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<b>REPORT TO:</b>	<b>Finance &amp; Management</b>	<b>AGENDA ITEM: 11</b>
<b>DATE OF MEETING:</b>	<b>22<sup>nd</sup> October 2009</b>	<b>CATEGORY: DELEGATED</b>
<b>REPORT FROM:</b>	<b>Director of Community Services</b>	<b>OPEN</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>Gill Hague – 01283595742 <a href="mailto:gill.hague@south-derbys.gov.uk">gill.hague@south-derbys.gov.uk</a></b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>Community Infrastructure Levy (CIL)</b>	<b>REF:</b>
<b>WARD(S) AFFECTED:</b>	<b>All</b>	<b>TERMS OF REFERENCE: EDS</b>

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## **1.0 Recommendations**

- 1.1 Members agree the text set out in the conclusion section of this report as the Council's response to the Department of Communities and Local Government (CLG) consultation regarding the Community Infrastructure Levy (CIL).

## **2.0 Purpose of Report**

- 2.1 To inform Members of the current consultation from CLG regarding detailed proposals and draft regulations for the introduction of the CIL and to seek an agreed response.

## **3.0 Executive Summary**

- 3.1 The report and Appendix A refer to a provision in the Planning Act 2008 for the introduction of a Community Infrastructure Levy (CIL) and concentrates on aspects of the draft proposals and regulations currently out for consultation that may have implications for the operation of a CIL in South Derbyshire. Those issues relate to the definition of infrastructure, changes to the use of planning obligations, effect on affordable housing, joint examinations and how the levy is calculated. The suggested response is set out in the conclusion section.

## **4.0 Detail**

- 4.1 The Summary of the detailed consultation document is attached as Appendix A to this report and sets out briefly what the CIL is, how it should be spent, how to set it, calculation, payment and enforcement, the relationship with S106 obligations and implementation. A full copy of the consultation documents can be found on the CLG website. A response is required by 23<sup>rd</sup> October 2009.
- 4.2 The legislative basis for a CIL was provided in the Planning Act 2008. The CIL will be a new mechanism under which local authorities will be empowered to enable contributions towards local and sub-regional infrastructure to be sought from developers to support development of the area.

4.3 The definition of 'infrastructure' for the purposes of CIL is set out in section 216 (2) of The Planning Act 2008 and includes:

(a) roads and other transport facilities,

(b) flood defences,

(c) schools and other educational facilities,

(d) medical facilities,

(e) sporting and recreational facilities,

(f) open spaces, and

(g) ~~affordable housing (being social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008 (c. 17) and such other housing as CIL regulations may specify).~~

The Act in section 216 (3) contains a power for the regulations to amend the definition of 'infrastructure' so that CIL can be kept up to date and indeed the draft regulations have modified item (g) above as shown by the struck through text.

4.4 The Government whilst wishing to give Local Authorities as much flexibility as possible in applying CIL to meet the needs of their local communities wishes to avoid a lengthy list in the Act which by becoming more and more comprehensive would inevitably start to rule things out as the list became more specific. It is suggested that it will be possible for authorities to apply CIL to items which are not explicitly listed in section 216 (2) as during debates in Parliament Ministers indicated that police stations were 'infrastructure' for CIL purposes. However, such buildings do not sit squarely with any of the general items listed in the Act and the regulations do not include them.

4.5 If as is suggested in the document Ministers considered police stations for the purposes of CIL to be 'infrastructure' then would ambulance stations and fire stations similarly be acceptable? Changing regulations to keep up to date is likely to be cumbersome and would need to be undertaken quickly in order not to delay vital development. The best way forward would, therefore, be for the Regulations to make clear that the list is illustrative only and that other reasonable items may be added by local authorities according to local circumstances. It appears from the consultation that this is the Government's intention, although it is not clearly explained.

4.6 The change to point (g) above was considered necessary as it is now intended that affordable housing will continue to be achieved via planning obligations. The change provides a fallback position should CIL and planning obligations interact in such a way so as to cause a reduction in the amount of affordable housing delivered. The amendment would permit CIL revenue to be applied to affordable housing as a 'top-up' to make good any shortfall experienced.

4.7 Whilst the opportunity to secure elements via planning obligations remains then a strict definition of CIL is not a problem. Similarly the ability to use a planning obligation would allow items to be secured pending their formal inclusion in updated regulations.

- 4.8 Despite earlier suggestions that planning obligations will be repealed in full it is intended that they will remain after the CIL regulations come into force. However, the Government considers that over the years the scope of planning obligations has been extended beyond its original intention, which was to make acceptable development proposals, which might otherwise be unreasonable in planning terms. Case law and the Courts have established that the five policy tests in Circular 5/05 are simply guidance and have therefore enabled a widening of their scope. The Government considers that in the light of CIL it is not appropriate to continue to permit planning obligations to be used in the broader way and considers that CIL will provide a new, fairer and more transparent mechanism for the collection of more generalised developer contributions. It is therefore intended to restrict the use of planning obligations to direct impact mitigation by moving them from policy into law.
- 4.9 The introduction of CIL is not mandatory, however, if the use of planning obligations is cut back then those authorities that for whatever reason do not wish to adopt a CIL may have no alternative but to do so if development in their areas is to be provided with adequate infrastructure.
- 4.10 The Act contains a power to enable CIL regulations to require charging authorities to prepare and publish a list of projects that are to be or may be funded wholly or partly by CIL. However, the Government does not propose to use that power at the present time. There will however need to be a charging schedule, which must demonstrate that it has been informed by appropriate available evidence and such evidence should include an up to date Development Plan. The focus should be on providing evidence of a funding gap i.e. what is needed once other expected funding sources have been identified. Where infrastructure planning has already been submitted in support of a sound Core Strategy Development Plan Document as part of the LDF process the CIL Inspector will not be required to reopen the examination. It is therefore important to ensure that work undertaken in preparation of the LDF is of sufficient quality and does not need to be added to should the Council opt for a CIL.
- 4.11 Following full consideration of the consultation responses, the Government will lay CIL regulations in Parliament, where they will be debated in the House of Commons, before coming into force on 6 April 2010.
- 4.12 The definition of 'infrastructure' and changes to the legislation relating to planning obligations are therefore the two main issues of consequence to South Derbyshire. A form of words in response and these and other matters is set out in the conclusion section of this report.

## **5.0 Financial Implications**

- 5.1 CIL is a new mechanism for securing contributions from developers toward infrastructure provision and costs for introducing it in terms of resources to administer and monitor payments are unknown.

## **6.0 Corporate Implications**

- 6.1 A CIL would support Corporate Plan theme Sustainable Growth and Opportunity as the Government sees its introduction as a source of additional finance for infrastructure.

## **7.0 Community Implications**

- 7.1 A CIL would support the Sustainable Environment, Healthy Communities and Vibrant Economy themes in that it will assist with the provision of appropriate infrastructure.

## **8.0 Conclusions**

- 8.1 If the intention is that planning obligations should aim to secure the necessary requirements that facilitate the granting of planning permission for a particular development and CIL contributions are for general infrastructure needs then the Regulations need to make clear that “infrastructure” may include items not specifically listed either in the Act or in the illustrative list in the Regulations. For example, it is suggested that police, ambulance and fire stations should be regarded as “infrastructure”.
- 8.2 It is vital that planning obligations can still be used effectively by those authorities that choose not to introduce a CIL therefore there should be no scaling back of planning obligations. The pooling of contributions from planning obligations/tariffs should also still be allowed irrespective of whether an authority has adopted a CIL.
- 8.3 Any charging mechanism has the potential to become complicated and open to interpretation. To apply CIL to the gross external area would be the simplest and least complicated.
- 8.4 For sites that are intended for development wholly for affordable housing the imposition of CIL contributions could significantly undermine the viability of the scheme and therefore put much needed homes at risk. Such developments should be excluded entirely from paying CIL rather than paying a reduced amount.
- 8.5 Given that the CIL will be operated via the planning process in order to avoid confusion and provide consistency the definition of affordable housing should be that as set out in PPS3 (for Member’s information this definition is set out in appendix B) as that forms the basis for monitoring the provision of affordable housing units and will be what is used in LDFs and their Annual Monitoring Reports.
- 8.6 In order to avoid duplication and complexity the use of joint charging schedule/development plan examinations is supported.

## **9.0 Background Papers**

- 9.1 Community Infrastructure Levy – Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy – Consultation from Communities and Local Government July 2009.