

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PLANNING & DEVELOPMENT COMMITTEE

Agenda Item No.

meeting date: 15 APRIL 2010
title: COMMUNITY INFRASTRUCTURE LEVY - CIL
submitted by: DIRECTOR OF DEVELOPMENT SERVICES
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1 PURPOSE

1.1 To receive information on the new approach to delivering infrastructure and changes to the current system of using planning agreements (Section 106) introduced as a result of changes to the Planning Act.

1.2 Relevance to the Council's ambitions and priorities

- Council Ambitions – Matters presented in this report relate to the ambition to protect and enhance the existing environmental quality of the area.
- Community Objectives – The issues support the objectives of safeguarding the local area and delivering public services.
- Corporate Priorities – To be a well managed authority.
- Other Considerations – None.

2 INFORMATION

2.1 Members will be familiar with the process of securing through 'Section 106 Agreements' contributions towards necessary infrastructure as a result of new development. Often this will relate to highway works, affordable housing, drainage, open space and education provision as typical examples. In using Agreements, a number of tests need to be applied that would seek to ensure that the Agreement has a direct link to the development and both fair and proportionally related to it. In practice, over time Agreements have in recent years been applied a little more flexibly giving wider scope for developer contributions, most often in the approach taken to supporting the delivery of affordable housing.

2.2 The situation in relation to the use of Section 106 Agreements has changed as a result of measures introduced in The Planning Act 2008. New regulations have come into effect from 6 April 2010 that now enable Councils to charge a Community Infrastructure Levy on new development, should the Council choose to introduce a levy approach. It should be noted that it is not mandatory (as yet) there is an associated change to way section 106 agreements will be utilised. The Council will have to determine whether it wishes to introduce such an approach. As part of the regulations, a prescriptive approach is introduced to the use of planning obligations that remove some of the previous flexibilities.

- 2.3 In particular, regulation 122 (there are 129 regulations relating to CIL) sets out that a planning obligation may only be entered into where it is
- necessary to make the development necessary in planning terms
 - directly related to the development
 - fairly and reasonably related in scale and kind to the development
- 2.4 In effect, this is a clarification on the previous regulations with a re emphasis on a direct relationship to the development. This will require a much more rigorous approach to ensure that what is contained in an Agreement is necessary. In its strictest interpretation, the test would be whether planning permission would be able to be granted without Section 106 Agreements being in place, for example could a condition be capable of delivering the necessary controls or indeed is what's sought within the Agreement actually reasonable? In practice, it is likely that over a period of time these test of reasonableness will be determined through the courts, leaving a period where best practice and acceptability will be subject to negotiation, agreement and challenge.
- 2.5 It would appear that there is an intention with CIL to move to a position where infrastructure is much more formally planned, by way of an infrastructure plan, in effect an enhancement of the Infrastructure plan that we have to produce as part of the Local Development Framework. Further legislative changes will come into effect in 2014 which will limit the number of Section 106 Agreements (to a maximum of five) that can be entered into for any particular form of infrastructure. The approach being that by that time, if infrastructure to support development is considered necessary, it will be previously identified, planned for and a means of delivery established through the CIL approach.
- 2.6 As indicated, it will be a matter for future consideration by the Council as to whether it wishes to implement CIL. In any event in order to do so, we will have to include approximately policy to enable this within the core strategy. Having decided to apply Community Infrastructure Levy, there are a number of matters that would need to be addressed and would generate a significant workload to establish the Council's position.
- 2.7 The enabling legislation makes provision for the Council to charge the levy on new developments. The Council will need to determine what categories of new development would be charged. In most cases, the charging authority would normally be the collecting authority and the process would have to be established to create a means of monitoring, collecting and delivering money back to the infrastructure providers. There may be scope however to establish a joint approach with other authorities but consideration would clearly need to be given to the mechanisms for determining the levels of charge, what infrastructure it would be applied to and who would determine priorities. If the Council was to implement the levy, it would have to determine a schedule of charging and this would have to be issued within a day of planning permission being granted. Any charging schedule would need to address how payments would be staged and deal with issues of proportionate costs if for example differing had interests in the land. Any potential disagreements between parties would have to be resolved by the charging authority. Whilst the charging authority can include an element for administration, it is likely that the process would require resources to deliver it.

2.8 A number of key matters arise from the regulations governing the process, the list below illustrates the range of issues that need to be accounted for and matters that would be subject to public inquiry before they were adopted:

- Rates are charged at pounds per square metre, the rate would be established based on what was needed.
- Different rates can be charged for different areas of the borough.
- CIL can only be introduced with an up to date development plan. This would need to include a detailed infrastructure study.
- The CIL approach can only be introduced after an independent public inquiry (outside the LDF process) with a binding report from the Inspector.
- The government expects national funding to continue to bear the main burden of providing infrastructure, CIL would be additional.
- CIL can only be used on new infrastructure and cannot support existing deficiencies or established spending.
- Affordable housing will not be provided through CIL and will continue to be provided as it is presently.
- It is anticipated that CIL will deliver sub-regional infrastructure.
- If introduced CIL will be a mandatory charge and is not negotiable by the developer. Hence the need for consultation and Inquiry process.
- Charging authorities will have to carry out viability assessments on the schemes.
- Payment would be expected at the commencement of development.
- Small scale developments will also be expected to contribute.
- A draft charging schedule would need to be prepared and consulted on before it was formally adopted.
- Exemptions would exist for charities and social housing providers.

2.9 Further work will clearly need to be undertaken on CIL to determine how the process could operate within Ribble Valley and what will need to be added to the Local Development Framework to enable it to be applied. It is clear that the Council will need to consider how it applies the use of Section 106 Agreements as a result of the changes to legislation now in effect regardless of whether it decides to utilise the CIL approach. Given the amount of development that the Council has to consider within the borough and the need for infrastructure to support that development, this is set to be an important issue for the authority over the coming months.

2.10 Further information will be provided to Members as work on the Local Development Framework progresses.

DIRECTOR OF DEVELOPMENT SERVICES

For further information please ask for Colin Hirst, extension 4503.