

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

14 JULY 2011

**REPORT OF CORPORATE
MANAGEMENT TEAM**

CABINET DECISION/COUNCIL DECISION/KEY DECISION

Community Infrastructure Levy

1. Summary

A new planning charge came into force under the previous Government on 6th April 2010 under the Community Infrastructure Levy Regulations 2010. It allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their area. The money can be used to fund a wide range of infrastructure that is needed as a result of development. This includes transport schemes, flood defences; schools, hospitals and other health and social care facilities, parks, green spaces and leisure centres.

However it requires the setting of a Levy which reflects the costs of the infrastructure, is proportionate, is sound and robust, and has been subject to consultation and testing by an independent Examiner.

The setting of the Levy requires the preparation of a Preliminary Draft Charging Schedule and evidence base documents, and that these are published for consultation. Following consultation and any amendments, the resultant document, known as the Draft Charging Schedule is submitted for independent examination and if approved, adopted and implemented by the Council.

The Regulations do not allow for the publication of a Draft Charging Schedule unless there is an adopted Core Strategy in place. The Stockton Core Strategy is being reviewed, and the distribution of housing in the Borough and consequently the scale and type of supporting infrastructure required could change. This may have an impact on the range of infrastructure items in the Infrastructure Schedule. Nevertheless, the Council can undertake the viability assessment work necessary to prepare the Preliminary Draft Charging Schedule, in expectation that the Core Strategy Review will be completed in a timely fashion. There is a mechanism whereby a Draft Charging Schedule can be examined at the same time as the Core Strategy. This is an option that can be considered in due course.

Other work will include a review of the Open Space, Recreation and Landscaping Supplementary Planning Document (SPD) and Planning Obligations SPD to make sure that they do not include charging formulae for those items that fall under the definition of infrastructure.

It is envisaged that further reports be taken to Cabinet, 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. Consideration will also need to given, at a later date, to the method by which spending priorities will be determined.

Attached at **Appendix 1** is the report of the Corporate Director of Development and Neighbourhood Services to Planning Committee of 12 January 2011, which provides further details of the preparation and application of the Levy.

2. Recommendations

It is recommended that Cabinet: -

1. Note the contents of this report;
2. Agree to adopt the Levy as the principal means of funding infrastructure through developer contribution;
3. Agree to preparatory work being undertaken to inform the setting of a levy charging schedule;
4. Agree that delegated powers be granted to the Head of Planning to prepare a Preliminary Draft Charging Schedule for consultation; and
5. Agree that further reports be taken, in due course, to agree a Preliminary Draft Charging Schedule for consultation, to report on the outcome of that consultation, and to agree a Draft Charging Schedule for consultation.

3. Reasons for the Recommendations/Decision(s)

CIL will be the principal means by which in the funding of infrastructure from developer contributions, with S106 contributions making a more limited contribution. The Levy will provide funding for infrastructure beyond that allowed via S106 contribution. The system will make sure that all development, where economically viable and without relief, contributes to the wider infrastructure upon which it make a demand.

It will provide certainty to developers to be able to plan for infrastructure contributions, and give some certainty to the Council regarding the quantum and timing of contributions to better plan for infrastructure provision.

The preparation of the various versions of the levy Charging Schedule, the supporting evidence, including an Infrastructure Delivery plan is long and complicated. It involves consultation and independent examination. It is vital that the work begins as soon as possible.

4. Members Interests

Members (including co-opted members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (paragraph 8) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgment of the public interest (paragraph 10 of the code of conduct).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting is being held, whilst the matter is being considered; not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (paragraph 12 of the Code).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc.; whether or not they are a member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in

the business being considered at the meeting, and if their interest is prejudicial, they must also leave the meeting room during consideration of the relevant item.

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COMMUNITY INFRASTRUCTURE LEVY

SUMMARY

A new planning charge came into force under the previous Government on 6th April 2010 under the Community Infrastructure Levy Regulations 2010. It allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their area. The money can be used to fund a wide range of infrastructure that is needed as a result of development. This includes transport schemes, flood defences; schools, hospitals and other health and social care facilities, parks, green spaces and leisure centres.

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It is envisaged that further reports be taken to Cabinet, 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. Consideration will also need to given, at a later date, to the method by which spending priorities will be determined.

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Recommendations

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DETAIL

Introduction

1. On the 18 November 2010 the Government confirmed that the Community Infrastructure Levy, introduced by the previous Government, would be continued, with some changes. The Government considers the levy would provide a fairer system to fund new infrastructure than the current use of obligations under Section 106 of the Planning Act 1990.
2. Stockton's adopted Core Strategy identifies that it is necessary that the public and private sectors deliver the essential social and physical infrastructure. The means by which Council's have to date secured developer contributions towards infrastructure has been by way of the use of obligations under Section 106 of the Planning Act 1990. The Government now encourages the use of the Levy instead 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 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 able to understand how new development is contributing to their community
3. In addition the Government intends, pursuant to its 'Localism' agenda, to make additional regulations that would enable local authorities to allocate a share of the levy raised in a neighbourhood to deliver infrastructure identified by the neighbourhood community itself.

The Levy

4. The levy, expressed as a rate of pounds per square metre, is 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. 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. Obligations remain the method for securing Affordable Housing.

5. There is the ability to charge variable levy rates depending on development type and locality. A local authority must aim to strike what appears to it to be 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 preparation of a charging schedule should be informed by appropriate evidence regarding the infrastructure funding gap and general development viability. The charges must be increased, in line with inflation, by reference to an index of construction costs specified by the Government.

The Process

6. The initial stage of the formal process leading to adoption of the levy involves the preparation of a Preliminary Draft Charging Schedule and evidence base, which includes viability assessments and infrastructure schedule. Following public consultation and any subsequent amendment made, a Draft Charging Schedule is prepared. An independent examiner, by way of an Examination in Public (EIP), considers this document.
7. Following the EIP, the Examiner will approve, modify or reject the Draft Charging Schedule. The Examiner may reject the Schedule if he considers that the evidence base is inadequate; the Draft Charging Schedule to be inconsistent with the evidence or would put the overall development of the area at serious risk. Under the current regulations any changes to a Council's levy rates, requested by the Examiner, are binding. However, the Government intends to include provisions, within the Localism bill, to give authorities more discretion about how unreasonable charges are corrected.
8. Once any modifications recommended by the Examiner have been addressed, the charging schedule must be formally approved by a resolution of Full Council, in order to ensure democratic accountability.
9. 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 should set out a list of the infrastructure items it intends to fund from levy revenue. 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.
10. Attached at **Appendix 1** is the report of the Corporate Director of Development and Neighbourhood Services to Planning Committee of 12 January 2011, which provides further details of the preparation and application of the Levy

Why adopt the Levy?

11. 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; not least because of the likely increase in total funding that would arise from application of the levy, to many more developments than are currently made the subject of obligations.
12. Adoption of the levy is not obligatory; it is however the Government's preferred vehicle for the collection of pooled infrastructure contributions. The regulations introduce restrictions that will reduce the effectiveness of obligations as a means to secure infrastructure. 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.

13. Because developers and landowners would know how much is to be paid under the levy, this can be factored into developer's financial appraisals and their discussions with landowners. This may well reduce those instances of developers abandoning their proposals, because they have underestimated the cost of necessary contributions, or seeking to argue their way out of making contributions because they have committed themselves to 'paying over the odds' for sites in a competitive environment. The processing of planning applications should be quicker and more straightforward in this respect.
14. The ability to charge differential levy rates means that Councils are able to tailor the levy to reflect the economics of any low demand areas they have, setting a lower charge so as not to generally frustrate development in those areas, while maintaining higher charges in those parts where demand is stronger. The viability assessment would show whether such an approach is justified.
15. 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 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.
16. 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. There would still be scope for obligations to address these mitigation requirements.

Future CIL Work Programme

17. It is envisaged that further reports be taken to Cabinet, 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.
18. Consideration will also need to be given, at a later date, to the method by which spending priorities will be determined. This is because adoption of the Levy would mean that specific infrastructure projects would no longer be generally identified and thus developer funding would be 'allocated' at the time individual planning applications are considered. Those considerations would also need to take account of the fact that the regulations permit up to 5% of the revenue arising from the levy to be used on administrative expenses, and that the Council would be able to pass money to other bodies to help deliver infrastructure for example, those delivering health facilities.
19. If Stockton chooses to adopt CIL, it must commit to producing 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.

CIL and the Core Strategy

20. The Regulations do not allow for publication of the Draft Charging Schedule until Council's Core Strategy has been adopted. This is because 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.
21. Stockton has an adopted Core Strategy (March 2010). However, the Council is now reviewing the spatial strategy (insofar as it relates to housing) and housing distribution elements of that document. The outcome is relevant to CIL as any changes to the housing strategy may have impact on the type and scale of infrastructure needed to support that

development. As part of the Review process, the Core Strategy Infrastructure Strategy (March 2010) will be updated, and this will inform an Infrastructure Plan; part of the evidence base for CIL.

22. However, the Council can undertake the viability assessment work necessary to prepare the Preliminary Draft Charging Schedule, in expectation that the Core Strategy Review will be completed in a timely fashion. There is a mechanism whereby a Draft Charging Schedule can be examined at the same time as the Core Strategy. This could also include the Regeneration DPD and is an option that can be considered in due course.

Other Work

23. A review of the Open Space, Recreation and Landscaping Supplementary Planning Document (SPD) and Planning Obligations SPD is required. This is to make sure that the funding formulae, that are included in those SPD's to deal with specific types of infrastructure, are still needed. However, the SPD's would still be needed to cover those matters that would not fall within the definition of 'infrastructure'. This work will be the subject of further reports.

VIEWS OF THE LOCAL DEVELOPMENT FRAMEWORK MEMBER STEERING GROUP AND PLANNING COMMITTEE

24. At the time of drafting, it was the intention to present this report to the LDF Members Steering Group on 12 July 2011. Any comments and amendments arising from those meetings will be reported verbally.

FINANCIAL IMPLICATIONS

25. The Council will have to consider funding plans for infrastructure, as in the future; only a maximum of 5 obligations under Section 106 of the Town and Country Planning Act 1990 (as amended) can be used on the same scheme. A proportion of the revenue arising from the levy can be used to cover initial set-up and administrative costs. Joint independent examination with the Core Strategy Review, and Regeneration (Sites and Allocations) Development Plan Documents and Infrastructure Delivery Plan will reduce set up costs. The Infrastructure Delivery Plan required used as evidence to prepare the schedule of CIL projects could be used for corporate infrastructure planning and to support the Core Strategy and other Development Plan work. Adoption of CIL entails a commitment to monitor and review; this may in turn lead to a revision of the Charging Schedule with costs similar to those at set-up.

LEGAL IMPLICATIONS

26. Section 206 of the Planning Act 2008 confers the power to charge CIL on certain bodies known as charging authorities and the Community Infrastructure Levy Regulations 2010 provide that this Council is such a body. In order to be able to charge CIL, the Council must adopt a charging schedule setting out the rates that will apply. The Community Infrastructure Levy Regulations of 2010 (as amended) and 2011 contain detailed provisions about CIL but there will be further changes when the Localism Bill becomes law, which is expected to be later this year. The draft charging schedule must be subject to public scrutiny, consulted upon, be open to representation and then submitted for independent examination. Even if the Council decides not to proceed with the charging schedule the powers which exist currently under Section 106 of the Town and Country Planning Act 1990 (as amended) will be restricted from 2014.

RISK ASSESSMENT

27. Not having an adopted CIL Charging Schedule in place by 6 April 2014 risks the loss of a major funding opportunity for a wide range of infrastructure.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

Economic Regeneration and Transport

28. The CIL will provide contributions towards the cost of infrastructure, which in turn will assist in economic regeneration. Transport and highway infrastructure are, in appropriate cases, eligible for CIL support.

Safer Communities

29. Crime prevention measures may be eligible for CIL support. .

Children and Young People

30. See 'Healthier Communities and Adults'.

Healthier Communities and Adults

31. Financial support for infrastructure will help to facilitate and support development which contributes to the Tees Valley being a place where present and future generations have a high quality of life and where all members of the community have the opportunity to realise their full potential through the provision of a vibrant economy, a safe and healthy environment and dynamic educational and cultural resources.

Environment and Housing

32. See 'Healthier Communities and Adults'

Stronger Communities

33. See 'Healthier Communities and Adults'

Older Adults

34. See 'Healthier Communities and Adults'

Education and Lifelong Learning

35. See 'Healthier Communities and Adults'

Arts Leisure and Culture

36. See 'Healthier Communities and Adults'

EQUALITIES IMPACT ASSESSMENT

37. Adoption of the levy would allow the Council and potentially local neighbourhoods, to target the resulting revenue stream towards those types of infrastructure considered necessary to meet the needs of different areas. This will help deliver equality and diversity through the Council's services. This report has not been subject to Equalities Impact Assessment as it provides for a means of facilitating the Community Infrastructure Levy. The preparation of the Charging Schedule and processes leading to adoption will include Equality Impact Assessment.

CONSULTATION INCLUDING WARD/COUNCILLORS

38. As the Community Infrastructure Levy is a Borough-wide scheme, it is not possible to identify specific wards or ward councillors for consultation.

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Education related: No

Background Papers:

- Community Infrastructure Levy Regulations 2010
- Community Infrastructure Levy (Amendment) Regulations 2011
- The Planning Act 2008
- Localism Bill 2010-2011
- Community Infrastructure Levy Final Impact Assessment, DCLG, February 2010
- Community Infrastructure Levy Guidance; DCLG, March 2010

Ward(s) and Ward Councillors: **ALL WARDS AND WARD COUNCILLORS**

Property: **N/A**