Report to the Cabinet

Report Reference: C-017-2015/16
Date of meeting: 23 July 2015

Epping Forest District Council

Portfolio: **Planning Policy**

Subject: **Assessment of the Viability of Affordable Housing, Community Infrastructure Levy and Local Plan.**

Responsible Officer: **Ken Bean** **(01992 564610)**

Democratic Services: **Gary Woodhall** **(01992 564470)**

Recommendations/Decisions Required:

(1) To note the findings of the Stage 1 Report, the Executive Summary for which is attached at Appendix 1;

(2) To agree that the Council progresses work needed to support the potential introduction of a Community Infrastructure Levy (CIL) along the lines proposed in the Stage 1 Report; and

(3) To agree that, irrespective of the decision taken on CIL, Stage 2 of the economic viability work should be completed to inform the Preferred Option Draft Local Plan and, accordingly, that officers be instructed to ensure that the consultants retained by the Council undertake and complete this work at the appropriate time.

Executive Summary:

The Dixon Searle Partnership (DSP) has been engaged by the Council to undertake an assessment of the economic viability of development across the District and advise on the implications of this for the drafting of Local Plan policies. The consultants were also asked to consider the scope for the introduction of a Community Infrastructure Levy (CIL) and the inter-relationship with overall development viability.

CIL, as the name suggests, is essentially a tax that local authorities can charge developers to help deliver the infrastructure needed to support the development of the area. A proportion of the levy collected is passed onto Parish and Town Councils to spend where development has taken place. CIL is intended to provide infrastructure to support the development of an area, rather than making individual planning applications acceptable in planning terms. Therefore, since some site specific impact mitigation may still be necessary in order for a development to be granted planning permission, where CIL is introduced there is still a legitimate role for development specific planning obligations.

The economic viability work is being undertaken in two stages and DSP has now reached the end of Stage 1. Their report reviews economic viability of development at a strategic level across the District and introduces potential options for Local Plan policy development, including the proportion of affordable housing and affordable housing thresholds. The Stage 1 report also considers the prospects for the introduction of a Community Infrastructure Levy and advises on broad parameters for viable levels of CIL for different land uses across the District.

The consultants briefed all Members on 19th May on the economic viability work undertaken so far. They explained the links with the Local Plan and affordable housing as well as also presenting their findings in respect of the prospects for introducing a CIL Charging Schedule across the District, indicating uses that could sustain a charge and the rates that might be levied.

The purpose of this report is to request that Cabinet note the work already completed and agree that the Council continues the work needed to support and inform both the Local Plan and potential introduction of a CIL Charging Schedule.

Reasons for Proposed Decision:

It is necessary to produce economic viability evidence as part of the Council's evidence base needed to underpin and inform policies in the emerging Local Plan.

The Community Infrastructure Levy (CIL) came into force in 2010 and is the Government's preferred approach to help deliver infrastructure needed to support the development of an area.

In summary, the reasons for recommending that the Council progresses its economic viability work is to: i) ensure that the Local Plan is founded on a robust, credible and up to date evidence base, and ii) facilitate the potential introduction of a CIL Charging Schedule.

Other Options for Action:

(i) To decide not to progress CIL. The implications of this would be that the Council would need to solely rely upon pooling up to a maximum of five section 106 (S106) contributions to fund a piece of infrastructure.

(ii) To delay a decision on whether to introduce CIL. Although the Government's preferred approach, there is not a statutory obligation to introduce CIL, nor any deadline set for making such a decision.

(iii) To not request consultants to undertake Stage 2 of their economic viability work. As explained in the body of the report, irrespective of the Council's decision on CIL, economic viability work is needed to inform how Local Plan policies are couched, including the policy approach taken in respect of affordable housing.

Report:

1. The Government's National Planning Policy Framework (NPPF, para 173) is clear that pursuing sustainable development requires careful attention to viability and costs in plan making and decision taking; also that plans should be deliverable. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements, should enable development to be deliverable. In setting policy on local standards in the Local Plan, including requirements for affordable housing, it is necessary to assess likely cumulative impacts on development across the District. Consultants, Dixon Searle Partnership (DSP) have been appointed to make this assessment and advise on the scope to introduce CIL charges.

2. CIL, as the name suggests, is essentially a tax on development and is levied to ensure funding of infrastructure and requires charging authorities to identify the total cost of infrastructure they wish to fund wholly or partly through the levy. In doing so it is necessary to

consider what additional infrastructure is needed to support development and what other sources of funding are available. The NPPF (para 177) emphasises the importance of LPAs understanding district-wide development costs when preparing their Local Plans, therefore necessitating that infrastructure and development policies are planned at the same time. Also, that affordable housing and any local standards requirements that may be applied to development should be assessed at the plan-making stage and kept under review.

3. Typically, infrastructure information is provided in an Infrastructure Delivery Plan (IDP) that councils produce as a key piece of evidence used to support and justify both CIL charging schedules and Local Plan policies. Therefore, irrespective of whether EFDC decides to pursue CIL, it will be necessary to prepare an IDP in support of the emerging Local Plan.

4. The levy can be used to fund a wide range of infrastructure including transport, flood defences, education, health and social care facilities as well as a broad range of facilities such as play areas, parks and green spaces, district heating schemes, cultural, sports, police and other community safety facilities. However, the Government's Planning Practice Guidance (PPG) states that for affordable housing, use of S106 obligations remains the appropriate funding mechanism and therefore should not be included in CIL charging. The PPG also makes clear that CIL is intended to provide new infrastructure, and therefore should not be used to remedy pre-existing deficiencies in infrastructure provision unless these deficiencies will be made more severe by new development.

5. DSP's Stage 1 Report has now been received, the Executive Summary of which is attached as Appendix 1. The report sets out findings and recommendations for the Council to consider in taking forward the drafting of the Local Plan and the potential for implementing of a CIL alongside a reasonable and viable level of affordable housing to be sought on residential development schemes across the District.

Community Infrastructure Levy (CIL)

6. The CIL levy is payable on new development which creates net additional floor space where the gross internal area of new build exceeds 100 square metres. That limit does not apply to new houses or flats and a charge can be levied on a single house or flat of any size. There are however a number of exemptions including residential developments built by 'self builders', (as defined in the CIL Regulations), social housing, charitable development, buildings into which people do not normally go / go only intermittently for inspection or maintenance purposes and vacant buildings brought back into the same use.

7. The evidence base for a charging schedule needs to be robust and is examined in public prior to adoption of the levy. It is necessary to use an area-based approach to CIL, which entails a broad test of viability across the area, and be able to demonstrate that the proposed levy rate(s) set an appropriate balance. To help ensure the viability of development is not put at risk, the CIL regulations permit differential CIL rates to be charged in relation to geographical zones, types of development and/or scales of development. However, caution is expressed both in Government guidance and by the Council's consultants based on their experience that a CIL charging authority intending to set differential rates should seek to avoid undue complexity. Also, differential rates must not be set in such a way that they constitute a notifiable state aid under European Commission regulations.

8. It is important to recognise that CIL is only likely to provide a proportion of the funding needed to provide the infrastructure required to support new development. Typically s.106 only provides for about 7% of infrastructure funding; whilst CIL may contribute a little more, successive revisions made to the CIL Regulations by Government since first introduced in 2010 has had the effect of reducing an LPA's ability to charge CIL for new development.

Relationship between CIL and the Local Plan and Neighbourhood Plans

9. CIL is expected to have a positive economic effect on development across a local plan area. Paragraph 175 of the NPPG advises that where practical CIL charges should be worked up and tested alongside the Local Plan. It is also important to note that it is necessary to have in place an adopted up to date Local Plan prior to introducing CIL charging. This means that in setting rates it is necessary to demonstrate how the CIL proposals contribute positively to plan delivery, and that an appropriate balance is struck between additional investment needed to provide infrastructure to support new development and the potential effect on the viability of developments. Not all development may be viable either before or after the impact of CIL and other planning policies – however, what is important in setting CIL rates is that delivery of the Local Plan as a whole will not be put at undue risk through cumulative requirements placing too high a level of collective costs on developments.

10. Whilst CIL charging schedules are not formally part of the Local Plan, they should inform and generally be consistent with each other. Forming part of the Council's justification for introducing CIL the Council would need to be able to explain and justify how the levy rate(s) proposed will contribute towards implementation of the Local Plan and generally support development across the whole of the District. The evidence demonstrating this would principally comprise DSP's Stage 1 and Stage 2 reports illustrating potential effects the proposed rate(s) would have on economic viability. It is also necessary to provide information about the amount of funding collected in recent years through S106 agreements together with an indication of the extent to which affordable housing and other targets have been met.

11. The NPPF states (para 175) that in supporting and incentivising new development a meaningful proportion of CIL funds raised should be passed onto the neighbourhoods where the development takes place. Accordingly, the CIL Regulations stipulate that the proportion of CIL receipts that must be given to relevant Town and Parish Councils is 25% where there is a Neighbourhood Plan in place and 15% otherwise. This neighbourhood portion of the levy can be spent on a wider range of things than the remainder of the levy and therefore need not be restricted to infrastructure, provided that the use meets the requirements to "support the development of the area" (CIL Regulation 59C refers).

Relationship between CIL and Section 106 (s106)

12. At examination the charging authority is required to set out a draft list, (commonly referred to as the Regulation 123 list), of projects or types of infrastructure that are to be funded in whole or in part by the levy. It is also necessary to set out any known site-specific matters for which section 106 contributions may continue to be sought alongside CIL, and in so doing provide a clear explanation how CIL will operate alongside S106 obligations so as to ensure there is no so called "double dipping" between costs and obligations used to support particular infrastructure provision. This is to provide transparency regarding what a Council intends to fund through the levy and where it may continue to seek section 106 contributions. The purpose of the Regulation 123 list is to help provide evidence on any potential funding gap – it is not the purpose of the CIL examination to challenge the infrastructure items that the Council may decide to include on it.

13. Since 6 April 2015 a maximum of five S106 contributions - back dated from April 2010 - may be pooled to fund or provide a single infrastructure project. The effect of restricting the pooling of S106 contributions is to encourage local authorities to adopt CIL to fund infrastructure as, apart from affordable housing, s.106 contributions may be less effective in bringing some community benefits forward. However, it should be noted that there appears to be some flexibility whereby some councils operating CIL still also collect up to five S106

contributions to fund improvements to a specific item, for example a particular school.

Relationship between CIL and Affordable Housing Policy

14. Affordable housing is the primary viability consideration and therefore, alongside setting CIL rate(s), it is also necessary to consider affordable housing policy impacts. The Council's consultants in their Stage 1 report conclude that from the results to date the emerging picture indicate an affordable housing headline target of 40% for sites of 11 or more dwellings rather than the current 50% policy target applied to rural areas and smaller settlements. At the 40% level DSP believe there would be meaningfully greater scope to achieve a reasonable combination of both affordable housing and CIL, having regard to the fact that CIL rates should allow a buffer and not be set right at the margins of viability.

Consultants' Recommendations

15. Based on work undertaken to date, DSP's provisional outcomes to be considered further indicate recommending a three tier charging schedule as a potential option for residential uses.

- For non-strategic (smaller scale) development assuming a 40% affordable housing target, a general CIL rate of between £150 - £225 per sq. metre is likely to be appropriate.
- There is however a few areas in the District where residential values indicate that a lower CIL rate and /or affordable housing target may be required to ensure the viability of delivery. At this stage the suggested rate in these areas is £80 to £100 per sq. metre, about half of the general rate.
- For any strategic sites that might be identified with significant on-site / site specific infrastructure and mitigation costs (through S106) DSP advise that consideration will need to be given to a £0 per sq. metre or very low CIL rate – especially if a fixed District-wide affordable housing proportion is maintained.

16. In relation to other uses at present there is only thought to be the potential for some forms of retail development charged at a relatively modest District-wide rate certainly not exceeding the general residential parameters, and more likely to be closer to the provisional lower residential range of £80 to £100 per sq. metre. Thus currently DSP conclude that there is no scope in viability terms to justify a CIL charge for other uses such as employment. However, as with all other aspects, this matter will be subject to further consideration in the future.

Conclusion

17. For the reasons explained above regarding the need for viability evidence to inform Local Plan policies, officers consider that the option of not progressing Stage 2 viability work is an untenable one since the absence of robust, credible and up to date evidence covering theses matters would place the Local Plan at serious risk of being found unsound at examination.

18. Whilst the Council can decide either to not progress work on CIL, or to delay making a decision, officers do not recommend either of these options. Further viability work is needed to inform the planning policy stance taken in our Preferred Option Draft Local Plan. The Stage 1 report produced by the consultants is clear in its finding that this District could support a CIL charge for new residential and retail development. Officers' recommendation is that viability work is therefore progressed with a view to also potentially introducing a CIL Charging Schedule following adoption of the Local Plan in 2018.

Resource Implications:

If a CIL is introduced a number of practical issues arise. It will entail work beyond the planning policy and development management teams. This is because it will be necessary to put in place administrative systems involving teams across the Council to facilitate the issuing of notices, invoicing and collection and chasing up late payment of any CIL payments due. In recognition of the need to put in place / adapt existing systems the Regulations permit CIL charging authorities to spend up to five per cent of their total levy receipts on administrative expenses.

In relation to the S106 pooling restrictions it is now necessary to keep an accurate record of the number of obligations, back dated to April 2010, that relate to a specific type of infrastructure.

Legal and Governance Implications:

The legislative and regulatory provision for producing a Local Plan and CIL Charging Schedule is given under The Town and Country Planning Act 1990 (as amended), The Town and Country Planning (Local Planning) (England) Regulations 2012 and The Community Infrastructure Levy Regulations 2010 (as amended 2011, 2012, 2013 & 2014). Policy on both Local Plans and CIL is given in the National Planning Policy Framework (NPPF) with more detailed policy guidance provided in the Government's online Planning Practice Guidance (PPG).

Safer, Cleaner and Greener Implications:

The SCG Scrutiny Panel is required to keep under review the application of Strategic Environmental Assessment (SEA) as it applies to the preparation of the new Local Plan. The SEA is one of the key mechanisms by which alternative sites and policy options will be tested to determine which is the most appropriate to deliver the vision and objectives of the Local Plan. However, there is no requirement to undertake either SA or SEA in relation to production of a CIL charging schedule.

Consultation to be undertaken:

Representations will be invited on the draft Local Plan Preferred Option Draft Local Plan prepared under Regulation 18 of the The Town and Country Planning (Local Planning) (England) Regulations 2012 and again under Regulation 20 on the proposed submission plan. In relation to CIL a charging authority is required to consult on a preliminary draft charging schedule and then again on the draft charging schedule that goes forward for examination.

Background Papers:

DSP Stage 1 Report Assessment of the Viability of affordable Housing, Community Infrastructure Levy and Local Plan

Risk Management:

There are a number of potential risks associated with a decision taken on whether to implement a CIL:

- There is a reasonable likelihood that the CIL Regulations will be further amended in the future – it should be noted that the overall impact of earlier changes has been to reduce the amount of new development that is CIL liable.

- Although not yet tested, it is likely that the interpretation of CIL Regulation 123 will be the subject of a legal challenge to be determined in the courts.
- In respect of the relationship between CIL and S106, the courts may determine the legality of the Regulation 123 list including a mix of both generic infrastructure types and specific infrastructure projects and the ability to use up to five S106 obligations for a specific piece of infrastructure whilst also using CIL funds for the same infrastructure type.
- In the absence of S106 pooling there is a risk that the imposition of a CIL Charging Schedule may fail to deliver sufficient funding for the infrastructure needed to support new development. Particularly if the level of planned development in the Local Plan is low or if actual delivery of planned development is lower than anticipated.

Specifically in relation to the Local Plan, as explained above, there is a strong likelihood of the plan being found unsound if the policies are not based on robust viability evidence.

Due Regard Record

Epping Forest District Council

Name of policy or activity:

Assessment of the Viability of Affordable Housing, Community Infrastructure Levy and Local Plan

What this record is for: By law the Council must, in the course of its service delivery and decision making, think about and see if it can eliminate unlawful discrimination, advance equality of opportunity, and foster good relations. This active consideration is known as, 'paying due regard', and it must be recorded as evidence. We pay due regard by undertaking equality analysis and using what we learn through this analysis in our service delivery and decision making. The purpose of this form is as a log of evidence of due regard.

When do I use this record? Every time you complete equality analysis on a policy or activity this record must be updated. Due regard must be paid, and therefore equality analysis undertaken, at 'formative stages' of policies and activities including proposed changes to or withdrawal of services. This record must be included as an appendix to any report to decision making bodies. Agenda Planning Groups will not accept any report which does not include evidence of due regard being paid via completion of an Equality Analysis Report.

How do I use this record: When you next undertake equality analysis open a Due Regard Record. Use it to record a summary of your analysis, including the reason for the analysis, the evidence considered, what the evidence told you about the protected groups, and the key findings from the analysis. This will be key information from Steps 1-7 of the Equality Analysis process set out in the Toolkit, and your Equality Analysis Report. This Due Regard Record is Step 8 of that process.

Date / Name	**Summary of equality analysis**
Ken Bean 23/07/2015	• The Cabinet report is seeking approval to progress economic viability evidence work needed to support policies in the emerging Local Plan and potentially introduction of a Community Infrastructure Levy across the District. • Once commenced, the Local Plan may have various equality implications for a number of different groups, both in terms of the level of engagement that is undertaken during its preparation and the impact that any policies may have on different sections of the local community. However it is the duty of the District Council to consider such issues during the preparation of the Local Plan, and if introduced, the Community Infrastructure Levy (CIL) would be subject to equality analysis separately.

	• As explained in the Cabinet Report, the Stage 1 Report, necessarily high level at this juncture, has been completed providing an initial assessment of the viability of affordable housing, CIL and the Local Plan. As the Council has not yet identified a preferred policy approach either to the Local Plan (including affordable housing policies, spatial strategy and site allocations) or CIL it is not yet possible to undertake a proper assessment of matters to be addressed in terms of an equality analysis report. In respect of the preparation of the Council's District Local Plan it will be possible for this to be undertaken at the Draft Preferred Option Stage. • No equality issues have been identified at this stage.