

Meeting: Council

Date: 2 February 2017

Wards Affected: All Wards

Report Title: Community Infrastructure Levy (CIL)

Is the decision a key decision? Yes

When does the decision need to be implemented? Immediately

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1. Proposal and Introduction

- 1.1 This report recommends that Torbay Council adopts Community Infrastructure Levy (CIL) in accordance with the Independent Examiner's Report dated 2 December 2016 and agree to the necessary administrative arrangements being put in place. It is brought forward as a general exception under Standing Order 14 (reference 1028278) on the basis that delaying a decision would result in the loss of income opportunities.
- 1.2 The Council's CIL Draft Charging Schedule was submitted for examination by Independent Examiner following consideration by Council on 11 May 2016. An Examination Hearing took place on 9 November 2016 and the Examiner's final report was received on 5 December 2016. It is attached at Appendix 3 to this report.
- 1.3 The Examiner's Report makes four Modifications and one non-binding suggestion. He has supported the Council's broad approach of levying CIL on non-strategic sites and using s106 Agreements to help fund infrastructure needs arising from strategic sites. This accords with the approach proposed in the Planning Contributions and Affordable Housing Supplementary Planning Document (SPD). He has recommended that the Council consider defining strategic sites as those of 15 or more dwellings outside of the built up area.
- 1.4 Whilst the Examiner's Report allows an option of Charging £140 per sqm for sites of 15-29 dwellings in Zone 3 (Outside the Built Up area); he cautioned against this approach because it was in the margins of viability and made the Charging Schedule more complicated. He therefore made a non-binding suggestion that all sites in Zones 3 (outside the built up area) and 4 (Future Growth Areas) of 15 or more dwellings should be zero rated for CIL and infrastructure needs be addressed

through S106 Obligations. This would simplify the CIL charging Schedule and remove an area of concern he had about viability, and is the recommended approach.

- 1.5 The Examiner did not support the Council's proposal to seek CIL on sites of 1-3 dwellings in Zone 2 (i.e. elsewhere in the built up area), and recommended a zero rate of CIL for sites of 1-3 dwellings in Zones 1-2. This is in effect a binding recommendation. The Council can choose to disregard the Examiner's recommendation but would need to withdraw the existing Charging Schedule and start afresh. This would cause significant cost to the Council and delay in implementing CIL. The Examiner's recommendations are evidence led and there is no guarantee that a revised CIL would be supported with a charge on sites of 1-3 dwellings.
- 1.6 Notwithstanding this, the CIL residential Charging Zones were revised over Summer 2016 to include the most affluent areas of Torbay (Ilsham Valley, Watcombe Heights, Torquay and Bascombe Road, Churston) within Zone 3, so that small sites in these high value areas are CIL liable. Accordingly sites of 1-3 dwellings in these areas would be CIL chargeable at £70 per square metre. The Examiner supported these zones.
- 1.7 The Examiner has recommended that a zero charge be levied on Extra Care Units, but CIL may be charged on retirement housing which offers no additional care.
- 1.8 He supported the Council's proposals to seek CIL on out of town centre retail and food and drink uses at £120 per square metre.
- 1.9 With Council's approval, the Charging Authority may start to charge CIL, so long as this decision has been published. (Publication requirements are set out in Regulation 25 of the CIL Regulations). Administrative/technical arrangements will need to be put in place to assess CIL liability, send out relevant notices, monitor commencements and instalment dates, and enforce non-payment. This will require a CIL administration officer, details of which still need to be resolved. It is recommended that Council supports creation of the new post with Spatial Planning.
- 1.10 The Council is able to surcharge persons liable for CIL if they commence development without submitting the required notices. There is therefore a strong case to provide sufficient notice to agents and house builders that CIL will be introduced and it is recommended that Council supports this provision.
- 1.11 Up to 5% of CIL may be retained for administrative purposes.
- 1.12 It is recommended that CIL comes into force as soon as practicable and that the setting of the implementation date is delegated to the Executive Head of Business Services. Given the necessary administrative and notification arrangements that need to be put in place Council should be aware that this is not expected to be before 1 May 2017.
- 1.13 The Council's Validation List for planning applications will need to be updated to set out CIL requirements.

2. Reason for Proposal

- 2.1 CIL is a levy on new floor space created by development. It is regulated by the Community Infrastructure Levy Regulations 2010 (as amended). CIL must be set having regard to viability and cannot be used as a planning tool to influence the location of development. Regulation 14.1 (as amended) of the CIL Regulations requires charging authorities “to strike the appropriate balance between desirability of funding infrastructure through a CIL and the potential effects of imposing a CIL on their area”.
- 2.2 Torbay’s Draft Charging Schedule is supported by various viability studies and has been the subject of four public consultations. Details of these are set out in Appendix 1.
- 2.3 The Draft Charging Schedule (as modified by the Examiner) sets the following rates for residential CIL.

Zone	Site size/ number of dwellings (gross). CIL rate (£ per sq m)		
	1-3 dwellings	4-14 dwellings	15+ Dwellings
1. Built up areas within top 20% deprivation (Community Investment Areas+)*	Zero	£30	£30
2. Elsewhere in the built up area**	£30 Zero	£70	£70
3. Outside the built up area**	£70	£70	£140 Zero- S106 Obligations will be used to secure infrastructure funding***. (See note)
4. Future Growth Areas	£70	£70	Zero- S106 Obligations will be used to secure infrastructure funding.

Direct site impacts of development will be dealt with through planning conditions of S106/S278 agreements where necessary.

* Based on the lower super output areas within the top 20% deprived areas in the Indices of Deprivation 2015.

**The built up area is defined as the area not designated as Countryside area (Local Plan Policy C1) or Undeveloped Coast (Local Plan policy C2). However, Watcombe Heights, Ilsham Valley and Bascombe Road are within Zone 3.

*** The Examiner formally recommended a charge of £140 per square meter for sites of 15-29 dwellings in Zone 3. However he expressed concern at the viability of this rate, and the complexity that it added to the CIL Charging Schedule. In consequence, he made a non-binding recommendation that the Council should consider treating all sites in Zones 3 and 4 of 15+ dwellings as being strategic and thereby zero rated for CIL).

- 2.4 The Revised Draft Charging Schedule charges retail and food and drink developments (i.e. Uses Classes A1, A3, A4, and A5) of more than 300 square metre in out of town centre locations CIL, at the rate of £120 per square metre. This is based on likely viability and in this context The Willows is treated as an out of centre location.

- 2.5 CIL will be used on the South Devon Highway, for which there is a funding gap of £20 million. It is also proposed to use CIL to offset the recreational impact of development upon the South Hams SAC (at Berry Head). The Council is entitled to amend the Reg123 list so long as it publishes it on its website and does not “double dip” i.e. use s106 and CIL for the same item.
- 2.6 A “neighbourhood portion” of 15% of CIL, rising to 25% where Neighbourhood Plans have been made (i.e. adopted), must be spent in the area in which development arises. Further details are set out in Appendix 1.

3 Recommendation(s) / Proposed Decision

- 3.1 That the Community Infrastructure Levy (CIL) Revised Draft Charging Schedule dated September 2016, with Examiner’s Modifications be adopted by the Council as the basis for levying CIL.
- 3.2 That the Council adopts the Examiner’s non-binding recommendation of treating residential developments of 15 or more dwellings in Zones 3 and 4 as being strategic (and thereby zero rated for CIL but subject to a wider range of s106 Obligations).
- 3.3 That the Council seeks CIL from chargeable developments that are granted permission with the implementation date delegated to the Executive Head of Business Services to ensure all operational needs are in place.
- 3.4 That a new CIL administration and monitoring post is created within Spatial Planning to ensure that CIL is charged and administered in accordance with the Regulations.
- 3.5 That a surcharge be imposed on persons liable for CIL if they commence development without submitting the required notices.
- 3.6 That the Validation list for planning applications be updated to set out CIL requirements.

Appendices

Appendix 1: Supporting Information and Impact Assessment

Appendix 2: Proposed Adoption Community Infrastructure Levy Charging Schedule (including Examiner’s Modifications).

Appendix 3: CIL Examiner’s Report.

Appendix 4: CIL Stages, actions and deliverables (PAS guidance on implementing CIL)

Background Documents

Torbay Local Plan 2012-30 A landscape for success.

<http://www.torbay.gov.uk/newlocalplan>

Torbay CIL Viability Study –Economic Viability Update. Peter Brett Associates January 2016.

Torbay CIL Viability Update Burrows Hutchinson, August 2016. www.torbay.gov.uk/CIL

Torbay CIL Examiner’s Report. December 2016 www.torbay.gov.uk/CIL

Planning Contributions and Affordable Housing Supplementary Planning Document.
www.torbay.gov.uk/CIL

Community Infrastructure Regulations 2010 (as amended)

(National) Planning Practice Guidance Section ID 25

<http://planningguidance.communities.gov.uk/blog/guidance/community-infrastructure-levy/>