



## **DRAFT** PORTFOLIO HOLDER DECISION NOTICE

### **PROPOSED INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR STRATEGIC PLANNING AND ECONOMIC DEVELOPMENT**

### **FAREHAM COMMUNITY INFRASTRUCTURE LEVY (CIL) DRAFT CHARGING SCHEDULE CONSULTATION**

#### **PROCEDURAL INFORMATION**

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Corporate Director (Governance), the Chief Executive and the Head of Finance are consulted together with Chairman and Vice Chairman of The Overview and Scrutiny Committee and any other relevant overview and scrutiny committee. In addition, all Members are notified.

If five or more Members from those informed so request, the Leader may require the matter to be referred to Cabinet for determination.

**If you wish to make representation on this proposed Decision please contact the relevant Portfolio Holder and the following Committee Administrator by Friday 7 September 2012.**

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**Committee Administrator:** Nancy Graham, Tel: 01962 848 235, Email: [ngraham@winchester.gov.uk](mailto:ngraham@winchester.gov.uk)

#### **SUMMARY**

This draft decision notice sets out the recommended response to Fareham Borough Council's (FBC) consultation on the Fareham Community Infrastructure Levy (CIL) draft Charging Schedule 2012. The consultation closes on 11 September 2012. The consultation documents can be viewed at:

<http://www.fareham.gov.uk/council/departments/planning/ldf/cil.aspx>

The FBC Infrastructure Delivery Plan justifies the need for CIL in the Borough and the charging schedule rates set are based on their Viability Assessment work. This consultation is centred on whether the Council's draft Charging Schedule complies with the relevant legislation and has followed due process.

The FBC draft Charging Schedule is considered to be in general compliance with the relevant legislation. However, the infrastructure requirements arising from the North of Fareham Strategic Development Area (SDA), now known as the New Community

North of Fareham, are not reflected in this CIL draft Charging Schedule as further work on infrastructure and viability is required; instead FBC propose to review the CIL prior to any planning permission for development at the SDA being granted.

It is therefore recommended that the City Council (WCC) raises concerns that the draft CIL Charging Schedule does not make provision for securing infrastructure provision for the measures associated with the Fareham SDA, including those which may fall within the Winchester City Council area (e.g. land being made available and laid out as green infrastructure)<sup>1</sup>. It is also recommended that the Council highlights the need for a formal agreement between FBC and WCC, as soon as possible, on how funding would be secured to provide the necessary infrastructure within Winchester District, required by the development of the SDA.

### **PROPOSED DECISION**

1. That the Council responds to the consultation raising concerns that the draft CIL Charging Schedule does not make provision for securing infrastructure provision for the measures associated with the Fareham SDA which may fall within the Winchester City Council area (e.g. land being made available and laid out as green infrastructure)<sup>1</sup>.
2. That the Council highlights the need for FBC and WCC to reach an agreement as soon as possible, on how funding would be secured to provide the necessary infrastructure required by the development of the SDA, including any within Winchester District.

### **REASON FOR THE PROPOSED DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

#### **1. Background to CIL**

The Community Infrastructure Levy (CIL) is a mechanism for raising funds from new development for infrastructure needed to support growth (such as roads, schools, open-space etc, but currently not for affordable housing). Councils currently use S.106 agreements to secure infrastructure provision; these are negotiated on a site-by-site basis. CIL will replace much of the S.106 system by setting a standard charge on developments where there is a net gain in the developed floorspace<sup>2</sup> (i.e. not necessarily for replacement development or changes of use). The use of S.106 agreements will be scaled back, but will still be used to cover issues such as site-specific provision or impact mitigation requirements<sup>3</sup>.

CIL money will be pooled together and the 'charging authority'<sup>4</sup> will decide where it should be spent, based on the authority's infrastructure list (the 'Regulation 123 list')

<sup>1</sup> The principle of an SDA North of Fareham has been established through the Fareham Core Strategy and Policy SH4 in the submitted Winchester District Plan Part 1 – Joint Core Strategy.

<sup>2</sup> 'Any new build – that is a new building or an extension – is only liable for the levy if it has 100 sqm, or more, of gross internal floor space, or involves the creation of additional dwellings, even when that is below 100 sqm.' [CLG CIL Overview](#)

<sup>3</sup> [Community Infrastructure Levy 2010 Regulations](#) 122 (2)

<sup>4</sup> Local planning authorities are charging authorities under the [Planning Act 2008 \(206\)](#),

which can be updated when appropriate. Once collected, it will not be earmarked for specific infrastructure/facilities and there will be competing priorities for CIL funding. A 'meaningful proportion'<sup>5</sup> of the money raised must be spent in the area of the development to ensure that it receives sufficient money to help it manage the impacts of the new development.

Local planning authorities are 'charging authorities' and can therefore produce a 'CIL Charging Schedule' which sets out the charge rates for development within their authority area as a charge per square metre. Charges can vary for different types of development, or for different locations, provided there is economic viability evidence to support this approach.

In setting a charging schedule, the charging authority must reach a balance between the need for CIL (the estimated cost of infrastructure required to support development, which is not funded through other routes) against the potential effects of CIL on the economic viability of development<sup>6</sup>. CIL should have a positive economic effect and not result in development becoming unviable. The amount charged must therefore be based on the viability of the development and CIL may not meet the full cost of infrastructure needed in the District. CIL is consequently not intended to be a mechanism for paying for all infrastructure needed in the District.

## 2. Fareham's Consultation on CIL

The consultation is on Fareham Borough Council's (FBC) [draft CIL Charging Schedule](#). To support the draft Charging Schedule, FBC has produced an [Infrastructure Delivery Plan](#) which identifies the total infrastructure funding gap (this has already been tested through the Examination of FBC Core Strategy) that the levy is intended to support, and [a CIL Viability Assessment](#) which sets out the CIL that a development could realistically pay.

FBC have set a single charge per development type, to cover the whole Borough (i.e. no development zoning). Based on their work on viability, they have set rates for residential, care homes, hotels and retail developments (other than comparison retail). This is summarised in the table below.

Type of Development <sup>7</sup>	CIL charge per m2
Residential falling within Classes C3(a) & (c) and C4	£105
Care homes falling within Classes C3(b) and C2	£60
Hotels falling within Class C1	£35
Retail falling within Class A1:	
Comparison retail <sup>8</sup> in the centres as shown on the maps annexed to the schedule	£0
All Other Retail <sup>8</sup>	£120
Standard Charge (applies to all development not separately defined above)	£0

<sup>5</sup> Not yet defined. This requirement has been introduced under new powers in the Localism Bill

<sup>6</sup> [Community Infrastructure Levy 2010 Regulations](#) 14(1)

<sup>7</sup> As defined in Town and Country Planning (Use Classes) Order 1987 (as amended)

<sup>8</sup> As defined in FBC notes to the Charging Schedule

The calculations are based on the balance struck between the cost of infrastructure and the potential effects of CIL on economic viability of development in accordance with the [Community Infrastructure Levy 2010 Regulations](#) 14(1). The rates are therefore not set right up to the margin of economic viability, to allow for changing land values and economic circumstances and Fareham conclude that the charge 'will not put the overall development across their area at serious risk'<sup>9</sup>.

The Fareham Strategic Development (SDA) is not dealt with specifically within the draft schedule, which covers the whole of Fareham Borough including the proposed SDA. FBC are expecting that the CIL Charging Schedule will be reviewed prior to any planning permission for development at the SDA being granted.

The consultation is to determine<sup>10</sup> whether the charging authority has:-

1. complied with the requirements of the [Planning Act 2008](#) (as amended by the [Localism Act 2011](#)) and the [CIL Regulations 2010 \(as amended\)](#);
2. used appropriate available evidence to inform the draft charging schedule;
3. had regard to the statutory guidance, [Charging setting and charging schedule procedure guidance" \(March 2010\)](#).

Following the consultation, FBC will submit the draft Charging Schedule for Examination with the aim of adopting the CIL Charging Schedule in January 2013.

### 3. Recommended Response to Consultation Questions

1. Compliance with the requirements of the [Planning Act 2008](#) and the [CIL Regulations 2010 \(as amended\)](#):

No comments to make.

2. Use of appropriate available evidence to inform the draft Charging Schedule:

The development of the SDA relies on land within Winchester City being retained undeveloped to ensure separation between the SDA and the existing settlements of Knowle and Wickham<sup>11</sup>. It is likely that some of this land will need to be made available as green infrastructure and there may be a need for other infrastructure improvements within Winchester City Council's area as a result of the development of the SDA (e.g. off-site transport or footpath improvements). However, the SDA requirements are not specifically reflected in this draft CIL Charging Schedule as further work on infrastructure and viability will be required; instead FBC propose reviewing the CIL prior to any planning permission for development at the SDA being granted.

For Winchester, it is imperative that there is a mechanism put in place which will secure the provision of the necessary green infrastructure, at the appropriate time, in the Winchester City area to support the SDA. This will require an agreement with Fareham as any CIL contributions would otherwise go into a Fareham

<sup>9</sup> [Charging setting and charging schedule procedure guidance" \(March 2010\)](#).

<sup>10</sup> In line with the [Planning Act 2008 \(212\)](#)

<sup>11</sup> The principle of an SDA North of Fareham has been established through Policy SH4 in the submitted Winchester District Plan Part 1 – Joint Core Strategy.

Borough-wide 'pot' with no guarantee that they will be spent on the necessary infrastructure, at the right time, including infrastructure outside Fareham Borough. An alternative mechanism for ensuring delivery of necessary infrastructure for the SDA, including the area in Winchester, is through S.106 agreements; effectively creating a zero-rating under CIL for the SDA and securing all provision through S.106. The City Council is considering this approach for the Strategic Allocations within Winchester in its emerging CIL Charging Schedule.

Following Government guidance<sup>12</sup>, 'charging authorities should not seek to exempt individual development sites from CIL through setting a differential rate, unless they can demonstrate that this is justifiable in economic viability terms.' It would therefore be necessary for Fareham to undertake further viability work once more details of the SDA are developed, to test whether CIL is viable, taking account of the infrastructure costs that it should bear. This would be needed to justify applying a zero CIL charge to the SDA area, but could help ensure that adequate infrastructure for this scale of development can be provided through S.106, including provision for the area within Winchester District.

Alternatively, CIL can be collected outside the authority's area in line with 59 (3) of the CIL Regulations "A charging authority may apply CIL to funding infrastructure outside its area where to do so would support the development of its area". However, under this approach the City Council would be entirely dependent on Fareham Borough Council agreeing to make available some of its CIL contributions for infrastructure provision, improvement or maintenance in the City Council's area.

Therefore, it is recommended that the City Council responds to the consultation raising concerns that the draft CIL Charging Schedule does not make provision for securing infrastructure provision for the measures associated with the Fareham SDA which may fall within the Winchester City Council area (e.g. land being made available and laid out as green-infrastructure).

On the basis that Fareham may not change its approach at this stage, it is also recommended that WCC highlights the need for FBC and WCC reach an agreement as soon as possible, on how funding would be secured to provide the necessary infrastructure within Winchester District, required by the development of the SDA.

3. [Has regard to the Statutory Guidance, Charging Setting and Charging Schedule Procedure Guidance" \(March 2010\).](#)

It is considered that the statutory guidance has been taken into consideration in forming the schedule. There are a couple of points that could be clarified, although it is not recommended that the City Council makes comment on these as they do not directly affect the City Council's area.

It is not clear why the rate for Care Homes in the draft Schedule (£60) is less than the rate proposed in the Viability assessment (£105). Although there is no

<sup>12</sup> [Charging setting and charging schedule procedure guidance" \(March 2010\).](#)

requirement for a proposed rate to exactly mirror the evidence, for clarity, it would be useful to explain why a lower figure is proposed.

It is not clear whether FBC has considered the administration costs of implementing the CIL which can be added on-top of the CIL rate, in accordance with 14(2)<sup>13</sup>.

#### **RESOURCE IMPLICATIONS:**

None directly as a result of this consultation, but if adequate means are not in place to secure appropriate funding for infrastructure in Winchester District this could have financial implications for the City Council.

The resource implications relate to whether funding will be secured to provide the necessary infrastructure within Winchester District to support the SDA. This could include funding for the creation and on-going management of the green infrastructure, and potentially for associated access improvements (e.g. footpath links). These infrastructure provisions/improvements may not be achievable if the necessary agreements are not in place to secure adequate funding.

#### **CONSULTATION UNDERTAKEN ON THE PROPOSED DECISION**

n/a

#### **FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION NOTICE**

n/a

#### **DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR OFFICER CONSULTED**

n/a

#### **DISPENSATION GRANTED BY THE STANDARDS COMMITTEE**

n/a

**Approved by: (signature)**

**Date of Decision**

**Councillor Robert Humby – Portfolio Holder for Strategic Planning and Economic Development**

<sup>13</sup> [The Community Infrastructure Levy Regulations 2010 14\(2\)](#)