

# BRIDGEND COUNTY BOROUGH COUNCIL

## REPORT TO DEVELOPMENT CONTROL COMMITTEE

20 SEPTEMBER 2012

### REPORT OF THE CORPORATE DIRECTOR - COMMUNITIES

#### COMMUNITY INFRASTRUCTURE LEVY

#### 1. Purpose of Report.

- 1.1 To recommend to Cabinet that approval be given to undertake a Viability Study to help determine the feasibility of implementing the Community Infrastructure Levy (CIL) Regulations 2010 within the County Borough of Bridgend.

#### 2. Connection to Corporate Improvement Objectives/Other Corporate Priorities

- 2.1 The introduction of CIL will aid the achievement of the following Corporate Improvement Objectives (2011-2013):

- (i) To build safe and inclusive communities supported by an effective physical infrastructure.
- (ii) To support our disadvantaged communities by promoting economic growth, physical renewal and sustainability.

#### 3. Background.

- 3.1 The Planning Act 2008 and the CIL Regulations 2010 have introduced a new regime for funding infrastructure to support new development, as outlined in the Council's emerging Local Development Plan (LDP).
- 3.2 The introduction of CIL is not a mandatory requirement for local authorities. However, the new legislation effectively scales back the scope of Section 106 legal agreements, limiting them to affordable housing (although central government are considering bringing this within the CIL regulations) and 'on site' mitigation measures, therefore if the Council does not implement a CIL it will potentially lose out on collecting contributions from developers to fund vital infrastructure.
- 3.3 The CIL Regulations 2010 came into force on 6<sup>th</sup> April 2010 and placed limitations on the use of planning obligations. From this date a planning obligation may only constitute a reason for granting planning permission if it complies with the three tests stated in the Regulations, namely, that it is:-
- (i) necessary to make the development acceptable in planning terms;
  - (ii) directly related to the proposed development; and
  - (iii) fairly and reasonably related in scale and kind to the proposed development.

- 3.4 A planning obligation which does not meet these three tests will not constitute a reason for granting planning permission. This provides developers with more grounds to challenge proposed planning obligation requirements if they are not fully supported by robust evidence of their need and relevance. This Council has historically pursued planning obligations in strict adherence with national policy guidance, so the limiting effect of the regulations will not be as pronounced as in some other authorities.
- 3.5 However, from April 2014, no more than 5 separate planning obligations can be used to provide a single defined infrastructure project or type of infrastructure. This will have significant implications for strategic obligations, which are based on cumulative impact and require pooled contributions for their delivery, and for those obligations which relate to the same types of infrastructure such as education facilities or highway improvements that do not identify a specific project.

#### **4. Current situation / proposal.**

- 4.1 CIL is prepared and set by the local planning authority. The charging system will need to consider the total costs of infrastructure provision resulting from development within the County Borough, (as set out in the Local Development Plan), against existing funding streams and the viability of that development. CIL will also rationalise the land uses that will be subject to the charge, with all land uses being potentially liable. It should be noted that the CIL would not be a standardised charge paid by all types of development. The CIL schedule is likely to set out differential rates reflecting the size, nature and viability of different land uses within the County Borough and is likely to be applied on a zonal basis.
- 4.2 The implications of proceeding with or without a CIL are set out below.

##### **Option A - Implementing CIL**

- a) The infrastructure required to support the delivery of new development and the contribution to be made by developers will be clearly identified in a Charging Schedule.
- b) There will be a charge per m<sup>2</sup> of new floorspace that is collected from most developments, allowing for the cumulative impact of small developments to be better addressed and infrastructure funding to be spread across a larger number of developments.
- c) It will provide developers more certainty about what they need to contribute and will be independently tested for its impact on economic viability, reducing the risk of challenge.
- d) It will be more time efficient than negotiating numerous Section 106 Agreements.
- e) It will enable the Council to manage the flow of funding for infrastructure when combined with the Council's other financial resources, funding streams and corporate spending plans.

f) A charging schedule will remain in place unless revoked or reviewed. While providing certainty this reduces the level of flexibility in the face of changed circumstances over time. However, flexibility is increased in terms of what / where the CIL is spent on.

g) The monies cannot be clawed back by developers as is currently the case with Section 106 agreements if not spent within the prescribed period.

### **Option B - Not implementing CIL**

a) Although Section 106 agreements can take a long time to negotiate, they can reflect up to date and site specific viability issues.

b) The CIL Regulations 2010 state that Section 106 Agreements can now only be secured to mitigate the direct impacts of a development, for example improved road access, on site landscaping or an on site play area. This means the amount of money secured through Section 106 Agreements is likely to be significantly reduced in future.

c) From April 2014 Section 106 contributions will only be able to be pooled from up to five agreements, irrespective of whether an Authority has implemented CIL. This will mean that each individual Section 106 agreement will need to relate to a specified project and the value of the contribution will need to reflect the actual cost of that project relevant to the need generated by the development. The use of generic formula to calculate the level of contributions will be difficult to justify.

4.3 The principal implications for the Council in preparing CIL are resources and funding. The preparation of CIL will require corporate backing and a corporate desire to be realised. The component parts of the final CIL Charging Schedule will comprise matters originating from service areas throughout the whole Council. Whilst the planning service would lead on the preparation of CIL, as it will be realised through the planning application system, the CIL Charging Schedule will be a corporate document that will help to realise the Council's aims and objectives in developing the County Borough.

4.4 In order to ensure that all forms of infrastructure are considered in the CIL it will be necessary for all relevant service areas to identify their infrastructure needs and to provide robust costs for the delivery of that infrastructure. The information and costings provided for the CIL must be robust enough to stand up to examination at the formal independent examination, similar to that held for the LDP.

### **Facilitating the Preparation of CIL**

4.5 The purpose of CIL is to provide infrastructure necessary to allow development to take place that is in accordance with the LDP. Therefore the Council will be able to utilise an approved CIL once the LDP has been adopted, although the preparation of CIL is likely to take a number of years to complete, with existing obligations and S106 agreements being utilised in the meantime. Given the direct links to the LDP, the Development Planning Team are best placed to take the lead on the preparation of the CIL, to ensure that the CIL provides for development in accordance with the LDP and includes all necessary infrastructure. As outlined above, the preparation of CIL will require significant input from service areas across

the Council and the Development Planning Team will co-ordinate the input to ensure that the CIL is prepared promptly and in accordance with the time constraints placed on it by the CIL Regulations.

## **5. Effect upon Policy Framework & Procedure Rules.**

5.1 None

## **6. Financial Implications.**

6.1 It is acknowledged that the full cost of preparing CIL is not known at this time. Given the current economic climate there are legitimate concerns over committing the Council to a procedure that will have significant cost implications. The major area of unknown costs lies in the investigative work that may be required to provide sufficiently robust evidence for the inclusion of some elements in the CIL.

6.2 There are two distinct elements of work that can be identified:

- (i) A valuation exercise to establish the cost of the infrastructure the Council would wish to fund from CIL.
- (ii) A viability exercise to establish the economic viability of charging CIL throughout the County Borough.

It is difficult to provide estimates for (i) at the moment, as the precise nature of the infrastructural requirements of the County Borough will be determined by the examination of the LDP. However, the opportunity now exists to commence (ii) building upon the work undertaken in the preparation of the LDP evidence base.

6.2 In order to achieve consistency between the Council's affordable housing policies and CIL, the viability work would resemble an update of the Affordable Housing Viability Study. The Council has obtained a quote of £12,968 (excl VAT) to undertake the work, which would take approximately 3 months to complete the cost of which can be met from existing budgets.

6.3 It is acknowledged that the likely cost of preparing CIL will be significant and will require a Council commitment to fund these costs to realise the CIL Charge.

6.4 However, the CIL Regulations have been amended to include the provision for councils to claw back some of the cost outlay in preparing and implementing CIL, by allowing them to reclaim 5% of the total CIL revenue for the first 3 years that CIL is levied. In addition to this the CIL Regulations make provision for councils to use up to 5% of each year's CIL revenue to offset the CIL administrative costs of charging for CIL for that year. This covers the years following the initial three year period and can continue to be recovered for as long as the CIL is being charged.

6.5 It should also be noted that the recent Communities and Local Government consultation proposed removing the 5% cap on the amount of administrative costs that can be clawed back.

6.6 In considering the relative costs of preparing CIL, it should be noted that they will have to be borne up front, whilst the clawing back of the costs will only be realised once the CIL Schedule is implemented at the end of the preparation process.

Therefore the Council will have to bear the costs of preparation before any costs can be clawed back.

**7. Equalities.**

7.1 An Equality Impact Assessment screening has been undertaken and the content of the report is unlikely to have an impact on equality issues.

**8. Recommendation.**

8.1. It is recommended that the Development Control Committee resolve to:

- Recommend to Cabinet that exploratory work is undertaken to establish the economic viability of operating a CIL charge in Bridgend County Borough Council.

**LOUISE FRADD  
CORPORATE DIRECTOR - COMMUNITIES  
10<sup>th</sup> September 2012**

**Contact Officer:** Gareth Denning  
Principal Section 106 Officer

**Telephone:** (01656) 643193

**E-mail:** Gareth.Denning@bridgend.gov.uk