

COUNCIL

20TH SEPTEMBER 2017

CARMARTHENSHIRE COMMUNITY INFRASTRUCTURE LEVY UPDATE AND PROGRESS REPORT

Executive Board Recommendations:

- That the Carmarthenshire Community Infrastructure Levey Update and Progress Report be received;
- That the current position in relation to the future of CIL both within a national and within a Welsh context be noted;
- That progress on the preparation of a Carmarthenshire CIL be held in abeyance pending the outcome of future considerations of the Welsh Government as a result of the Wales Act 2017;
- That a further report is presented when there is clear indication on the future of CIL, on any changes to the CIL regulations or proposals for a replacement tariff;
- That the progress to date be noted and that the representations received be utilised to inform any future work on CIL or any replacement.

Reasons:

- To ensure that any unnecessary or abortive work on CIL preparation is not undertaken.
- To advise on recent changes and considerations around CIL including legalisation and devolved powers.

Relevant scrutiny committee to be consulted YES

Exec Board Decision Required YES

Council Decision Required YES

EXECUTIVE BOARD MEMBER PORTFOLIO HOLDER:- Cllr. Mair Stephens

Directorate

Environment

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EXECUTIVE SUMMARY

COUNCIL
20TH SEPTEMBER 2017

CARMARTHENSHIRE COMMUNITY INFRASTRUCTURE LEVY UPDATE AND PROGRESS REPORT

Purpose of this Report

This report seeks to provide an update on the progress to date in relation to the introduction of a Community Infrastructure Levy (CIL) within Carmarthenshire. In this respect it also updates on the devolved nature of CIL in Wales and its future in a National context, including the recent independent review of CIL commissioned by the Department for Communities and Local Government (DCLG). In so doing the report outlines the potential forthcoming changes and the resultant implications.

Background - CIL

The CIL is a planning charge, introduced by the Planning Act 2008 as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. It came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010 which set out how local authorities can introduce a CIL and changed the way in which planning obligations can be sought through Section 106 Agreements. It should be noted that CIL legislation was within the remit of the Department for Communities and Local Government (DCLG), and was not devolved to the Welsh Government.

Where a CIL is adopted then a range of developments will be liable for a charge under a 'Charging Schedule' which would identify the level of CIL that will be applied to each type of development. If introduced, the CIL would be mandatory and charged against all new development that meets the qualifying criteria. Monies generated from CIL would be used to fund a wide range of infrastructure that is needed to support growth in the area.

Whilst the adoption of a CIL charge is not mandatory, it was considered prudent that the Authority fully consider the respective benefits or otherwise it may have in delivering infrastructure improvements necessary to facilitate regeneration and growth.

Progress to Date

On the 13th January 2016, County Council resolved to progress work on preparing a Community Infrastructure Levy (CIL) for Carmarthenshire and authorised the production of a Preliminary Draft Charging Schedule, and to conduct a formal consultation on its content, along with the associated evidence base. Note, the Preliminary Draft Charging Schedule is the first stage in establishing the CIL, and set out the proposed charging rates for Carmarthenshire.

The formal consultation on the Preliminary Draft Charging Schedule commenced on the 7 September 2016 for an 8 week period ending on the 4 November 2016, with comments invited on its content and that of the supporting evidence.

During this consultation some 29 representations were received from a range of groups, bodies and individuals. These responses were scheduled to be reported back to Council for consideration and to determine, whether or not to proceed to the next stage and consult on a CIL Draft Charging Schedule, and subsequently submit it for examination.

Evidence Gathering

Carmarthenshire County Council commissioned the District Valuer Services – Valuation Office Agency to undertake a CIL economic viability study for Carmarthenshire. The Draft Study was completed in November 2015 and provided a comprehensive and up-to-date evidence base upon which the proposed CIL rates are based.

To test the financial viability of introducing a potential CIL within Carmarthenshire, the Study tested sites covering a range of uses from new housing to a broad range of commercial uses such as retail, office, industrial etc. Details in relation to the Viability Study, and other evidence can be viewed via the flowing link:

<http://ilocal.carmarthenshire.gov.uk/media/96628/Study-into-the-Viability-of-Charging-CIL-Background-Document.pdf>

An Infrastructure Background Paper was prepared in 2013 to inform the production of the Local Development Plan (adopted in 2014). For the purposes of informing the consideration of adopting a CIL, further information was needed on Carmarthenshire's infrastructure requirements and the cost for delivery. As such, a further Infrastructure Assessment Background Paper has been produced. The CIL Background Paper: Infrastructure Assessment can be viewed via this link at the i-local webpage:

<http://ilocal.carmarthenshire.gov.uk/media/96610/Infrastructure-Assessment-Report-Background-Document.pdf>

This Paper updates the existing evidence and supplements it with information relating to additional types of infrastructure not previously fully considered. The Paper identifies the infrastructure costs and potential sources of funding. The Paper also proposes a list of the types of infrastructure which should be funded by the CIL, this is referred to as the 'Regulation 123 List'.

Note: Whilst the above evidence has been prepared within the context of CIL preparation it has, and will form an important part of ongoing evidence gathering in respect of the Annual Monitoring requirements for the Carmarthenshire Local Development Plan (LDP). It will also assist in informing any future review of the LDP.

The Future of CIL - Relevant Issues

- **DCLG CIL Review - A New Approach to Developer Contributions**

In November 2015 the Westminster Government commissioned an independent national review of CIL with the purpose of:

'Assessing the extent to which CIL does or can provide an effective mechanism for funding infrastructure, and to recommend changes that would improve its operation in support of the Government's wider housing and growth objectives.'

The review examined the amount of revenue CIL is raising, the types of development that are paying CIL, impacts on viability and the operation of the neighbourhood share of CIL. The independent review group submitted their report in October 2016 and was published in February 2017 (see link below) titled A New Approach to Developer Contributions to Ministers. <https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government>

In summary, the report's overall conclusion was that: CIL as currently configured is not fulfilling the original intention of providing a faster, fairer, simpler, more certain and more transparent way of ensuring that all development contributes something towards cumulative infrastructure need and that it has also disrupted and complicated the Section 106 arrangements which, though much criticised, actually worked reasonably well for many sites.

In identifying a way forward, the report recommends that Government consider a twin-track approach that allows local authorities to take advantage of the best elements of the existing CIL and Section 106. It recommends that the Government replace the CIL with a hybrid approach of a broad and low level Local Infrastructure Tariff (LIT) and Section 106 for larger developments. The report also identifies a series of further recommendations on the way forward.

- **Devolution of CIL Powers**

The UK Government on 7 June 2016 published the Wales Bill with the intention to amend the Government of Wales Act 2006. The Bill received Royal Assent as the Wales Act 2017 on 31 January 2017.

As part of the Wales Act 2017 CIL became a devolved matter with powers anticipated to be transferred to the Welsh Government in April 2018. In this respect a Transfer of Functions Order is necessary to allow Welsh Ministers to modify existing secondary legislation. If the Welsh Ministers then consider it appropriate to rewrite the CIL Regulations then it is possible that further legislation may be required to enable this, however, this has not been confirmed.

Given the above it is currently unclear on the approach the Welsh Government wish to adopt on CIL, and notably whether they wish to continue with the approach as set out within the CIL regulations, or develop specific amendments or abandon it altogether.

Conclusion

Given therefore that it is not clear on what form, if any, CIL or its potential replacement will take, it is recommended that until greater clarity on the future of CIL is available, that preparation of a CIL for Carmarthenshire be held in abeyance.

This reflects not only the uncertainty surrounding the future form of CIL, but also the commitment and implications in terms of financial costs and officer necessary to progress CIL against an uncertain backdrop where any future work may be abortive. In this context it is also noted that the potential for an LDP review to commence in the near future would raise issues around the timing of CIL adoption. In this regard were a CIL to be progressed it would need to clearly accord with, and express elements of LDP policy in terms of Strategic delivery, and as such it would be prudent for its future consideration to be linked with that of any LDP review.

It should be noted that whilst consideration was being given to the potential adoption of a CIL charge within Carmarthenshire the current requirements in relation to financial contributions sought from developers under Section 106 would remain. In this respect, and in light of the above proposal to hold CIL in abeyance, the current requirements in relation to section 106 and developer contributions remain relevant. These requirements will continue to be implemented to ensure compliance with LDP policy, and that developers, the community and the public have continued clarity around the contributions to be sought from any development. Such contributions will also be sought in accordance with the CIL Regulations including that in respect of pooling limitations.

A future report will be presented advising of the latest position once a clear direction is available on the future of CIL, its replacement, or any changes to the CIL regulations.

DETAILED REPORT ATTACHED?

NO

IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed: L Quelch

Head of Planning

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
YES	YES	YES	YES	NONE	YES	YES

1. Policy, Crime & Disorder and Equalities

The purpose of implementing CIL is to pay for the infrastructure needed to support the development and regeneration of the County. To this end, it supports the aims and objectives of the LDP's Objectives and Policies and also the Council's commitment to regeneration.

Whilst the future of CIL is uncertain if the Council resolves to prepare a CIL Charging Schedule then this will need to be done in accordance with equal opportunities policies and will need to ensure that the correct consultation procedures are complied with in accordance with the Community Infrastructure Levy Regulations 2010 (as amended).

2. Legal

The planning obligations and CIL regulations are covered by S106 of the Town and Country Planning Act 1990 (as amended), The Planning Act 2008 (as amended), The Community Infrastructure Levy Regulations 2010 (as amended) and the Localism Act 2011. The Wales Act 2017 devolves CIL powers to the Welsh Government.

3. Finance

Provisions in relation to the preparation of CIL has previously been made in the Planning division budget with ongoing provision now part of the LDP reserve. This would include provision for further evidencing. It is also noted that such evidence work remains compatible with that of, and linked to future LDP review.

In considering the relative costs of preparing CIL, it should be noted that if progressed they will

have to be borne up front, whilst the clawing back of the costs will only be realised once the CIL Schedule is implemented at the end of the preparation process. Therefore the Council will have to bear the costs of preparation before any costs can be clawed back, should Planning Division Budget not be in a position to provide this initial provision an application will be made for a growth bid. The preparatory work undertaken to date are being funded by reserves.

The report details the changing position at a national and Wales level to CIL along with the resultant uncertainty. In this respect the potential for continued use of budgets on CIL will be a factor against this backdrop of uncertainty, where any future work may be abortive. The relationship of CIL to the LDP is well defined and the mutuality of some of its evidence is clear. Similarly many local authorities have prepared a CIL concurrent with an LDP. As such this may, once future arrangements become, clearer be an option in preparing a CIL or its future alternative. As such an ongoing financial commitment linked to the statutory preparation and review of the LDP is required.

Section 106 developer contributions will continue to be sought in accordance with regulations and the policies and provisions of the LDP. Monies collected will be utilised in accordance with the legal heads of terms specified on the agreement.

4. ICT

If the Council elects to progress towards the adoption of a CIL then a new system will be required to manage and monitor CIL liability and the collection of funds.

6. Physical Assets

If CIL were adopted in the future it may impact on land values when disposing of land, while certain categories of development may incur CIL if undertaken by the authority, this will be determined in the final charging schedule.

7. Staffing Implications

It is anticipated that any progress of CIL or any replacement will be delivered through current staffing resources. This will be reviewed in light of any future proposals emerging from the Welsh Government.

In relation to Section 106 matters a Monitoring and Implementation Officer has been appointed to assist in its effective operation from a planning context.

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: L Quelch

Head of Planning

1. Scrutiny Committee

Community Scrutiny Committee: TBC

2. Local Member(s)

Local Members have been consulted as part of the formal consultation (8 weeks) undertaken in respect of the publication of the Preliminary Draft Charging Schedule.

3. Community / Town Council

Community and Town Councils are a specific consultee and were part of the formal consultation (8 weeks) undertaken in respect of the publication of the Preliminary Draft Charging Schedule.

4. Relevant Partners

A full public consultation (8 weeks) was undertaken as part of the publication of the Preliminary Draft Charging Schedule.

5. Staff Side Representatives and other Organisations

Relevant representative and organisations were consulted as part of the publication of the Preliminary Draft Charging Schedule.

Section 100D Local Government Act, 1972 – Access to Information

List of Background Papers used in the preparation of this report:

THESE ARE DETAILED BELOW:-

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Preliminary Draft Charging Schedule		English: http://local.carmarthenshire.gov.wales/media/96622/Preliminary-Draft-Charging-Schedule-Consultation-Document.pdf Cymraeg: http://lleoli.sirgar.llyw.cymru/media/96619/Preliminary-Draft-Charging-Schedule-Consultation-Document-Welsh.pdf
Study into the economic viability of charging CIL in Carmarthenshire		English: http://local.carmarthenshire.gov.wales/media/96628/Study-into-the-Viability-of-Charging-CIL-Background-Document.pdf Cymraeg: http://lleoli.sirgar.llyw.cymru/media/96625/Study-into-the-Viability-of-Charging-CIL-Background-Document-Welsh.pdf
CIL Background Paper: Infrastructure Assessment		English: http://local.carmarthenshire.gov.wales/media/96610/Infrastructure-Assessment-Report-Background-Document.pdf Cymraeg: http://lleoli.sirgar.llyw.cymru/media/96607/Infrastructure-Assessment-Report-Background-Document-Welsh.pdf
Carmarthenshire Local Development Plan		English: http://www.carmarthenshire.gov.wales/home/residents/planning/policies-development-plans/local-development-plan/#.V-AO11IUUy9 Cymraeg: http://www.sirgar.llyw.cymru/cartref/preswylwyr/cynllunio/cynlluniau-datblygu-a-pholisi/y-cynllun-datblygu-lleol/#.V-AO6FIUUy8
A New Approach to Developer Contributions		https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government