for Community Infrastructure Levy
<https://www.gov.uk/guidance/community-infrastructure-levy>

“Planning for the Future – White Paper” (August 2020) MHCLG
<https://www.gov.uk/government/consultations/planning-for-the-future>

Mid Devon webpages:

Cabinet 21st November 2016
<https://democracy.middevon.gov.uk/mgAi.aspx?ID=4486#mgDocuments>

Council 1st December 2016
<https://democracy.middevon.gov.uk/ieListDocuments.aspx?CId=156&MId=752&Ver=4>

CIL examination webpage
<https://www.middevon.gov.uk/residents/planning-policy/community-infrastructure-levy-cil/community-infrastructure-levy-cil-examination/>

<https://www.middevon.gov.uk/residents/planning-policy/community-infrastructure-levy-cil/examination-library-2017/>

CIL Viability Update June 2018:

<https://www.middevon.gov.uk/media/346380/mddc-cil-viability-update-report-final-dsp-17517v3.pdf>

<https://www.middevon.gov.uk/media/346381/appendix-i-plus-cover-sheet.pdf>

<https://www.middevon.gov.uk/media/346382/appendix-ii-pluscover-sheet.pdf>

<https://www.middevon.gov.uk/media/346383/appendix-ii-appraisal-summaries.pdf>

<https://www.middevon.gov.uk/media/346384/appendix-iii-v3-plus-costar.pdf>