



<b>Title</b>	Adoption of the Community Infrastructure Levy (CIL) Charging Schedule	
<b>For further information about this report please contact</b>	Dave Barber Policy and Projects Manager Development Services  01926 456065 Dave.barber@warwickdc.gov.uk	
<b>Wards of the District directly affected</b>	All	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No	
<b>Date and meeting when issue was last considered and relevant minute number</b>	Full Council 12 <sup>th</sup> April 2017, item 13 Executive 05 <sup>th</sup> Jan 2016, Item 6 Full Council 28 <sup>th</sup> Jan 2015, Minute Number 67 Executive 4 <sup>th</sup> June 2013, Item 4	
<b>Background Papers</b>		
<b>Contrary to the policy framework:</b>	No	
<b>Contrary to the budgetary framework:</b>	No	
<b>Key Decision?</b>	Yes	
<b>Included within the Forward Plan? (If yes include reference number)</b>	Yes	
<b>Equality Impact Assessment Undertaken</b>	Yes	
<b>Officer/Councillor Approval</b>		
<b>Officer Approval</b>	<b>Date</b>	<b>Name</b>
Chief Executive/Deputy Chief Executive		Bill Hunt
Head of Service		Tracy Darke
CMT		Chris Elliott/Bill Hunt/Andy Jones
Section 151 Officer		Mike Snow
Monitoring Officer		Andy Jones
Finance		Mike Snow
Portfolio Holder(s)		Cllr Alan Rhead
<b>Consultation &amp; Community Engagement</b>		
Public consultation on the Draft Charging Schedule took place in January and February 2017. Further consultation on the proposed Charging Schedule took place in July and August 2017.		
<b>Final Decision?</b>	Yes	
<b>Suggested next steps (if not final decision please set out below)</b>		

## 1. **Summary**

- 1.1 This report seeks resolution to formally adopt the Community Infrastructure Levy (CIL) Charging Schedule following on from the approval of the Draft Charging Schedule by the independent Examiner appointed by the Planning Inspectorate.
- 1.2 Once adopted, it is intended that the CIL charging process will commence between 20<sup>th</sup> November and 18<sup>th</sup> December 2017.

## 2. **Recommendations**

- 2.1 That Executive notes the content of the Inspector's report attached at appendix 1 to this report.
- 2.2 The Executive recommends to Council that the CIL Charging Schedule attached at appendix 2 to this report is adopted, in accordance with section 213 of the Planning Act 2008 (as amended).
- 2.3 The Executive recommends to Council that the CIL Charging Schedule takes effect from a date to be determined by the Head of Development Services in consultation with the Portfolio Holder for Development Services. The date will not be earlier than 20<sup>th</sup> November 2017 but no later than 18<sup>th</sup> December 2017.
- 2.4 The Executive informs Council that, once the Charging Schedule is adopted, authority rests with the Executive to approve the establishment of formal governance arrangements in relation to the distribution of CIL monies and to approve the infrastructure priorities for the first and subsequent financial years.
- 2.5 The Executive recommends to Council that the Head of Development Services is authorised to take any steps deemed appropriate for the purpose of implementing recommendation 2.2, including publication of the Charging Schedule, implementation of the processes required to administer CIL, the use of CIL to cover administrative expenses incurred in connection with CIL (in accordance with regulation 61 of the 2010 CIL Regulations) and the correction of any "correctable errors" in accordance with Regulation 26 of the CIL Regulations 2010 (as amended) .
- 2.6 That the Executive approves the CIL Instalments Policy, attached at appendix 3 to this report, and that the policy comes into force on the date of the CIL Charging Schedule takes effect.
- 2.7 That the Executive agrees that, other than the exemptions and reliefs required by the CIL Regulations 2010 (as amended), such as developments in relation to affordable housing and those used for charitable purposes, the Council's policy is only to apply discretionary relief or exemptions where exceptional circumstances can clearly be demonstrated. Authority to apply discretionary relief for exceptional circumstances is delegated to the Head of Development Services in consultation with the Portfolio-holder for Development Services.
- 2.8 That the Executive agrees the Regulation 123 list attached at appendix 4 for CIL monies received prior to the end of March 2018 and notes that a separate report will be presented to the Executive in February or March 2018 to establish formal governance arrangements in relation to the distribution of CIL monies and to gain approval for the following financial year's infrastructure priorities and Regulation 123 list for the forecast CIL income.

### **3. Reasons for the Recommendations**

- 3.1 The Council is committed to introducing a CIL Charging Schedule which, in addition to other funding mechanisms such as Section 106, will support the delivery of the infrastructure required for the level of growth proposed in the recently adopted Local Plan. It is intended to complement rather than replace other funding streams and to promote development rather than hinder it.
- 3.2 The Draft Charging Schedule and Modifications have undergone extensive consultation, viability assessment and independent examination. The independent Examiner has concluded that the proposed charging rates would not threaten the viability of sites and the scale of development identified in the Local Plan.
- 3.3 In April 2017, Council resolved the approval of the Draft Charging Schedule (DCS) and its subsequent submission to the Planning Inspectorate as required by the Community Infrastructure Regulations 2010 (as amended).
- 3.4 The formal examination hearing took place on 24<sup>th</sup> July 2017. The Examiner raised a few points of clarification regarding the DCS submitted by the Council and as a result the DCS was altered to address them.
- 3.5 A further period of public consultation was then held during July and August. In total, six representations were made during this period and they were submitted to the Examiner in September 2017 for his consideration in preparation for the issue of his final report.
- 3.6 On the 23/10/2017, the Inspector issued his final report approving the Charging Schedule for Warwick District Council, subject to three modifications and stating that the rates contained therein will not in his opinion hinder the viability of development in the area going forward.
- 3.7 The three modifications recommended by the Inspector are set out in appendix A of his report. Two of the recommendations (relating to retail charges and the retail zoning map), are simply points of clarification that are required to prevent ambiguity. The other recommendation is that Hampton Magna should be in the lower value Zone A rather than Zone D – a position that the Draft Charging Schedule originally proposed but which was changed following the consultation in January/February this year.
- 3.8 It has always been the intention to adopt the CIL Charging Schedule in conjunction with the Local Plan. As the Local Plan has now been formally adopted, it is envisaged that this will result in an increase in planning applications most of which will be liable for CIL if the Charging Schedule is in place when the applications are approved.
- 3.9 It is for these reasons that it is prudent to approve and adopt CIL by the end of December to ensure that we capture the anticipated influx of planning applications and therefore to maximise the level of CIL revenue available to facilitate the provision of necessary infrastructure in support of the Local Plan.
- 3.9 There are a few internal procedures being developed to enable the administration of CIL and these will be managed and approved at officer level,

with the overall responsibility resting with the Head of Development Services in consultation with the portfolio holder. The regulations allow the Council to use up to 5% of CIL receipts to cover the administrative costs of CIL. CIL is likely to have some significant resource implications in determining planning applications and working with infrastructure providers. It is therefore recommended that the Head of Development be authorised to draw on the potential to use a small proportion of CIL receipts for administrative costs. However, bearing in mind the need to maximise the amount of CIL that contributes directly towards infrastructure, it is intended to keep this to the minimum necessary.

- 3.10 The legislation allows for the Charging Authority to operate an instalments policy which is designed to allow developers to spread the cost of CIL particularly those facing the highest liabilities. The instalments policy is included in appendix 3 to this report.
- 3.11 The instalments policy has been extensively modelled to ensure it is in line with the regulations, supports viability and is an affordable model for the Council. It is envisaged that an effective instalments policy will enable CIL payments to be made without the requirement to introduce costly and cumbersome enforcement options. In general, it is proposed that the Council's policy should be not to apply discretionary reliefs and exemptions. However there may be a small number of cases where genuine exceptional circumstances apply in accordance with regulation 55. This regulation allows relief for exceptional circumstances where the Council:
- considers that to require payment of the CIL would have an unacceptable impact on the economic viability of the development, and
  - is satisfied that to grant relief would not constitute a State aid.
- One example is for sites which have outline planning permission with section 106 agreements approved prior to the adoption of CIL. Where reserved matters applications for these permissions are considered after the adoption of CIL, it is proposed that these will be exempt from CIL if it is clear that the section 106 agreement was laid out on the basis of there being no CIL liability. If CIL were applied in these circumstances it would be likely that the Section 106 agreement would need to be renegotiated.
- 3.12 The Regulation 123 list sets out those items of infrastructure which the Council intends to spend CIL monies on. Appendix 4 shows a simplified Reg. 123 list for allocating CIL money to during the remainder of the financial year 2017/18. These items are drawn from the list that was considered by Council in April 2017. This curtailed list takes account of the fact that that the receipts during this period are likely to be negligible as no payments will be made until 60 days after commencement on site. In this context, the Reg. 123 list set out in Appendix 4 should be understood as a temporary position ahead of the completion of the detailed and thorough infrastructure planning work that is currently underway with infrastructure providers. This will enable officers to bring forward robust proposals for a revised Reg. 123 list to be considered by Executive in February or March 2018. This revised list will form the basis for allocating CIL receipts during 2018/19 when a more substantial level of funding is expected. The Reg. 123 list will then be reviewed annually.
- 3.13 Alongside the Charging Schedule and the Instalments Policy set out in this report, it is common practice to establish a recovery and enforcement policy to set out how surcharges will be applied where applicants do not comply with the regulations and how overdue payments will be recovered. Given that there will not be any circumstances requiring enforcement for several months it is proposed that officers include this policy in the report to Executive in

February/March 2018. In principle it is proposed that this policy sets out an expectation that applicants should adhere to the regulations and that failure to do so will have consequences. This firm approach seeks to minimise the additional resources and costs that the Council could incur where regulations are not followed.

#### 4. Policy Framework

##### 4.1 Fit for the Future (FFF)

The Council's FFF Strategy is designed to deliver the Vision for the District of making it a Great Place to Live, Work and Visit. To that end amongst other things the FFF Strategy contains several Key projects.

The FFF Strategy has 3 strands – People, Services and Money and each has an external and internal element to it. The table below illustrates the impact of this proposal if any in relation to the Council's FFF Strategy.

<b>FFF Strands</b>		
<b>People</b>	<b>Services</b>	<b>Money</b>
<b>External</b>		
<b>Health, Homes, Communities</b>	<b>Green, Clean, Safe</b>	<b>Infrastructure, Enterprise, Employment</b>
<u>Intended outcomes:</u> Improved health for all Housing needs for all met Impressive cultural and sports activities Cohesive and active communities	<u>Intended outcomes:</u> Area has well looked after public spaces All communities have access to decent open space Improved air quality Low levels of crime and Anti-Social Behaviour (ASB)	<u>Intended outcomes:</u> Dynamic and diverse local economy Vibrant town centres Improved performance/productivity of local economy Increased employment and income levels
<b>Impacts of Proposal</b>		
Will help co-ordinate the timely provision of infrastructure such as schools, community spaces, medical facilities that are essential to enable the growth required in the Local Plan	Will help co-ordinate the timely provision of infrastructure such as new parks, play areas and open spaces that are essential to enable the growth required in the Local Plan	Will help co-ordinate the timely provision of infrastructure such as roads that are essential to enable the growth required in the Local Plan
<b>Internal</b>		
<b>Effective Staff</b>	<b>Maintain or Improve Services</b>	<b>Firm Financial Footing over the Longer Term</b>
<u>Intended outcomes:</u> All staff are properly trained All staff have the	<u>Intended outcomes:</u> Focusing on our customers' needs Continuously improve	<u>Intended outcomes:</u> Better return/use of our assets Full Cost accounting

appropriate tools All staff are engaged, empowered and supported The right people are in the right job with the right skills and right behaviours	our processes Increase the digital provision of services	Continued cost management Maximise income earning opportunities Seek best value for money
<b>Impacts of Proposal</b>		
None	None	None

#### 4.2 **Supporting Strategies**

Each strand of the FFF Strategy has several supporting strategies. The Local Plan is one of the key strategies, cutting across many of the FFF strands. The CIL scheme ensures the delivery of appropriate infrastructure to enable the growth required through the plan period.

### 5. **Budgetary Framework**

5.1 There are no costs directly incurred because of the formal adoption of the CIL Charging Schedule, and the legislation allows for a proportion of the monies collected to be used towards the ongoing costs of administering the levy.

5.2 As referred to in Section 3, the adoption of CIL is an important charging mechanism to generate funding towards many of the infrastructure costs resulting from the Local Plan, with these items being included in the Regulation 123 list.

5.3 The CIL Charging Rates set out in Appendix 2 will be indexed annually in accordance with Regulation 40 of the CIL Regulations 2010 (as amended). The level of charge applied to each development will be the rate applicable at the time planning permission is granted (or in the case of outline applications, at the time reserved matters permissions are granted).

5.4 CIL will not fund the entire 123 List, which will mean that the relevant authorities will need to continue to seek alternative funding to supplement it, such as the submission of bids for Central Government grants.

5.5 It should also be noted that infrastructure contributions will continue to be sought from Section 106 agreements where these are compliant with the CIL regulations and where the infrastructure project is not included within the Reg. 123 list. Section 106 agreements will therefore be used alongside CIL to deliver the Infrastructure Delivery Plan.

### 6. **Risks**

6.1 Members may recall from the previous report regarding CIL presented to Council in April 2017 that it is likely that CIL will be amended or replaced with a new regime at some point in the future. It has recently been announced that the future of CIL and its likely replacement will form part of the Autumn Budget Statement.

6.2 Although it is likely that changes to the funding regime will be announced, these will take some time to take effect and may require primary legislation.

As such it remains important and practical to continue to adopt CIL as it currently stands so that infrastructure funding is realised in the transition period for any replacement scheme.

- 6.3 Should CIL not be adopted, there is a risk that the significant growth expected within the District will not contribute fully to the infrastructure that is needed (for example, the development spike likely to follow the release of Green Belt land with the adoption of the Local Plan). This would leave a financial deficit that would need to be met from other sources, or not be met at all. Further, the restriction on pooling more than five Section 106 contributions towards one infrastructure project means that major infrastructure is now more difficult to fund from the use of Section 106 Agreements alone.

## **7. Alternative Option(s) considered**

- 7.1 The Council could choose not to pursue the adoption of the CIL Charging Schedule and the CIL scheme. This course of action would undermine the options the Council has to providing the funding needed to deliver the Infrastructure Delivery Plan. In seeking approval from Council to adopt the CIL scheme, it is considered essential that this coincides with the recent adoption of the Local Plan. This is because there is now likely to be a significant increase in housing planning applications accompanied by additional sites being released for development.

## **8. Background**

### **General information about CIL**

- 8.1 The Community Infrastructure Levy (CIL) was introduced under the Planning Act 2008 and is a tariff system that enables local authorities to make a charge on new development to fund infrastructure needed to support development. The CIL Regulations came into effect in April 2010 and minor amendments were made to the Regulations in April 2011. Further Regulations were published during 2012.
- 8.2 CIL is a charge on new development; it is charged per square metre on net additional floor-space of development. CIL is not charged on social housing and developments used for charitable purposes. The amount payable will be set at the time planning permission is granted and payment will be linked to the commencement of development. Larger amounts will be payable in instalments over fixed time periods.
- 8.3 CIL is intended to complement rather than replace other funding streams and is intended to promote development rather than hinder it. Its main advantages are that:
- It is modest representing around 2-5% of total development costs and is not charged on types of development that cannot sustain it.
  - It is a fixed, non-negotiable charge and is therefore transparent and predictable.
  - It is less time-consuming and complicated than Section 106 planning obligations, with less need for protracted negotiations with applicants and the drawing up of legal agreements (although these will still be required to secure affordable housing and addressing site specific mitigation).
  - Local communities will be able to influence how a proportion of CIL receipts are spent in their areas, so that communities can benefit from

development in their area. In areas where a Neighbourhood Plan is in place, 25% of CIL receipts arising from developments in that area will be controlled by local neighbourhoods. Elsewhere, neighbourhoods will control 15% of CIL receipts relating to developments in each area.

- 8.4 Unlike funding from Section 106 agreements, CIL funds can be spent on a wide range of infrastructure to support development without the need for a direct geographical or functional relationship with the development. Section 106 agreements will still be used, but in a more focused way to directly provide both 'off-site' infrastructure, (through financial contributions), and 'on site' improvements through site specific obligations.
- 8.6 To adopt a CIL Charging Schedule, we will need to demonstrate that there is a funding gap which exceeds the likely receipts from other sources. This is set out in a live and evolving document called a Regulation 123 List, included at appendix 4 to this report. The Regulation 123 list is drawn from the Infrastructure Delivery Plan which was considered during the Local Plan Examination in Public that ended in December 2016.

### **Preparation to adopt CIL and the collection process**

- 8.7 As part of the preparations to introduce the CIL scheme, an extensive engagement exercise has been undertaken. This exercise was carried out in conjunction with the major infrastructure providers in the District as well as Town and Parish Councils so that the most effective process to distribute CIL monies to these key stakeholders could be agreed.
- 8.8 The key infrastructure providers in addition to Town and Parish Councils include:
- Warwickshire County Council – Education, Transport and Highways, Infrastructure Delivery
  - Warwickshire Police Place Partnership
  - South Warwickshire Clinical Commissioning Group
  - South Warwickshire Foundation Health Trust
- 8.9 Because of this level of engagement and joint working, there are now effective processes in place to distribute CIL money and to agree the infrastructure priorities with these key infrastructure providers. It is the responsibility of the Charging Authority to make the ultimate decision on those priorities considering the appropriate levels of engagement and consultation with major stakeholder such as those listed above.
- 8.10 As part of this process, a report will be brought to the Executive in the early part of 2018 which will include recommendations for those major infrastructure projects that are recommended as most suitable to be funded through CIL receipts for the following financial year.
- 8.11 This process will be repeated annually so that the Executive approves how CIL is allocated to infrastructure going forward
- 8.12 It should be noted that the payment of CIL is a legal requirement governed by the CIL Regulations 2010 (as amended). Once a liability has been determined, a bill will be issued to the liable party and payment must be made in line with the terms of the demand notice – this may be in full or through the instalments policy depending upon the size of the liability.



- 8.13 The responsibility for determining liability, issuing the liability notice and the subsequent billing and collection of CIL will be the responsibility of the Development Management Team, part of Development Services.
- 8.14 There are a range of enforcement powers available to the council if payment is not made in line with the requirements of the bill. These include planning enforcement powers as well as debt recovery options such as the use of bailiffs. If and when any of these enforcement options are required, the most appropriate course of actions will be decided upon through joint liaison between Development Services and Finance with appropriate legal advice and support.

### **Rationale behind the latest changes to the Charging Schedule**

- 8.15 Members will note that there are some changes to the proposed DCS when compared to the one that Council approved in April 2017.
- 8.16 These amendments are principally in the format of the Schedule, to aide legibility and clarity because of comments from the Examiner. It should be noted that a Council may only approve its charging schedule if it has had regard to the examiner's recommendations and the reasons for them, and it has made modifications sufficient to remedy any defects or non-compliance with the statutory requirements.
- 8.17 The only amendment not covered in the above is the zoning of Hampton Magna. Following Examination, the Council has agreed to place Hampton Magna in Zone A, as it had been in the original DCS submitted for consultation in January 2017.

APPENDIX 1: Examiner's Report on the Examination of CIL

APPENDIX 2: CIL Charging Schedule

APPENDIX 3: Instalments Policy

APPENDIX 4: Regulation 123 List November 2017 to March 2018