



Community Infrastructure Levy: Publication of a Statement of Modifications

Cllr Mark Ruffell: Cabinet Member for Planning and Infrastructure

Report to	Full Council
Ward(s):	All
Key Decision:	NO
Appendix 1:	Proposed CIL Rates: August 2016
Appendix 2:	Summary and Analysis of Representations received to the Revised Draft CIL Charging Schedule
Appendix 3:	Proposed Statement of Modifications
Appendix 4:	Draft Regulation 123 List
Appendix 5:	CONFIDENTIAL Legal Advice on CIL
Papers relied on:	Report to Full Council: 21 July 2016

Foreword – Cllr Mark Ruffell, Cabinet Member for Planning and Infrastructure

The borough needs the right infrastructure to support its future development. New developments must contribute to the much-needed funding for roads, transport solutions, schools, community facilities and other infrastructure to ensure that residents continue to enjoy a high quality of life here.

That is why it is so important that progress is made in introducing a Community Infrastructure Levy to help to provide for the needs of existing and future residents of the borough. This gives the ability to collect together money from developments of all sizes to help fund a comprehensive programme of infrastructure improvements to benefit the wider borough, beyond the current developers' contributions for more localised projects.

The publication of a Statement of Modifications will help the borough council move to the next formal stage of the process of introducing the Community Infrastructure Levy. This is a vital step in securing the funding that we need.

Recommendation to Council:

- **To approve the Community Infrastructure Levy Statement of Modifications for Submission to the Examiner;**
- **To approve the updated Draft R123 list for submission to the Examiner; and**
- **To withdraw the Draft Community Infrastructure Levy Charging Schedule, November 2014.**

Background, corporate objectives and priorities

This report accords with the Council Plan priorities in:

- Preparing for controlled and sustainable growth; and
- Improving residents' quality of life

In particular, the approach to securing income through the Community Infrastructure Levy will assist in the provision of infrastructure to support residents and businesses in the borough.

Glossary of terms

Term	Definition
CIL	Community Infrastructure Levy
EPH	Economic, Planning and Housing Committee
LHA	Local Highways Authority
LPA	Local Planning Authority
R123	Regulation 123 list
S106	Section 106

Main considerations

1 Executive Summary

- 1.1 Community Infrastructure Levy (CIL) is the primary mechanism to secure contributions from development to deliver new infrastructure across the borough. Without CIL the council would have to rely on the more limited opportunities available via Section 106 planning obligations, which relate more directly to the development itself, and other external sources of funding to deliver the infrastructure needed to support the timely delivery of the development set out in the Basingstoke and Deane Local Plan.
- 1.2 Under the Local Plan the council must prepare and implement a Community Infrastructure Levy (CIL) charging schedule. This sets out the levy rates to be paid per square metre on new development in the borough. It must be prepared in accordance with the Community Infrastructure Levy Regulations 2010 and needs to set rates which do not threaten the ability to viably deliver the sites and scale of development identified in the Local Plan.
- 1.3 A range of rates are proposed based on the evidence available around economic viability. There needs to be sufficient evidence to withstand scrutiny at examination by an independent Examiner, who will need to be content that the draft charging schedule sets an appropriate balance between the need to fund infrastructure to support development and the potential effect on the viability of developments.

- 1.4 The Examiner will give a recommendation that the draft charging schedule should be approved, rejected, or approved with specified modifications, with reasons for their conclusion. If the charging schedule can be modified to comply with the legal requirements, the Examiner must recommend appropriate modifications which could include variations in the proposed tariff for specific developments or locations where the evidence justifies it.
- 1.5 The draft charging schedule, which sets out a range of proposed tariffs, was reviewed by the Economic, Planning and Housing Committee on 14 July 2016 and agreed by Council 21 July 2016. A copy of the proposed tariffs is provided in Appendix One. Further to this, public consultation began in August 2016 to give an opportunity for representations to be submitted to the council for consideration prior to formal submission to an independent Examiner.
- 1.6 This report summarises the representations received. Following detailed assessment of all these comments it is considered that only one of the proposed tariffs, relating to the Manydown housing allocation, requires amendment. This change reflects the response of the borough council and Hampshire County Council as joint landowners of the majority of the Manydown allocation in the Local Plan. The full assessment of this response is in the main report. In summary, as a result of the assessment of the representations received and further technical advice, it is recommended that the Manydown CIL rate be reduced from £60 per square metre to £50 per square metre. The main reasons for this change relate to further information from the county council on the highway costs associated with the development. Also advice suggested that the country park land would be best secured through section 106. A valuation has since been undertaken for this land, which imposes a further cost on the developer which needs to be reflected in the viability assessment.
- 1.7 The fact that detailed costings of the country park and highways infrastructure are not yet available and the extent of infrastructure requirements are likely to be resolved only at the time that the outline planning application is determined, has been taken into account. Government advice is that, in the case of such uncertainties, a buffer can be used to avoid setting a charge at the margins of viability. This approach has been followed in setting the figure.
- 1.8 Assuming this change is agreed then the regulations require a Statement of Modifications to be published highlighting the change in the Manydown tariff. Para 4.2 of the main report sets out the intended timetable – with the expectation that the tariff will be in place by November 2017. The report also recommends the formal withdrawal of the 2014 draft CIL charging schedule published in November 2014 which is a procedural matter required by the relevant regulations.
- 1.9 This will allow the council (as local planning authority) to collect contributions from schemes granted permission after this date to invest in the infrastructure necessary to support the council's Local Plan objectives. CIL cannot be applied retrospectively on schemes granted planning permission prior to it being implemented. This means that any infrastructure requirements would have to be delivered solely by Section 106 planning obligations, which are required to meet more specific legal tests.

2 The Proposal

It is proposed to:

Seek authority to submit the Statement of Modifications for Examination alongside the Revised Draft Charging Schedule and the Updated Draft Regulation 123 list, in order to progress with the introduction of CIL in the Borough which will support the delivery of infrastructure.

Seek authority to withdraw the Draft CIL Charging Schedule of November 2014, to provide clarity to the Examiner on the status of the documents published to date.

3 Key Issues for Consideration

3.1 The Borough Council is in the process of introducing a CIL Charging Schedule which will place non-negotiable financial charges on some types of new development in the borough. This funding will help to deliver infrastructure required within the borough. Once introduced, this will work alongside s106 agreements, where there is a requirement to mitigate the impacts of a particular development.

3.2 Consultation on a Revised Draft CIL Charging Schedule, which sets out the proposed rates to be charged for each form of development, was undertaken in August / September 2016, when 33 responses were received. These raised issues around:

- Criticism of the assumptions and methodology used in the viability study;
- Request for a more fine-grained approach to zoning with further forms of development zero rated;
- Suggestion that the country park at Manydown should be provided through s106 and that the cost / value of the land should be taken into account;
- Account should be taken of the implications of safeguarding land to accommodate an additional seven forms of entry at the proposed secondary school at Manydown (which may be needed beyond the current Local Plan period) and the loss of the ability to develop around seven hectares;
- Enabling costs of the Manydown site, such as highway works;
- The benchmark land value for the Golf Course site is too low;
- Concern that Brexit may impact on the housing market; and
- Comments on the Regulation 123 list and suggestions around how to spend CIL.

3.3 A more detailed summary of each representation and the council's response to each of the above issues is set out in Appendix Two to this report. These have been informed by consideration of relevant guidance and the assumptions taken in the viability assessment. However, further consideration has been given to the issues below in order to explore these points in more detail.

- The highway costs associated with the Manydown site; and

- The country park, to be provided as a part of the Manydown site and its associated cost.

3.4 In respect of the highway costs, further information is now known about the junctions that are likely to require mitigation associated with this large-scale development, having been highlighted through pre-application submissions. Accordingly, a review of the costs previously assumed has been undertaken, in conjunction with officers from the Local Highways Authority (LHA), in light of their experience of the likely scale of the works required. This has resulted in an increase in the costs assumed for these improvements from £6.3m to £9.3m, albeit the scale and detail of the mitigation is still the subject of discussion with the LHA through the current planning application.

3.5 The position regarding provision of the country park has evolved over time, as would be expected on a scheme of this nature, and it is important that the latest position is reflected in the viability assessment. During the Local Plan examination, it was agreed between the landowners and the LPA that land for the country park can be safeguarded and the country park can be delivered utilising CIL receipts. This was because the country park was intended to address a strategic need for the whole town rather than just for Manydown. In light of its role to serve a borough-wide need, over and above the needs of the Manydown site, a value was not attached to the land at that time.

3.6 However, in representations on the CIL Revised Draft Charging Schedule, the Manydown landowners suggested aspects of the country park will be directly related to the delivery of Manydown in order to provide ecological protection and enhancement, landscape buffering and alternative natural greenspace (ANGS). As a result, they proposed that the Manydown development contribution is treated as a S106 item and that further viability testing would be required to take account of the additional cost to be borne by the landowners.

3.7 Valuation advice has been sought by the Local Planning Authority (LPA) to consider the value of the country park land, which takes into account the position that:

- The planning policies, which set the policy framework until 2029, provide no support for the country park land having any prospect of development;
- There is a restrictive user clause within the long lease stating that this land is not to be used other than for the purposes of agriculture or forestry or as public open space for recreational purposes for landscaping purposes; and
- Funding is required to cover the costs to operate and manage country parks which are often run at a deficit.

3.8 The advice provided indicates that, in its current form as agricultural land, the area is valued at £2,000,000. As a country park, the site has a lower value than this, reflecting the position that a country park requires on-going revenue support and that agricultural land is more valuable because it has the potential to produce an income.

- 3.9 Taking into account the increase in costs associated with highway improvements (£3m), and the cost of the land for the country park (£2m, using its value as agricultural land), the opportunity has been taken to consider the impact of this on the proposed CIL rate for the Manydown site. The outcome of this further work is that, with the retention of a 43% buffer to cover any unknown costs, the CIL rate that can be achieved decreases from £60 per square metre of development to £54 per square metre. It should be noted that none of these additional costs, either individually or cumulatively, renders the Manydown development unviable, and in all cases it is assumed that the site delivers policy compliant 40% affordable housing and full mitigation.
- 3.10 In respect of the proposed levy, normal practice around CIL is to round rates to the nearest £5 or £10. Given the need to maintain a generous buffer for unknown costs, it is appropriate to reduce the rate for residential development at Manydown from £60 to £50, providing a buffer of 46% against the maximum theoretical amount that can be achieved. It should be noted that maintaining a £60 CIL rate for the Manydown site would result in a buffer of 36% which is below that factored in for the other strategic sites upon which CIL will be payable, which range from 44% to 55%.
- 3.11 In order to progress this change through the appropriate process, it is necessary to prepare a Statement of Modifications, under Regulation 19(1)d of the CIL regulation.
- 3.12 The Statement of Modifications details the proposed changes that the council wishes to make to the Revised Draft CIL Charging Schedule since consultation in August / September 2016 which will include the reduction in the proposed CIL rate for Manydown and also other minor changes to the text within the document.
- 3.13 A four week period of consultation will commence upon submission, whereby a request to be heard by the Examiner may be made in relation to the modifications. This will allow landowners and members of the public to comment on the proposed change, and will allow the Examiner to consider views expressed through the examination process. A copy of the proposed Statement of Modifications is set out in Appendix Three, which will be considered by the Examiner alongside all of the other proposed charges set out in the Revised Draft CIL Charging Schedule.
- 3.14 In addition to responding to comments received in relation to the proposed CIL rates, minor amendments are required to the draft Regulation 123 (R123) list in order to present the latest position. This includes:
- Amendments to the list of highway schemes listed, following views expressed by Hampshire County Council and reflecting the increase in costs associated with the Manydown site and additional junctions to be improved through planning obligations; and
 - Factual updates to the list of sports and green infrastructure projects.
- 3.15 A copy of the proposed updated draft R123 list is set out in Appendix Four.

4 Next Stages

4.1 In order to progress CIL to the examination stage, it will be necessary to submit the Revised Draft CIL Charging Schedule to the Examiner for consideration through the examination process. This will need to be accompanied by the Statement of Modifications, as well as the representations received during consultation to date, in addition to relevant evidence and the updated Draft R123 list.

4.2 On the basis of the above, it is proposed that the following timetable is followed:

- Submission of the Revised Draft Charging Schedule and Statement of Modifications, updated Draft R123 list and also commencement of the four week consultation period on the Statement of Modifications – late May
- Conclusion of the four week consultation period – late June
- Commencement of the examination – late July
- Examiner's Report – September
- Adoption of the CIL Charging Rates –October
- Implementation – late November

4.3 Upon receipt of the necessary documents, including the consultation responses to date, the Examiner will consider the proposed CIL rates in respect of whether:

- The charging schedule supported by background documents containing appropriate available evidence;
- The charging rate informed by and consistent with the evidence; and
- The evidence demonstrate that the proposed charge rate would not put the overall development of the area at serious risk.

4.4 Having given consideration to these issues, the Examiner has the ability to recommend that the charging schedule be approved, rejected or approved with specific modifications. The Examiner may also require additional work to be undertaken to address issues that arise during the examination process.

4.5 In addition to the above issues, it is also appropriate to seek authority to formally withdraw the Draft CIL Charging Schedule, published in November 2014. This document was superseded in 2016 by the publication of the Revised Draft CIL Charging Schedule, and it is appropriate to withdraw the draft document from 2014 in order to provide clarity to the appointed Examiner on which documents should be formally considered.

4.6 An update on this matter was provided to the Economic, Planning and Housing Committee at their meeting on 27 April, who sought clarity on a number of issues, as set out below. This report addresses the points raised.

- Concern that the proposed rate for Manydown has decreased from £60 to £50 and the reasons behind this;
- The scale of the buffer should be outlined in monetary terms, including the impact of reducing the proposed CIL rates from £60 to £50;

- The size of the buffer if a CIL rate of £60 is retained for the Manydown site, having factored in additional costs associated with the country park and highway works; and
- Further detail on the country park and the means of providing this.

5 Corporate Implications

Legal Implications

- 5.1 In order to progress a Statement of Modifications and to formally submit the proposed CIL rates for examination, it is necessary to follow the requirements of both Part 11 of the Planning Act 2008 ('the Act') and Community Infrastructure Levy Regulations 2010 (as amended) ('the CIL regulations'). In particular, the regulations set out the detailed requirements of what information must be submitted and any other procedural steps to follow to introduce CIL.
- 5.2 The proposal to withdraw the previously published Draft CIL Charging Schedule from November 2014 will assist in providing clarity to the Examiner on the status of the documents to be examined.
- 5.3 Members have previously been provided with a copy of leading Counsel's advice on the LPA's approach to formulating and adoption of the CIL charge. This is set out in Appendix Five for ease of reference.
- 5.4 Members will note that the advice of leading Counsel, in addition to other matters, is very clear that the LPA:
- Must not consider any developments by the Council as landowner any more favourably than those developments of a third party; and
 - That any decisions made by the LPA must be evidence based.
- 5.5 Following consultation with interested parties, independent expert advice has been sought on the representations made and the recommended reduction in the CIL charge for Manydown is based upon that evidence.

6 Financial Implications

- 6.1 A change in the proposed CIL rate for the Manydown, from £60 to £50 per square metre, will reduce the amount of CIL income that will be secured from development on the site by approximately 17%. Based on a number of assumptions around the quantum of development and typical floor areas (upon which CIL is chargeable), it is estimated that the income from this site will drop by about £1.6million, from around £9.6million to £8million. £1million of this reduction arises from the higher costs factored in, while the increase in buffer from 43% to 46% accounts for around £640,000. After the 25% Neighbourhood Fund has been allocated to parishes, it would reduce the portion retained by the Borough Council by approximately £1.6million over the next 12 years from £7.2million to £6million.

- 6.2 It should also be noted that if planning permission is granted for the current planning application at Manydown in advance of the introduction of CIL, the development will not be liable to pay CIL.
- 6.3 In order to progress with the examination process, it will be necessary to appoint an Examiner to consider compliance of the proposed rates with Government regulations. The Examiner will require the provision of administrative support during the process. The cost of these roles will be met from within the existing Planning Policy and Infrastructure budget.

7 Risk Management

- 7.1 Given the scope for delays in the introduction of CIL and the timing of the determination of the planning application for the Manydown site, a Risk Assessment has been undertaken in accordance with the council's risk management process. This indicates one red, 'high risk' concern.
- 7.2 Consideration has been given to the means of mitigating this risk, which is focussed on potential delays that may arise through the examination process in the event that further evidence is required. Until the examination has commenced, it is not known if any significant issues will arise, or what they may consist of. It is therefore not currently possible to put in place additional mitigation measures.

Equalities Implications

- 7.3 An Equality Impact Assessment was undertaken to consider the implications of the introduction of CIL for the Public Sector Equality Duty and the impact on the protected characteristics groups (Equality Act 2010). No differential impact has been identified for any groups. It was noted that all residents will benefit from improvements to infrastructure in their local area and the borough as a whole. When considering the proposed Statement of Modifications, no specific impact has been identified for any of the protected characteristics groups.

8 Consultation and communication

- 8.1 Subject to the agreement of Full Council, the Statement of Modifications and updated R123 list will be submitted for examination alongside the Revised Draft Charging Schedule (August 2016) and other submission documents. This will trigger a statutory four week period during which time anyone can request the right to be heard on the modifications. It is proposed that this will commence in late May, during which time notifications will be undertaken in line with Government regulations, including:
- Notification to statutory consultees and all those who have previously expressed an interest in CIL or responded to CIL consultations (email or letter);
 - Publication on the council's website;
 - Hard copies made available in the council offices and distributed to all libraries in the borough

9 HR implications

- 9.1 In order to progress CIL through the examination process, it will be necessary to seek administrative support to the Examiner to assist in ensuring the smooth running of the hearing sessions and the provision of information to all participants during and in the run up to the examination.

Conclusion

10 Summary and reason for the decision

- 10.1 In conclusion, it is considered that a Statement of Modifications should be published to reflect a proposed reduction in the CIL rate for the Manydown site, in light of increased costs associated with highways works and the provision of land for the country park. This has been tested through further viability assessments, factoring in the full cost of the policy requirements of the Adopted Local Plan, including the provision of 40% affordable housing. This will be accompanied by an updated Draft R123 list to reflect the latest position. It is also appropriate to withdraw the Draft CIL Charging Schedule 2014 to provide clarity to the Examiner on the documents to be considered.

11 The options considered and rejected

- 11.1 An alternative to not publishing a Statement of Modifications (and maintaining the existing proposed rate to be applied to development on Manydown) would be to seek to reach an agreed position through the examination process, involving the landowner's representatives. However, this is not considered to be appropriate, since the LPA wishes to progress CIL in a timely, open and transparent manner, based on the most up-to-date viability evidence, in line with national guidance.

Date: 18 May 2017

Decision taken by: Full Council

Lead officer	Head of Planning and Infrastructure, Matthew Evans
Report author	Mark Lambert: mark.lambert@basingstoke.gov.uk
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Status	Open
Confidentiality	It is considered that information contained within this report (and appendices) contain exempt information under the meaning of Schedule 12A of the Local Government Act 1972, as amended, and therefore cannot be made public.