

Report to Cabinet

21 September 2017

By the Cabinet Member for Planning and Development

KEY DECISION



**Horsham
District
Council**

Not Exempt

Adoption of Draft Planning Obligations and Affordable Housing Supplementary Planning Document

Executive Summary

On 1 March 2017 the Council received the Independent Examiner's report into the draft Horsham District Council Community Infrastructure Levy (CIL) Charging Schedule. The Independent Examiner recommended that the draft Horsham CIL Charging Schedule be approved without any further modifications.

On 26 April 2017 full Council approved the Horsham District Council CIL Charging Schedule for adoption and implementation. The Charging Schedule will be implemented on 1 October 2017 or as soon as practical thereafter, in consultation with the Cabinet Member.

The Council will therefore start, from 1 October 2017, to charge the Community Infrastructure Levy on liable developments (residential development and 'large format' retail development, including supermarkets and retail warehousing i.e. retail development over 280 sqm) at a charge of £135 per sqm for residential and £100 per sqm for 'large format' retail development. Funds collected through the CIL will be spent on infrastructure on a District-wide basis (e.g. education; health; parks; sport and leisure; and transport).

In addition to the CIL charge, the Council needs to clarify what will be sought through Section 106 agreements. This is clarified in the revised "Planning Obligations and Affordable Housing" Supplementary Planning Document. Affordable housing will still be provided through Section 106 agreements. In addition, the Council will only be able to seek funds through Section 106 agreements for local infrastructure schemes where they are directly linked to a particular development and can be classed as direct on-site mitigation.

The Council consulted on a draft Planning Obligations and Affordable Housing Supplementary Planning Document between 6 May 2016 and 17 June 2016. This Report sets out the key issues raised by consultees to the draft Planning Obligations and Affordable Housing SPD during the consultation period, and the recommended responses to those comments.

It is recommended that a final version of the Planning Obligations and Affordable Housing SPD, incorporating revisions following consultation, is approved, so that it can come into force on the same day as the Community Infrastructure Levy (1 October 2017).

Recommendations

Cabinet is recommended to:

- i) Note the representations and responses to the draft Planning Obligations and Affordable Housing SPD;
- ii) Approve the draft Planning Obligations and Affordable Housing Supplementary Planning Document, as amended by the changes set out in Appendix 1, as supplementary guidance to be used in the determination of planning applications from 1 October 2017.
- iii) Delegate authority to the Cabinet Member for Planning and Development to approve minor editorial changes prior to publication.

Reasons for Recommendations

- i) For consideration by Members;
- ii) To provide guidance on how Section 106 contributions will be sought once the Horsham CIL Charging Schedule is implemented on 1 October 2017.
- iii) To give the Cabinet Member delegated authority to approve minor changes to the document, without the need for it to be referred back to Cabinet.

Background Papers

- Preliminary Horsham Draft Charging Schedule (consultation occurred between 16 May and 27 June 2014)
- Horsham CIL Draft Charging Schedule (consultation occurred between 6 May and 17 June 2016).
- Draft Planning Obligations & Affordable Housing Supplementary Planning Document , May 2016
- Infrastructure Delivery Plan, April 2016
- CIL Viability Update Assessment & Appendices, February 2016
- CIL Proposed Modifications (consultation occurred between 18 November 2016 and 19 December 2016)
- Independent Examiner report on the draft Horsham District CIL Charging Schedule, 1 March 2017.

Wards affected: All

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Background Information

1 Introduction and Background

- 1.1 As part of the changes introduced under the Planning Act 2008, the Government introduced the Community Infrastructure Levy (CIL); and this was brought into law by the CIL Regulations 2010, as amended.
- 1.2 CIL is a charge which local authorities in England and Wales can levy on most types of new development in their areas when it is viable to do so. The proceeds of the levy provide infrastructure to support the development of an area in line with local authorities' development plans; in this case, the Horsham District Planning Framework, which was adopted in November 2015.
- 1.3 In order to be able to introduce the levy, a council must produce and adopt a CIL Charging Schedule, setting out the charging area(s) for the district and the charging rate. This involves two periods of public consultation (and potentially a third – Proposed Modifications) followed by an Examination by an Independent Examiner.
- 1.4 In addition to the work that was carried out on the Draft CIL Charging Schedule, a Draft Planning Obligations & Affordable Housing Supplementary Planning Document (SPD) was produced. This was in order to clarify what would be liable for a Section 106 contribution once the CIL charge was in operation. The draft SPD was consulted on at the same time as the Draft CIL Charging Schedule (May to June 2016). The consultation process included:
 - Invitations to comment sent to approximately 600 consultees, which included statutory consultees; parish councils; neighbouring authorities; residents; businesses and voluntary bodies;
 - publication on the Council's website and through the local press
- 1.5 The Examination into the draft CIL Charging Schedule was held by written representations only and the Independent Examiner's report was received on 1 March 2017. It recommends that the Horsham District CIL Charging Schedule be approved, incorporating the modifications proposed by the Council. No other changes were required and Council approved the CIL Charging Schedule in April 2017.

2 Relevant Council policy

- 2.1 The Horsham District Planning Framework (HDPF) is the relevant plan that sets out how growth and development will take place in the District in the period to 2031. The CIL charge is set at an appropriate level to ensure that the plan is economically viable and sufficient infrastructure is identified to deliver the development proposed in the HDPF.

3 Details

- 3.1 23 representations were made to the draft Planning Obligations and Affordable Housing SPD. These were received from West Sussex County Council, the

Environment Agency, representatives of the development industry, a parish council and an individual. Changes are proposed in the light of the comments received. In addition, a number of amendments are proposed to the SPD by the Council due to changes in legislation, or to provide clarification on certain aspects of the document. A summary of the comments received and the Council response is included at **Appendix 1**.

3.2 **Appendix 2** comprises the draft revised Planning Obligations and Affordable Housing SPD, which includes proposed additions, which are underlined and highlighted text, and deletions, which are shown as a strike-through.

3.3 A summary of the main points raised is set out below:

Clarification sought by West Sussex County Council

3.4 West Sussex County Council has requested the rewording of paragraph 6.3.5 to clarify that the transport improvements referred to only relate to the strategic allocations within the Horsham District Planning Framework (adopted 2015), not to the remainder of sites that will be coming forward over the Plan period. In addition, WSCC sought clarification in relation to financial contributions for education facilities. These requested changes have been made to the SPD at 6.3.16.

Observations about viability assessments and their availability – Individual

3.5 It was requested that there should be reference to the fact that case law requiring public disclosure of key facts from viability assessments should have priority over any view of the applicant to avoid disclosure.

3.6 Paragraph 6.1.55 has been amended to reflect that the Council will seek to ensure the transparency of viability evidence, wherever possible. This is in line with Government guidance set out in paragraph 4 of the Viability section of the Government's Planning Practice Guidance.

Provision of Affordable Housing via Condition – Gladman (development industry)

3.7 It was proposed that the provision of affordable housing could be dealt with adequately by condition, rather than through a legal agreement. The Council does not consider that planning conditions are an appropriate method of dealing with larger scale applications, and that the use of conditions would pose greater risks and difficulties than by dealing with the issue through a legal agreement. No change has been made to the SPD

Monitoring Fees – Gladman (development industry)

3.8 Objection to the collection of monitoring fees by Horsham District Council when monitoring legal agreements. This was based on a legal case from 2015, where the Secretary of State removed monitoring fees from Oxfordshire County Council on a particular development. While the Council accepts that in this one case, the monitoring fees were not appropriate, it does not consider that this case law prevents Horsham District Council from seeking monitoring fees, where these are properly assessed and justified on a case by case basis. No change has been made to the SPD

Clarification of who is responsible for spending CIL funds

- 3.9 Clarification has been provided on who is responsible for spending CIL funds. Paragraph 4.8 has been amended to clarify that Horsham District Council is the collecting authority and will pass relevant funds to West Sussex County Council for the provision of certain strategic infrastructure. West Sussex County Council will be responsible for the expenditure of funds that it has received from Horsham District Council.

Clarification of Position on Standard Legal Agreements

- 3.10 Paragraph 6.1 has been amended to clarify that Horsham District Council will be introducing standard legal agreements/unilateral undertakings to simplify procedures.

Clarification on the Use of affordable housing reviews

- 3.11 Clarification has been provided on the use of affordable housing reviews. Additional wording has been added to paragraph 6.1.27 to set out that review mechanisms should not be used to reduce the base level of affordable housing i.e. the reviews are only to be used to look at increasing levels of affordable housing, where appropriate.

Open Space Standards

- 3.12 Paragraph 6.3.19 clarifies that sport, recreation and open space standards are set out in the Council's adopted 2014 "Sport, Open Space and Recreation Assessment".

4 Next Steps

- 4.1 Subject to Cabinet's agreement to adopt the draft Planning Obligations and Affordable Housing SPD when it meets on 21 September 2017, it will be published and advertised in accordance with the Town and Country (Local Planning)(England) Regulations 2012. The Council will start charging CIL on 1 October 2017.

5 Views of the Policy Development Advisory Group

- 5.1 TBC after PDAG on 6 September 2017.

6 Other Courses of Action Considered but Rejected

- 6.1 One alternative course of action would have been to not implement a CIL Charging Schedule and to continue using Section 106 agreements when seeking developer contributions to mitigate development in Horsham. However, given the tightening of the rules through CIL regulation 122 on what a Council can seek a section 106 agreement for (it must be necessary, directly related to the development and reasonable) and also the pooling restrictions imposed by the Government (no more than 5 separate legal agreements can be pooled for a single infrastructure project or type of infrastructure e.g. education), it was decided by HDC to implement a CIL Charging Schedule.

7 Resource Consequences

- 7.1 Estimates have been made of the likely income generated by the adoption of the CIL Charging Schedule. This has been estimated at approximately £21 million between 2017/18 and 2030/31.
- 7.2 It is not possible at this stage to forecast how many legal agreements may be forthcoming over the Plan period (up to 2031), once the Community Infrastructure Levy and Planning Obligations and Affordable Housing SPD are implemented on 1 October 2017. It is therefore not possible to estimate Section 106 income over this period.
- 7.3 The Council recruited a CIL Planning Assistant in August 2017 to help deal with the introduction of the Horsham Community Infrastructure Levy in October 2017.

8 Legal Consequences

- 8.1 The Supplementary Planning Document (SPD) is a statutory document and the legal requirements in relation to its preparation and adoption are set out in the Town and Country Planning (Local Planning) (England) Regulations 2012. Other legal implications are incorporated in the body of this report.

9 Risk Assessment

- 9.1 Following the adoption of the Planning Obligations and Affordable Housing SPD, there is a six week period when the decision to adopt the document can be judicially reviewed. The Council has sought to minimise the likelihood of a successful challenge.

10 Other Considerations

- 10.1 There are no Crime & Disorder; Human Rights; Equality & Diversity or Sustainability consequences resulting from this decision.