



## Report to Cabinet

<b>Date:</b>	<b>11<sup>th</sup> July 2023</b>
<b>Title:</b>	<b>Buckinghamshire Community Infrastructure Levy</b>
<b>Cabinet Member(s):</b>	Peter Strachan, Cabinet Member for Planning & Regeneration  Steven Broadbent, Cabinet Member for Transport  <b>Contact officer:</b> John Callaghan, Transport Strategy Funding Manager
<b>Ward(s) affected:</b>	All
<b>Recommendations:</b>	<b>Cabinet to</b>  <b>AGREE:</b>  <b>(1) that the process of considering the introduction of CIL in the north and central planning areas of the County is supported;</b>  <b>(2) that a review of the Charging Schedules in the south, east and west planning areas is undertaken;</b>  <b>(3) that, subject to technical assessment, work commences on a single charging schedule for Buckinghamshire Council;</b>  <b>NOTE:</b>  <b>(4) that a programme of technical work and consideration of the options for a new charging schedule including coordination with the new Local Plan for Buckinghamshire will be produced and agreed with the Cabinet Members for Planning and Regeneration and Transport. An indicative timeframe and key steps</b>

**in preparing and adopting a charging schedule are included in the report.**

**Reasons for decision:** To secure funding for infrastructure from developments, and to ensure a more consistent approach to developer and infrastructure funding across the county.

## **1. Executive summary**

- 1.1 This report describes how the Council collects developer contributions for infrastructure, how this operates in practice, through s106 contributions and Community Infrastructure Levy (CIL), including variation between different legacy planning areas.
- 1.2 The report concludes that there is a case for considering the introduction of CIL in the north and central areas of the County to secure funding for infrastructure from developments there. This would also ensure a more consistent approach to developer and infrastructure funding across the county.
- 1.3 The report also concludes that the opportunity to commission, review and hold a public examination to introduce CIL in the north and central planning areas, may also provide the opportunity to review the charging schedules in the west, south and east planning areas. This would bring these up to date and enable a countywide approach to planning and infrastructure considerations.

## **2. Background**

- 2.1 The requirement for new infrastructure is often driven by the need to mitigate development and developer contributions are an important source of funding for the Council to provide that infrastructure. Developer contributions can be provided:
  - Through Planning Obligations within section 106 (s106) agreements - these are deeds between the local authority and land owners/developers that are attached to the land, usually accompanying a planning permission. They make developments acceptable that would otherwise be unacceptable in planning terms and where these impacts cannot be addressed through a planning condition (eg because they entail financial contributions).
  - Through the Community Infrastructure Levy (CIL) – a fixed charge levied on new development at a £X per square metre, to fund infrastructure that supports the development of the area - not necessarily associated with the specific development.

2.2 Local Planning authorities can use a combination of both CIL and Section 106 contributions from specific developments. They are required to set out in the annual Infrastructure Funding Statement what infrastructure projects or types of infrastructure which the charging authority intends will be, or may be, wholly or partly funded by CIL. The more detail available the easier it is to rebut potential claims from developers that CIL payments negate the need for some or all of the s106 contributions that the Council may seek.

2.3 Using Section 106 agreements, contributions can be attributed to very specific pieces of infrastructure and these contributions are usually time limited. CIL contributions can be applied more flexibly giving the Council greater authority to apply funding where it is most needed. CIL contributions are also not time limited.

2.4 s106 contributions are:

- financial contributions from developers secured by a legal agreement, usually accompanying a planning permission, to make developments acceptable which would otherwise be unacceptable in planning terms;
- secured during the planning process, bespoke and negotiated (unlike CIL); they must be necessary, directly related to the development and be fair and reasonable in scale and kind. (These are known as the Regulation 122 tests.) As a general rule, planning obligations for education, highways and open space infrastructure are more often sought for larger developments (i.e. for 10 dwellings or more). (Separate provision is made for affordable housing and this varies depending upon the policy position set out in the legacy local plans);
- usually focused on site specific mitigation of the impact of development, e.g. to provide new infrastructure;
- often linked to 'trigger points' at different stages of development e.g. payments made on occupation of 50, or 100 homes, and may vary for each contribution and by site;
- typically required to be spent within a set timescale, often ten years; and
- enforceable through the courts rather than through the planning process

2.5 Community Infrastructure Levy (CIL) is:

- a charge levied on new development in accordance with CIL Charging Schedules. Reflecting their legacy origins, these are different for the West and South/East areas, with different rates, which apply to different categories of land use;

- used for “the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area”. (i.e. they can be used across the whole of the Buckinghamshire Council area);
- not able to be used to fund affordable housing (affordable housing obligations are usually secured through a Planning Obligation)
- charged for all developments involving the creation of a dwelling (irrespective of floorspace);
- for all other development (not creating a dwelling) - the charge is based on the size of new development (the gross internal area measured in sq.m) but is exempt if less than 100 sqm of new floorspace is created;
- there are notable exemptions and reliefs (including for self-build, affordable housing and charities);
- not negotiable (unlike section 106 contributions);

A proportion of CIL:

- may be spent by the Council on its administrative expenses - up to 5% of receipts received in-year. To aid CIL set up costs, a ‘rolling cap’ applies on administrative expenses comprising the first part of the year that an authority sets a levy and the following three financial years taken as a whole. From year 4 onwards of an authority’s levy operation, the restriction works as a fixed in-year cap;
- is passed to the Town or Parish Council within which the development was situated – this is either 15% or 25% where a Neighbourhood Plan is adopted. (In the unparished area of High Wycombe – including the area to which the Daws Hill Neighbourhood Plan applies - the local allocation is held by the Council in a ring-fenced account. Decisions are taken on its use following consultation with and recommendations from the High Wycombe Town Committee).

2.6 Since 2020, the Council has published an annual Infrastructure Funding Statement (IFS). The IFS shows how development has contributed to infrastructure and how CIL and s106 contributions have been used, as well as the type of infrastructure that will be funded from CIL.

### **3. Variation across Buckinghamshire**

3.1 The legislation and the regulations that govern s106 contributions and CIL are set nationally. While there are still variations in practice reflecting the legacy arrangements in place across Buckinghamshire, in relation to s106 contributions

these variations should reduce once the new Local Plan for Buckinghamshire is in place.

- 3.2 In terms of CIL, the levy can only be charged where a CIL charging schedule is in place. These are in place in all areas aside from the central and north planning areas, corresponding to the former Aylesbury Vale area.
- 3.3 This leads to significant differences in how developer contributions are sought across the county. The majority of development occurs in the north of the county and therefore, in the absence of CIL, contributions towards wider infrastructure are left to individual negotiations on planning applications to secure section 106 funding.
- 3.4 The current arrangements also carry the risk of CIL collected in the south being allocated to, or underpinning spending in, the north of the county, where greater development is taking place and where in the short term infrastructure needs may be more acute.

#### **4. Opportunities for refining CIL**

- 4.1 For the future, the Government has proposed wide ranging changes to developer contributions with the introduction of a new Infrastructure Levy (IL).
- 4.2 Key points include:
  - regulations would be similar to CIL but would be based on actual gross development values;
  - councils would be responsible for confirming valuation at the time of sale;
  - s106 would be retained for larger sites;
  - introduction of IL in practice is envisaged by mid-2025 at the earliest;
  - a national rollout is planned over a decade with a 'test and learn' approach being mooted.

#### **Implications for Buckinghamshire**

- 4.3 The Council has previously welcomed the proposal to introduce a national IL. However, progress is slow and there is no certainty around its timely introduction. This reflects concerns about the complexity of making such a fundamental change. That being said the Council has indicated in its response to the consultation last month that it would be happy to enter into discussions on possibly being an early adopter of the new approach, subject to assurance on the level of financial and other support being available.
- 4.4 Given these uncertainties and the infrastructure issues facing the county, it is proposed to formally commence an assessment of the introduction of CIL in the north and central planning areas of the county.

- 4.5 As well as providing a more consistent basis for developer contributions across the county, it would also provide greater certainty over the level of contributions we can expect to receive for infrastructure.
- 4.6 Consideration will need to be given to whether a new charging schedule should be put in place in the north and central areas, or whether this should extend to the whole of Buckinghamshire
- 4.7 The evidence required to conduct the introduction of CIL within the north and central planning areas of the council and the considerations that underpin this evidence may require an evaluation of the infrastructure funding deficit and viability across the whole council area, as the Council is now one charging and collecting authority.
- 4.8 This may point to the need and the opportunity to consider a charging schedule for the whole of Buckinghamshire. The charging schedule for the west planning area is over a decade old, whilst the south and east charging schedules are based on the withdrawn Chiltern and South Bucks Local Plan. Procedurally the approach would be the same, albeit the scope and cost of the exercise would be greater.
- 4.9 An infrastructure assessment to support the new Local Plan is some way off. It will be dependent on the plan's proposed housing target and the emerging site allocations. It is expected during 2024.
- 4.10 This should not preclude the commissioning of consultants to assess the other key pillar of the evidence base that underpins any charging schedule: the viability of development.

## **5. Legal and financial implications**

- 5.1 Practically, the cost of consultants (where needed) can be met from the Local Plan reserve as this work will also benefit delivery of the new Local Plan. The staff and consultancy costs to introduce CIL can be reclaimed from the 5% administration charge that is part of the levy, with the scope to recoup funding over a period of three years as mentioned above.
- 5.2 The legislation governing the development, adoption, and administration of CIL is contained within the Planning Act (2008) and the Community Infrastructure Levy Regulations 2010 (as amended) with associated government National Planning Policy Guidance
- 5.3 The government has published guidance on CIL [Community Infrastructure Levy - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/community-infrastructure-levy) that includes the requirements for its introduction.
- 5.4 Charging schedules should be consistent with, and support the implementation of, up-to-date relevant plans (i.e. any strategic policy, including those set out in any spatial development strategy).

- 5.5 Charging schedules are not formally part of the relevant plan but they should inform and be generally consistent with each other. Where practical, there are benefits to undertaking infrastructure planning for the purpose of plan making and setting the levy at the same time. A charging authority may use a draft plan if they are proposing a joint examination of their relevant plan and their levy charging schedule.
- 5.6 The statutory process for preparing a charging schedule is similar to that which applies to relevant plans. Charging authorities may work together when preparing their charging schedules as a means to share knowledge and costs and to support strategic thinking in the use of the levy, linking the use of the levy to activities such as growth planning.
- 5.7 In summary, a charging schedule is prepared and adopted as follows:
- the charging authority prepares its evidence base in order to prepare its draft levy rates, and collaborates with neighbouring/overlapping authorities (and other stakeholders);
  - the charging authority prepares and publishes a draft charging schedule for consultation;
  - representations are sought on the published draft;
  - the charging authority must take into account any representations made to it before submitting a draft charging schedule for examination;
  - an independent person (the “examiner”) examines the charging schedule in public;
  - the examiner’s recommendations are published
  - the charging authority has regard to the examiner’s recommendations and reasons for them;
  - the charging authority approves the charging schedule.
- 5.8 The evidence base for a charging schedule is examined in public prior to the adoption of the levy. The Council as charging authority should have regard to the actual and expected cost of infrastructure, the viability of development, other actual or expected sources of funding for infrastructure and the actual and expected administrative expenses in connection with the levy.
- 5.9 Charging authorities must identify the total cost of infrastructure they wish to fund wholly or partly through the levy. In doing so, they must consider what additional infrastructure is needed in their area to support development, and what other sources of funding are available, based on appropriate evidence.
- 5.10 Information on the charging authority area’s infrastructure needs should be drawn from the infrastructure assessment that is or was undertaken when preparing the

relevant plan and their CIL charging schedules, (as the plan identifies the scale and type of infrastructure needed to deliver the area's local development and growth needs).

5.11 Paragraph 34 of the National Planning Policy Framework says that:

Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan.

5.12 A programme for the technical work and consideration of the options for a new charging schedule including coordination with work on the new Local Plan will be produced by the end of the year following procurement of consultants who will undertake the technical work. It is estimated the process may take around 18 months from commencement. The timeline for a county wide review may be similar to that for just the north and central planning areas.

5.13 In 2021/22 (the most recent year for which figures are published), the Council secured over £6.8m in CIL across the south east and west areas. If CIL is introduced in the north and central areas it is anticipated that, after a lag of several years, Liability Notices for in excess of £9m could be generated each year based on projected housing completions up to 2032/33 and assuming charging rates and other variables are comparable to those at present. (This estimate includes the 5% administration and any neighbourhood allocation). This funding could be used flexibly on infrastructure that supports the development of the area. (For comparison, in 2021-22, £6.8m of CIL was secured in the south /east/west areas as well as £16.1m s106 contributions in the north area (including £3.3m for open space, and £12.6m for education), plus a share of transport contributions totalling £2.2m.

5.14 In principle there is potential overlap between the categories of infrastructure that supports the development of the area (funded by CIL), and infrastructure that meets the Regulation 122 tests (and which is funded from s106 contributions). In practice this overlap is limited so to a large extent, and unless viability of development is the limiting factor, then CIL income would be expected to be largely additional to s106 income.

5.15 Actual income secured for infrastructure will depend on a number of factors. These include the charging rate; the rate of build-out of developments; any instalment policy; the amount of self build housing (which is CIL exempt); and the level of affordable housing required by the new Local Plan for Buckinghamshire.

## **6. Corporate implications**

6.1 The report relates to our corporate priorities as follows:

- Strengthening our communities – by maximising investment in infrastructure the Council ensure that support for local communities is embedded in decision making;
- Improving our environment – investment in infrastructure to support growth will support initiatives to improve the environment of the County.

At this point, there are no service specific implications of proceeding to investigate a wider application of CIL.

## **7. Local councillors & community boards consultation & views**

7.1 Given the Buckinghamshire-wide nature of the recommendations in this report, there has not currently been any consultation with local members or others. This would be undertaken as part of the process of developing any new charging schedule.

## **8. Communication, engagement & further consultation**

8.1 As part of the process of developing any new charging schedule, a communication and engagement plan will be developed to ensure that we consult with members, town and parish councils, land owners and developers, and other relevant persons.

## **9. Next steps and review**

9.1 A brief will be developed, and consultants will be procured to undertake the technical work necessary to develop a new charging schedule.

9.2 A programme for the technical work and consideration of the options for a new charging schedule, including coordination with work on the new Local Plan will be produced by the end of the year, and this will be agreed with the Cabinet members.

## **10. Background papers**

10.1 None.

## **11. Your questions and views (for key decisions)**

11.1 If you have any questions about the matters contained in this report please get in touch with the author of this report. If you have any views that you would like the

cabinet member to consider please inform the democratic services team  
democracy@buckinghamshire.gov.uk.