

# A Review of the Preparations for the Community Infrastructure Levy

by a Working Group of the Overview and Scrutiny  
Commission



January 2013

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## Acknowledgements

The Working Group would like to express its thanks and appreciation to the following people for their co-operation and time. All those who have participated in the review have been thanked for their contribution and received a copy of this report if wished.

Councillor John Ellis	Winkfield Parish Council
Councillor Graham Ellis	Bracknell Town Council
Councillor Colleen Healy	Warfield Parish Council
Anthony Lee	Senior Director of BNP Paribas Real Estate
Councillor Richard Price	Crowthorne Parish Council
Andrew Whitaker	Planning Director, Home Builders Federation

### Portsmouth City Council

Councillor Lee Hunt	Chair of Planning Committee
Jacqueline Boulter	Principal Planning Officer
Claire Upton Brown	Assistant Head of Planning

Officers of Huntingdonshire District Council

### Bracknell Forest Council

Councillor Mrs Ballin	Executive Member for Planning and Transport
Max Baker	Head of Spatial Policy
Richard Beaumont	Head of Overview and Scrutiny
Alex Jack	Borough Solicitor
Bev Hindle	Chief Officer: Planning and Transport
Alan Nash	Borough Treasurer
Vincent Paliczka	Director, Environment, Culture and Communities

## **1. Foreword by the Lead Member**

- 1.1 The work undertaken by the Working Group on the whole of this topic – including the previous work done on recommendations in respect of the Charging Rates – has been extensive and prolonged. It has been the most important task we have undertaken, especially in view of the long term effect decisions on this matter will have on the funding for this Borough.
- 1.2 Extending my thanks to the WG for the dedication that they have shown throughout this period hardly seems adequate for the commitment that they have shown and the assiduity with which they have pursued the task. We have learnt much and have brought an experience of commercial reality and knowledge, which I believe, has enhanced the outputs that have been achieved.
- 1.3 There have been concerns. We remain to be convinced that this project should have been ‘planning led’. While there is no doubt they have an important role to play, the ramifications and impact of CIL affect departments and directorates across the Borough. It is for that reason that we believe strategic responsibility should lie in the Chief Executive’s office. This is reflected in one of our recommendations.
- 1.4 Likewise, we were disturbed to learn that until the matter was raised by the Working Group, no external views had been taken from other outside bodies – despite the long-term prior existence of an officer group. We also felt strongly that a ‘second consultant opinion’ should have been sought to test the viability and soundness of conclusions drawn by the consultant initially engaged by the department. The Working Group appreciates the cost involved in this, but bearing in mind we are talking about funding an Infrastructure Delivery Plan in the region of £126 million, the costs are negligible and would provide enhanced evidence when submissions to the Regulator are made.
- 1.5 It is clear, however, that both Officers and Members have learnt a great deal – far more, we suspect, than most other authorities.
- 1.6 I commend this report to both the Commission and the Executive. In doing so I would like to emphasise the Working Group’s thanks and appreciation to our Head of Overview and Scrutiny Officer Richard Beaumont, whose help, assistance and guidance has been invaluable and demonstrates yet again how valuable is the role of this under-resourced section.

**Councillor Ian Leake**  
**Lead Working Group Member**

## 2. Executive Summary

- 2.1 Bracknell Forest Council ('the Council'), like other Local Authorities (LA), has a responsibility to provide adequate public infrastructure for everyone who lives, works and travels through the Borough. National government provides other public infrastructure (such as motorways and trunk roads) and Utility companies provide infrastructure too (such as railways). The LA infrastructure provisions are diverse – for example providing enough places in schools, building and maintaining local roads, and providing public open spaces. Public money alone is insufficient to meet these demands, so it is a well-established principle that people who build new houses or other developments which add significantly to the demands on the local infrastructure and facilities should contribute to those additional costs.
- 2.2 Traditionally, property developers have contributed to public infrastructure costs through 'Planning Obligations' - providing infrastructure themselves (for example a new road junction to serve a new housing development) and/or making a cash payment to the local authority through an agreement under Section 106 (S106) of the Town and Country Planning Act.
- 2.3 In 2008, new legislation introduced the Community Infrastructure Levy (CIL), as an alternative – but not a complete replacement for – the existing mechanisms for obtaining contributions towards public infrastructure costs. The Government intended that CIL would become the key mechanism by which councils will secure money to create and modify infrastructure to ensure the impact of development is mitigated. The CIL is therefore important for delivering essential public works and services across Bracknell Forest.
- 2.4 At its meeting on 10 January 2012, the Council's Executive asked the Overview and Scrutiny ('O&S') Commission to establish a working group to support the development of the Council's CIL arrangements; also asking that the Commission should consider inviting a representative of the Town and Parish Councils (T&PC) onto the Working Group.
- 2.5 This report describes the work of the Working Group Between February 2012 and January 2013, and it is organised in the following sections:
  - Part 3 Gives background information in respect of the Community Infrastructure Levy, and summarises how we set about our review.
  - Part 4 Summarises the information and evidence gathered by the Working Group.
  - Part 5 Contains the conclusions we have reached following our review, on which we have based a number of recommendations to the Council's Executive and to the O&S Commission.

At the end of our report is a glossary of terms used and an appendix containing detailed supporting information.
- 2.6 Members of the Working Group hope that this report will be well received and we look forward to receiving responses to its recommendations, and their implementation.

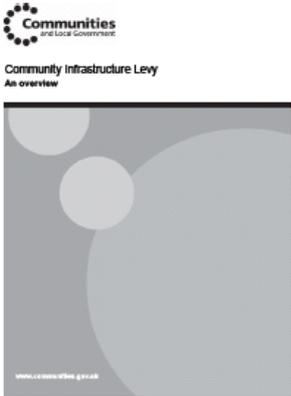
2.7 The Working Group comprised:  
Councillor Leake (Lead Member)  
Councillor Mrs Birch  
Councillor Virgo

Councillor Angell  
Councillor Heydon  
Councillor Worrall

### 3. Background

#### What is the Community Infrastructure Levy?

- 3.1 The Community Infrastructure Levy (CIL) was introduced under the Planning Act 2008, as amended by the Localism Act 2011. It came into force in April 2010. The Government has issued a series of detailed regulations and guidance on CIL, most recently in December 2012; and further regulations are expected. CIL allows local authorities (LA) in England and Wales to raise funds from developers undertaking new building projects in their area. The money can be used to fund a wide range of infrastructure that is needed as a result of development. This includes new or safer road schemes, flood defences, schools, hospitals and other health and social care facilities, park improvements, green spaces and leisure centres.
- 3.2 CIL is intended to complement rather than replace other funding streams and is intended to promote sustainable development rather than hinder it.
- 3.3 Councils, like Bracknell Forest, which are 'Charging Authorities' have a choice as to whether or not to introduce the CIL. Only a few councils are at an advanced stage in introducing CIL, and it seems likely that some councils will not adopt CIL. If a council decides not to introduce a CIL, from 6 April 2014, they will not be able to continue with their own system via S.106 planning obligations for pooled contributions, as the Council presently does through the 'Limiting the Impact of Development' Supplementary Planning Document. 'Charging authorities' all prepare development plans for their areas, which are informed by assessments of the infrastructure needs for which the levy may be collected.
- 3.4 CIL is seen by the Council's leadership as being very important for Bracknell Forest where large scale planned housing developments will result in the need for significant highway improvement works and a new secondary school, among other infrastructure requirements. The new limit on pooling S.106 contributions for a piece of infrastructure from more than five developments is seen as particularly significant, for example, when levies collected from a number of separate developments would necessarily have to be pooled to deliver sufficient funding to construct a new secondary school to serve a wide area of the Borough. In this respect, it is important to remember that significant areas of the Borough have been recommended to have a nil charging rate under CIL, but will still require infrastructure to be funded from CIL levy from other charging areas.
- 3.5 The law states that CIL payments will be calculated by applying a tariff rate to the net increase in floor area resulting from a development. This applies to the net additional floorspace on all floors of a building, i.e. not just the footprint of the building. The rate to be set will be based on a schedule that can set different levels of charge for different land uses (residential, business, retail, etc.) and for different geographic areas. The rates, and any variations within them must be set at a level that will ensure that most development is viable. Any variations between uses and geographic areas must be based on there being quantifiable differences in their viability. CIL is not charged on affordable housing and buildings used for charitable purposes. The amount payable on smaller schemes will be set at the time planning permission is granted and payment will be due at the



commencement of development. It is proposed that larger amounts will be payable in instalments over fixed time periods.

### **The Intended Benefits of the Community Infrastructure levy**

- 3.6 The Government has decided that this tariff-based approach provides the best framework to fund new infrastructure to unlock land for growth. The CIL is intended to be fairer, faster and more certain and transparent than the system of planning obligations. Levy rates are to be set in consultation with local communities and developers. CIL is a fixed, non-negotiable charge and will provide developers with much more certainty 'up front' about how much money they will be expected to contribute. Also, it is intended to be less time-consuming and complicated than S.106 planning obligations, with less need for protracted negotiations with applicants and the drawing up of legal agreements.
- 3.7 Unlike funding from S.106 agreements, CIL funds can be spent on a wide range of infrastructure to support development without the need for a direct geographical or functional relationship with the development. Planning obligations / S.106 Agreements will still be used, but in a more focused way to directly provide both 'off-site' infrastructure, through S106 contributions, and 'on site' improvements through planning conditions to mitigate the direct impact of the development proposed (e.g. landscaping, access roads). The regulations rule out the application of the levy for providing affordable housing, which will still need to be secured through S.106 agreements.
- 3.8 The Government has said that under the system of planning obligations only six per cent of all planning permissions brought any contribution to the cost of supporting infrastructure, whereas even small developments can create a need for new services. Almost all development has some impact on the need for infrastructure, services and amenities - or benefits from it - so the Government argues that it is only fair that such development pays a share of the cost, also that those who benefit financially when planning permission is given should share some of that gain with the community which granted it.

### **Calculation and Charging of CIL**

- 3.9 The LA firstly needs to demonstrate that new or improved infrastructure is needed to support planned development and mitigate its impacts. It must also show that there is a 'gap' in the available funding for the necessary infrastructure that requires the use of CIL.
- 3.10 The LA must also show that the proposed levy rates would not have an unacceptably adverse impact on the commercial viability across the area as a whole. It is not necessary to show that all developments would be viable, but that the majority of planned developments would not be made unviable by the proposed CIL level. The viability assessment needs to take account of the costs of other on-site infrastructure including affordable housing.
- 3.11 The law requires that the level of CIL proposed by the charging authority shall be tested by an independent examiner. This involves an assessment of whether a charge is justified by the need for, and cost of infrastructure, and whether the charge will have an unacceptably negative impact on the economic viability of development. In setting its CIL rate the Council must: '... aim to strike what appears to the charging authority to be an appropriate balance between:

- ‘The desirability of funding CIL and the actual and expected costs of infrastructure required to support development; and
- The potential effects of the imposition of CIL on the economic viability of development across its area.’

3.12 The amount of the CIL charge is set at the time of granting of planning permission. Payment is due on commencement of works or grant of retrospective planning permission. For larger developments, the Council intends to allow CIL payments in instalments.

### **How will the Income from CIL be spent?**

3.13 The Government estimates that introducing CIL has the potential to raise an additional £1 billion a year of funding for local infrastructure by 2016. LAs are required to spend the CIL funds on the infrastructure needed to support the development of their area. The levy is intended to focus on the provision of new infrastructure, but can be used to increase or repair existing infrastructure, if that is necessary to support development.

3.14 Using new powers in the Localism Act, the Government intends to require charging authorities to allocate a ‘meaningful proportion’ of CIL revenues raised in each neighbourhood back to that neighbourhood. Government regulations specifying what that proportion actually is have been delayed. Meanwhile the Government’s Planning Minister stated on 10 January 2013, ‘

*Neighbourhoods that .....draw up a neighbourhood development plan....will receive 25% of the revenues from the Community Infrastructure Levy arising from the development that they choose to accept..... Neighbourhoods without a neighbourhood development plan .....will still receive a capped 15% share of the levy revenue arising from development in their area.....Where the money is transferred to a parish council (in England)..... they will decide how the money will be spent - although they will be expected to work with the local planning authority.....In areas that have not been subject to neighbourhood planning there will be a cap of £100 per council tax dwelling on the neighbourhood funds..... We aim to have these incentives in place from Spring 2013.’*

3.15 The ‘meaningful proportion’ device is intended to ensure that where a neighbourhood bears the brunt of a new development, it receives sufficient money to help it manage those impacts. The Government has said that LAs will need to work closely with neighbourhoods to decide what infrastructure they require, and balance neighbourhood funding with wider infrastructure funding that supports growth. They will retain the ability to use the levy income to address the cumulative impact on infrastructure that may occur further away from the development.

3.16 Charging authorities are allowed to use up to 5 per cent of their total receipts on CIL to recover the costs of administering the levy.

## What is infrastructure?

- 3.17 The Planning Act 2008 provides a wide definition of the infrastructure which can be funded by the CIL, including transport, flood defences, schools, hospitals, and other health and social care facilities. This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, district heating schemes and police stations and other community safety facilities. This gives local communities flexibility to choose what infrastructure they need to deliver their development plan. The regulations rule out the application of the levy for providing affordable housing, so the Council will need to continue to require developers to provide for that through S106 contributions or other means.

## Bracknell Forest Borough's Infrastructure Requirements

- 3.18 At its meeting on 12 June 2012, the Executive was informed that the estimated costs for various types of infrastructure needed to support growth, which had been identified as requiring CIL to help fill the gap in available funding were as follows.

Infrastructure	Estimated cost
Local Road Network	£16,300,000
Footpaths and Cycleways	£2,000,000
Public Transport	£6,000,000
Primary Education	£26,500,000
Secondary Education	£28,000,000
Special Education Needs	£11,600,000
Community Facilities	£2,300,000
Libraries	£1,200,000
Built Sports	£4,500,000
Open Space	£20,800,000
Biodiversity	£620,000
Public Rights of Way	£880,000
Suitable Alternative Natural Greenspaces SANG <sup>1</sup>	£5,100,000
Police	£460,000
<b>Total Costs</b>	<b>£126,260,000</b>

- 3.19 The table above does not include the costs of administering CIL for which the Council can use a percentage of CIL receipts. Neither does it include the 'meaningful proportion' of CIL receipts that the Council will pass on to T&PCs within whose areas development takes place (the regulations on the size of this are awaited). More detail on infrastructure requirements is contained in the Infrastructure Delivery Plan – Draft Submission Site Allocations Development Plan Document approved by Council<sup>2</sup> as part of the Site Allocations documentation in November 2011. **NB** – At the time of writing this report, the Site Allocations were undergoing a public examination.

<sup>1</sup> Suitable Alternative Natural Greenspaces or 'SANGs' are a group of existing open spaces that are due to undergo enhancements designed to attract more visitors by providing an enjoyable natural environment for recreation as an alternative to the Thames Basin Heaths Special Protection Area

<sup>2</sup> The document can be viewed on the Council's website at <http://democratic.bracknell-forest.gov.uk/ieListDocuments.aspx?CId=141&MId=3797>

## Monitoring and reporting spending of the levy

- 3.20 To ensure that the levy is open and transparent, charging authorities are required to publish short reports on the levy for the previous financial year which must be placed on their websites by 31 December each year. They may prepare a bespoke report or use an existing reporting mechanism. These reports are aimed at ensuring accountability and to enable the local community to see what infrastructure is being funded from the levy. Charging authorities must report on how much monies they received from the levy in the last financial year and on how much was unspent at the end of the financial year. They must also report total expenditure from the levy in the preceding financial year, with summary details of what infrastructure the levy funded, how much of the levy was spent on each item of infrastructure and how much on administrative expenses.

## Progress on the Bracknell Forest CIL Arrangements

- 3.21 Council officers, in a Council-wide senior officer steering group led by the Director of Environment, Culture and Communities, have been monitoring the emerging legislative position on CIL for some years, and developing the arrangements for the CIL. They have operated under the direction and guidance of the Executive and the Corporate Management Team. This culminated in a special Council meeting on 12 June 2012, when Council endorsed for public consultation the Preliminary Draft Charging Schedule for CIL. The public consultation ran from 25 June to 13 August 2012. It proposed dividing the Borough into four charging zones, with varying CIL charging rates per square metre of:

- £Nil up to £220 for residential;
- £Nil up to £150 for residential care homes;
- £Nil up to £95 for large retail stores;
- £25 for hotels; and
- No charge for office, industrial or other developments, across the whole Borough



- 3.22 The consultation attracted a large number of responses, which gave rise to a need for further work to assess in more detail the viability of some of the Borough's major development sites. The outcome of the consultation was due to be reported to the Executive in early 2013, but this has recently been postponed to April.
- 3.23 The planned timetable for the introduction of CIL has been extended. In November 2011 it was planned to secure Council approval to the final terms of the scheme in April 2013, for CIL to commence operation in June 2013. Subsequently, the examination was re-timed for April 2013, leading to Council adoption of the scheme in July, and for CIL to commence in Bracknell Forest in the autumn of 2013. More recently, the timetable has been moved back another three months (though actual CIL income is not anticipated for some time after that).

## How we Organised this Overview and Scrutiny Review

- 3.24 The O&S Commission decided to form a Working Group ('the Group') to progress the review. Having had some briefing on the subject, and in consultation with councillors

and officers, the Group agreed its objectives and approach at the outset, as set out at Appendix 1.

- 3.25 The Group endeavoured to involve the Town and Parish Councils (T&PC) throughout the review. On 6 February 2012, the Lead Member of the Group wrote to the Chairmen/Mayors of all the T&PCs in Bracknell Forest, copied to the Clerks/Executive Officer, to invite their input to the Group's work, and seeking views on how to achieve their proper and meaningful involvement. The Lead Member also invited the T&PC representatives to attend the Group's first meeting, to receive a briefing from officers on the CIL; and to discuss the approach to be taken by the Group.
- 3.26 The Group intended to include representation from one or more T&PC, but this proved to be impracticable as all T&PCs wished to be represented. The involvement of T&P councils was important but the Group decided that all T&PCs should be treated equally, and having six additional members would make for a very large and slow moving Group, which was unacceptable. Instead, the Group decided to inform and engage T&PCs by:
- Sending to all T&PC representatives: the factual briefing material on the CIL, and notes of the Group's meetings.
  - Inviting the T&PC's views on the proposed approach to the Group's work; and giving the opportunity to comment on any recommendations the Group might make at the end of the work.
  - Giving an update on the work to each meeting of the Parish and Town Councils' Liaison Group, and answer any questions in that forum.
  - Inviting comments from T&PC's throughout the work; and the Group might then decide to invite a T&PC to one of its meetings.
  - Any T&PC was welcome to invite the Lead Member to attend one of their meetings, to talk about the review.

## 4 Investigation, Information Gathering and Analysis

- 4.1 The Working Group (the Group) met 11 times during the course of its work. This included visits to Portsmouth and Huntingdon, and we are appreciative of the time and co-operation of all the people we met, also for the helpful advice and assistance of council officers throughout our review. We describe below what we learnt from those meetings, in chronological order. Additionally, a member of the Working Group and the Head of Overview and Scrutiny attended meetings of the Parish and Town Councils' Liaison Group on 28 March, 11 July, and 17 October 2012, and 9 January 2013 to give progress updates on the Group's work, and to answer any questions.

### Introductory Review Work

- 4.2 On **23 February 2012** the Group, also representatives of the Borough's Town and Parish Councils (T&PCs), received an introductory and comprehensive briefing on the Community Infrastructure Levy (CIL) from Council officers. This covered the background to CIL, its role and relationship to the "Section106" (S.106) levy system, opportunities for Bracknell Forest, infrastructure needs, CIL Governance, work to date, and next steps. Much of the information provided to us is included in the preceding section 3 of this report.
- 4.3 Matters arising in discussion on the presentation, and in response to members' questions were:
- a) Approximately £90 million worth of projects had been identified that could attract CIL funding up to 2026. The overall level of expected development was set out in the Borough Council's Core Strategy and the emerging Site Allocations document. The relatively high proportion relating to Education was not typical nationally; needs vary between areas, and in Bracknell Forest there is an emerging need for another secondary school, for example. Depending on the viability of development, it was quite possible that the infrastructure 'shopping list' would not all be affordable, therefore good prioritisation of infrastructure needs will be important.
  - b) An officer steering group had been established on CIL, chaired by the Director of Environment, Culture and Communities. A lot of preparatory work on the CIL had been completed, and the Borough's Local Development Framework indicated that the CIL regime would be suitable for the Borough.
  - c) Officers anticipated the CIL Examination would take place in December 2012, ultimately leading to the commencement of CIL in June 2013.
  - d) Funding of infrastructure works would come from a variety of sources, including CIL.
  - e) Different types of development, and their location, will have differing impacts on infrastructure needs. This was addressed in the Local Development Plan.
  - f) Officers stressed the importance of setting the right expectation for CIL. This funding will come from the same 'pot' which has paid for S106 obligations; as such, CIL is essentially a different way of collecting money from developers (i.e. it should not be seen as additional, new funding). Neither can it be used to prevent development. Calculating the net increase in developed space can be complex.
  - g) The Government had not yet determined whether CIL could be applied to affordable housing. Section 106 cannot be applied to any development which is on the list of developments for which CIL is being charged.
  - h) Regulations were awaited from Government on what percentage element of CIL would constitute a 'meaningful proportion' to be passed on to T&PC's.

- i) The Council's response to the consultation on the draft CIL regulations expressed concern that the regulations might be in conflict with legal obligations relating to Special Protection Areas.
- j) The cost of engaging BNP Paribas for viability assessment work would be met from the element of CIL income which can be retained for administrative costs. BNP Paribas had been selected following competitive tendering, and they had extensive experience with local authorities, including CIL viability assessment. Officers stressed the importance of arriving at a well-evidenced and robust CIL Charging Schedule, leading to viable charge rates. The other key issue would be to complete the list of CIL infrastructure projects and prioritise them.
- k) The 'Regulation 123' list of CIL chargeable developments can be updated fairly easily. By contrast, any change to the CIL Charging Schedule would require consultation and Inspection; consequently it would probably not be changed very frequently, perhaps after around three to five years depending on whether there are significant changes in the market. The legislation provides for CIL charges to be increased annually in line with building cost inflation. Previously, indexation of S106 had been favourable for the Council. For major, long-running developments, there is also the scope for a number of separate planning permissions, each with their own CIL charge determined on the appropriate date.
- l) S.106 would have a continued application, for site specific issues (some of which might be covered by conditions attached to planning permission). Wider infrastructure needs, for example cycle routes, were more appropriate for CIL (and needed to be included in the Infrastructure Plan). CIL was not intended to meet the needs of water and other utilities, for which separate arrangements applied. Transport infrastructure costs of developments comprise developers' own costs (e.g. minor roads within new housing estates) and more major public road network changes (such as additional junctions) falling to be met by CIL or S106.
- m) There is no provision for a 'negative CIL charge', for example if developments entail a net reduction in developed space. Some councils have decided to have a zero-rated CIL, probably in an attempt to attract new development into their areas.
- n) T&PC's had been consulted on the Infrastructure Delivery Plan, but it would not be necessary to consult them on the commercial viability of developments. It would be open to T&PC's to use their share of CIL income to progress infrastructure works of importance locally.
- o) The liability for CIL arises on commencement of development works. At that point, developers are required to serve a notice on the Council, which will then raise an invoice for the full amount/staged payment as appropriate. There is no requirement to repay CIL.

4.4 **The Borough Solicitor, Alex Jack** briefed the Group on the legal considerations applying to CIL. The key issue for the Inspector in the examination in public to be held into the Council's proposed charging schedule would be whether development will be viable. There is scope for charging differential rates of CIL, for example on business or residential development, but differentiation might bring a risk of contravening EU State Aid restrictions. The Localism Act changes to CIL had been issued, clarifying for example that CIL can be used for the maintenance of infrastructure, also allowing CIL income to be used for a wide range of purposes. The Borough Solicitor also advised us that:

- a) Adopting CIL is optional and the Council's Executive had not yet decided on that. However, there is no doubt as to the best choice since from 2014 councils will not be allowed to pool more than five S106 funding streams for an

infrastructure project, besides there is much more freedom for councils over the retention and usage of CIL than that which the rules allow for S106.

- b) The CIL regulations had brought in a new restriction for S106. There is now no scope for a tariff-based S106, and the Council now needs to demonstrate more precisely than previously what the S106 monies are to be used for.
- c) Differential rates of CIL are not permitted to selectively encourage/discourage particular types of business development, and any differential rates would need to be properly evidenced and reasonable.

## The Assessment of Viability

- 4.5 On **15 March**, the Group met **Anthony Lee MRTPI MRICS, Senior Director of BNP Paribas Real Estate**, to consider their CIL Viability Assessment for the Borough, and to learn about the wider picture on the development of CIL nationally. Mr Lee told us that, in terms of the legal framework, the burden of proof and evidence to justify its CIL levels fell to the charging authority. The charging authority should endeavour to set its CIL at an appropriate rate to balance meeting all or part of its infrastructure funding gap with the potentially negative impact of high CIL levels upon the economic viability of development across its area. It was suggested that overly complex CIL charging schedules should be avoided in the interests of clarity. Bracknell Forest's Infrastructure Development Plan addressed the Borough's infrastructure needs.
- 4.6 The Council's draft charging schedule would be the subject of consultation and would be examined by an inspector to determine whether it complied with regulations and did not put development in the area at risk. Officers had drawn up a list of landowners and those with an interest in developing land in Bracknell Forest and would inform them of the consultation. The public, residential groups and T&PCs would also be consulted. Other local authorities were statutory consultees and would be invited to respond to the consultation. The duty to co-operate introduced by the Localism Act would assist in this area. Neighbouring authorities had reached a similar stage of CIL development as Bracknell Forest.
- 4.7 Mr Lee explained that, although it was possible to have a single CIL rate spanning an entire Borough, which was the approach that some councils had adopted, this would need to be based on the lowest common denominator site value, making it harder to meet the infrastructure 'funding gap'. The property market tended to follow a three to four year cycle and therefore it was possible that CIL rates would need to be adjusted at intervals to reflect this. Such adjustments would be subject to consultation. Allowing a buffer margin below maximum CIL rates would offer some developer protection against reducing values and would be favoured by inspectors, who were able to reduce rates. Alternatively, two or more CIL rates could be applied in a council area according to the location and nature of development. This would create increased income and there was a balance to be struck between simplicity and maximising income. With regard to other charging authorities, we were told that Shropshire had pursued two CIL rates of £40 and £80 per square metre (m<sup>2</sup>) according to whether the site was in an urban or rural location, respectively. Newham had adopted twenty different rates to reflect value variations between areas and types of development although this represented a complex system to implement and explain to landowners. Croydon had opted for differential rates and Redbridge favoured a flat rate of £70 m<sup>2</sup> based on the lower development value, which equated to a less than average amount. There were three tiers of CIL across central London to reflect house prices. Colchester had adopted rates of £120 - £240 m<sup>2</sup> in retail whilst residential rates in Bristol spanned from £50 - 70 m<sup>2</sup>, retail was £120 m<sup>2</sup>, commercial was zero and hotels were subject to another level.

- 4.8 Mr Lee described how the value of a development scheme reflected land values that development could generate over and above the existing use value, and £300k per hectare was a typical development scheme value. Commercial development was generally less viable than residential development and therefore commercial CIL rates needed to be set low to encourage commerce. For example, Portsmouth had set a £120 m<sup>2</sup> charge for residential developments and a zero CIL for commercial schemes. There was variation amongst different types of commercial schemes with out of town stores, particularly supermarkets, being more viable than offices and town centre retail. It was therefore logical to set CIL levels at zero where commercial development would otherwise be unviable.
- 4.9 Every site has an existing value and landowners have perceptions of worth. BNP Paribas's CIL viability assessment for the Borough was based on a residual value approach which deducted development costs including building, fees, loan interest, land price and Section 106 contributions, to establish the residual value against which CIL could be applied. Viable levels of CIL could be identified from residual land values following the deduction of benchmark land values for each type of net developable hectare. An illustrative scenario estimated that the granting of planning permission for residential development could raise the existing land use value from £6m to £12m with a zero CIL and no affordable housing element. The application of CIL and affordable housing at level one was estimated to achieve a value of £7m giving a profit of £1m to the developer and income to the Council whereas level 2 would result in a break-even development benchmark of £6m and therefore deter developers. The exercise of setting the CIL should explore the extent to which the level could be raised before the developer withdrew. A graph giving an example of CIL for different house numbers, levels of density and land types assisted with calculating viability and suggested a 'tipping point' of £160 m<sup>2</sup>. Developments of 500 or more units had a SANG requirement of one hectare of land per 1,000 occupants which was onerous on developers to provide. Suggestions for maximum residential CIL levels at different densities for inner and outer Bracknell, Binfield, Crowthorne, Warfield, Sandhurst and Ascot utilising a maximum 'buffer' of 40% below the 'tipping point' were given. The Group considered the buffer of 40% to be wide and a mid point was favoured.
- 4.10 Mr Lee explained that the viability assessment included hypothetical commercial appraisals of offices, retail and commerce in the Borough. This suggested a higher CIL for out of town retail owing to lower land prices and strong profitability. Sunday trading laws were a CIL variable. High street retail tended to feature refurbishment of existing units, which did not attract CIL liability. CIL discounts would not apply where buildings had been empty for six of the previous twelve months and therefore conversions of unoccupied buildings could produce CIL income and existing premises could be discounted if extended. Charities meeting their charitable objectives, such as providing social housing, were not subject to CIL charges. The Group was advised of the impact on development of additions and reductions of 10% against a CIL rate of £100 m<sup>2</sup>.
- 4.11 The following points arose from questions and discussion with Mr Lee:
- a) The parameters within which the CIL charge may be set was at the local authority's discretion. As house values in individual wards could vary significantly this was a factor in setting charge levels. The affordable housing component of new residential development could vary from 35% to 15% according to the area. Commuting was only a factor in determining CIL rates in so far as it affected house prices and employment opportunities.

- b) BNP Paribas operated several models to predict sale price, building costs, re-sale price and development values based on different numbers of units and the markets in various areas with the assistance of information from development land registry and estate agents.
- c) Although CIL could be aligned to Council Tax bands, this would not accurately reflect the market viability of an area as it related to individual property prices.
- d) Officers were currently evaluating a draft version of Paribas' CIL viability assessment for Bracknell Forest which involved undertaking an exercise to calculate the percentage of possible additional floorspace.
- e) The potential for receiving CIL from redeveloping brownfield sites was less than that for developing greenfield sites as the latter offered a greater net increase in floorspace. It was possible that this would encourage the redevelopment of existing sites in place of new build.
- f) Use of CIL income would need to be prioritised as there would be numerous education and transport demands on it. Unlike Section 106 contributions, CIL was not ring-fenced.

4.12 The Group also noted the Major Infrastructure Schedule for the Borough which listed infrastructure projects identifying the service area, host strategic site, estimated cost and funding source. The net infrastructure funding gap, to be partly funded by CIL payments, totalled approximately £89.3m. The schedule included some smaller sites in addition to the site allocations. Some infrastructure improvements would be funded by S.106 contributions. The schedule, an extract from the Infrastructure Development Plan which had been approved by Council, was an accurate assessment of infrastructure need to 2026 and justification for CIL rates. It would be subject to change as priorities and funding sources altered. Additions to the schedule were likely owing to the local high value development potential and low affordable housing requirement. Although it was possible to borrow against future CIL income in order to fund infrastructure improvements, this posed a potential risk that the proposed development was not pursued.

4.13 The Group discussed and noted the schedule. The following points arose from that discussion:

- a) CIL was not an alternative to existing Government grant in areas such as education.
- b) In response to concerns expressed in relation to possible increased burden on the council tax payer, the Working Group was advised that some items on the schedule were aspirational whilst others represented previously planned improvements to be funded by the capital programme. Infrastructure improvements would need to be financed in a phased manner.
- c) The Site Allocations Development Plan Document was currently at the inspection stage and it was possible that the inspector's response could prompt changes to the schedule.

### **Views of the Executive Member**

4.14 On **18 April**, the Group discussed with the **Executive Member for Planning and Transport, Councillor Mrs Ballin**, the arrangements for introducing the CIL. Cllr Mrs Ballin said that the Executive had considered the CIL at length on two occasions, to date. They recognised that, actioned properly, the CIL was an opportunity to raise substantial income to fund infrastructure works. The timing of the introduction of CIL was important; the Executive saw a need to have the policy in place to apply CIL to new planning applications. A two stage approach was envisaged, firstly establishing

the tariff, and next the governance arrangements including determining how the CIL income would be spent.

### **Refining The Viability Assessment**

- 4.15 At the same meeting, the Group considered the draft Viability Study report by BNP Paribas Real Estate of March 2012, which was to be revised in the light of officers' comments. We were shown a map of the Borough with initial proposals for three CIL charging zones. The zones were driven by a clear difference in valuations across the Borough, and we decided that this required further consideration. For example, the higher values in Sandhurst, Binfield and Ascot could justify the creation of a fourth charging zone for CIL. The map would also need further consideration in the light of future responses to the consultation on the preliminary charging schedule. Officers advised us that the greater the number of 'gradations' in the charging zones, the higher the potential CIL income, but some councils saw an advantage in simplicity with few zones, or even one. Other matters arising in discussion were:
- a) All major new housing development sites were currently in the blue ('Rest of Borough') zone. CIL – being applied at the time of granting planning permission - would not be applied to the Jennets Park development, which was already part-built.
  - b) CIL rates were being determined at the bottom of the property market cycle. When the cycle improves and the market returns for developers increased, the CIL rates should be re-considered (albeit the process of changing the rates would take around 12-18 months). Officers advised that the sensitivity analyses around market rates in the BNP report assisted the robustness of the viability assessment, and officers were endeavouring to 'future proof' the CIL arrangements as far as possible. A stronger economy with annual growth would have a significant effect on the viability of residential development, in particular. When publishing the CIL charging schedule, the Council would not be obliged to state when it will be reviewed.
  - c) Alternative funding sources for infrastructure were being explored by officers, but there were huge uncertainties over CIL income and infrastructure costs over the long-term, as there are many variables, not least in terms of the schemes a developer might possibly bring forward. CIL income flows were being estimated, despite these being unavoidably and heavily caveated.
  - d) CIL rates would not be negotiable by development scheme; the charge would be related to the net increase in floor area; instalment payments could be made; and the CIL rates would increase in line with the prescribed index.
  - e) The Group saw it as advantageous that BFC are ahead of neighbouring councils on the introduction of CIL. It was noted that other councils had experienced a surge in planning applications in the run-up to commencing their CIL scheme.
  - f) The Group expressed concern that some of the proposed CIL rates seemed low, and incorporated a substantial 'buffer' from the maximum rates which BNP assessed as being commercially viable. Officers advised that setting the CIL rates was a delicate balance requiring judgement of various factors; it must be recognised that excessively high rates would deter development and mean BFC would miss out on the associated CIL income. Realism was key, and there was a need to build up information over time.
  - g) The government's regulations were still awaited on the proportion of CIL to be paid over to T&PC's. The regulations might possibly set a minimum rate only, and the range was expected to be between 5 and 10%.
  - h) The first consultation would be around the CIL tariff. The next stage would be on governance issues and the arrangements for T&PC's usage of CIL income.

- 4.16 The Group reviewed the revised timetable for the introduction of the CIL, noting that the Executive aimed to introduce CIL as soon as possible in order to maximise income. Consultation on the Preliminary draft charging schedule would commence in June, with further stages leading to the examination/inspection and the 'Declaration' to Council in January 2013, with submission of the CIL schedule in February.
- 4.17 The Group then met the **Borough Treasurer, Alan Nash**, to explore the financial consequences of CIL. He told us that at this stage, the Council could not know how much income would be generated by CIL. There were no other obvious sources of funding for infrastructure expenditure, thus any shortfall of income to meet needs would be a consideration for the Capital Programme. The regulations require the CIL Examination to check that the CIL rates do not generate income in excess of the estimated funding shortfall on the Infrastructure Delivery Plan. However, in the event that the CIL income did exceed the funding gap, there would be no obligation on the Council to repay the CIL income. It was noted that there are huge variables when estimating CIL income. The main concern was that there might be a flood of planning applications in the run-up to the introduction of CIL. We were advised that it was unlikely that a CIL exemption would stimulate an increase in developments of affordable housing.

#### **Other Councils' CIL Charging Schedules**

- 4.18 The Group reviewed the summary information of CIL Charging Schedules from other local authorities. It was noted there were no direct comparators for Bracknell Forest, the most similar probably being Wycombe and Elmbridge. The Group decided to meet members and officers of another council which was more advanced in its CIL preparations, to learn from their experience, particularly as to the processes they followed and the factors they had taken into account (see paragraphs 4.28 – 4.29 and 4.33 below).
- 4.19 On **11 May 2012** the Group considered the revised CIL Viability Study report by BNP Paribas Real Estate, noting that the main changes from the earlier draft report as being: introducing a proposed CIL charge for Care Homes in some areas; the maximum CIL rates achievable had been revised downwards in some cases; The CIL map now included more zones; and the CIL rate for residential developments was now nil in the town centre, but had been increased elsewhere. Other matters arising in discussion were:
- a) There was no special provision for contaminated or brownfield sites, instead the 'buffer' within the proposed CIL rates was aimed at providing for site-specific costs. BNP's modelling had also been based on a range of sites and development uses.
  - b) The Group considered the 50% 'buffer' within the proposed CIL rates was very high, and when the economy recovered the Council could be missing out on a deal of potential income. Officers explained that the actual size of the buffer would be much lower than this for some types of development and site variations.
  - c) In line with the government's regulations, CIL on conversion of empty office space for residential purposes was avoidable if there was no increase in floor area. This would however require planning permission and might therefore attract a S106 liability.
  - d) Some new schools might not appear on the CIL infrastructure list if it was anticipated they could be funded by contributions from fewer than five developments.

- e) Due to variations in development value between areas, some developments would not be viable, but this was expected and allowed under the CIL regulations.
- f) Lines on the CIL zone map tend to follow roads and avoid running through known development sites. Members asked for absolute clarity over where the lines were, for example on which side of the road a CIL boundary line lay.
- g) Members queried whether the Council ought to seek a 'second opinion' on the Viability Assessment by BNP, given the significant financial consequences of the CIL rates. Officers advised that: the assessment and determination of the rates required a degree of judgement and it was not an exact science; the Council's Chief Officer: Property was satisfied with the BNP assessment; BNP used the methodology of residual land values and any other consultant would probably employ the same approach; also that – subject to the consultation and other regulatory requirements - CIL rates could be changed in the light of practical experience. The Working Group considered that there should be a firm commitment to reviewing the CIL rates periodically, to ascertain whether changes were needed. Members stressed the need to ensure the underlying data for the Viability Assessment was robust.
- h) The Group observed that the responses to the consultation would probably be on the lines that the proposed CIL rates were too high, consequently it would be advisable to consult on higher rates at the outset. Officers cautioned against consulting on proposed figures which were not supported by the Viability Assessment.
- i) Members queried why a nil CIL rate was proposed for hotel developments, and based on the viability assessment, indicated that a modest CIL charge of up to £25 per m<sup>2</sup> outside the town centre might be appropriate.
- j) The Director commented that the proposed CIL rates for residential development had already been revised in the light of the Group's views. The rates effectively doubled what was customarily levied through S.106.
- k) Officers currently anticipated CIL income at being £100 to £110 million, i.e. less than the £126m infrastructure funding needed.

### Views of the Private Sector

4.20 On **14 May** the Group met **Andrew Whitaker (AW), Planning Director, Home Builders Federation (HBF) Ltd**, to gain an understanding of the HBF's perspective on how the CIL is viewed by developers, both in terms of what would be a viable tariff and what would be suitable CIL arrangements. The HBF has some 350 members, of which 295 are house builders accounting for around 80% of all houses built in Britain (there are tens of thousands of builders registered with the National House Building Council. The HBF membership includes the eleven largest house builders, which account for 50% of all house building.

4.21 AW described the background to the introduction of the CIL. The house building industry had wanted to move away from site-by-site S106 negotiations; these took a great deal of time to negotiate, and they often approached the margin of viability, as opposed to reflecting a fair contribution to funding appropriate infrastructure needs. The industry felt increasingly that they were seen to be a 'cash cow', and this had come to a head with the downturn in the housing market in 2007. The industry accepted that it was reasonable to contribute to meeting the impact of development, but a simpler and fairer system was needed. AW counselled against having too many CIL charging zones, though strategic or other special sites could be separately provided for. AW suggested that LAs should aim to have an early review of their CIL rates, as it was unlikely they would be 'right' at the first attempt.

- 4.22 AW related how the HBF had responded to the 'Planning Gain Supplement' proposals by Government – a tax regime based on development - in 2004/05. At that time, the government and industry were unable to reach agreement on a viable solution, particularly as it was aimed at completed developments; and not knowing at the outset what the 'tax' would be was a major difficulty for the house building industry, which instead needed more certainty over future costs. This desire for an 'up-front' system was the subject of long discussions with government, culminating in the concept of the CIL. The standard CIL charge gave a developer certainty at the outset as to the contribution required to the locality's infrastructure. Given that most developments have a cumulative impact on a locality's infrastructure needs, the HBF saw the CIL reducing the need for site-by-site specific S106 charges, unless there are very site-specific infrastructure consequences of a development. The HBF would like to see as much of the Borough's infrastructure needs as possible covered by CIL (as opposed to S106).
- 4.23 AW said the HBF recognised that LAs are facilitating development, and that brought with it a need for additional infrastructure. This was to be set out in the Infrastructure Delivery Plan, which probably shows a shortfall in funding for those works. It would be unrealistic to expect CIL income to wholly meet that funding gap, and LAs needed to establish what were viable CIL charges in their area. One option to increase income could be to allow more development; and the infrastructure needs were lower for some types of development. The HBF also considered that CIL gave LAs a more predictable income flow than was possible with S106, and that might give LAs the confidence to borrow against the future CIL income flow, to commence the infrastructure works earlier. AW considered it to be unlikely that CIL would generate more income than S106 had in the Bracknell area, particularly as most developments would be on green-field sites. It was important to be realistic about what would be viable CIL charges. AW observed that CIL charging schedules had higher levels of charge for residential developments than other types, indicating that housing was seen as a sort of 'cash cow'. CIL applied to all developments with few exceptions, whereas S106 tended to apply only to larger developments. Smaller builders had not been accustomed to S106, and the imposition of CIL charges on individual house building might come as a shock to some. AW said the key issues were establishing viability levels, based on robust evidence; and the industry was happy to work with LAs to build that evidence base.
- 4.24 AW explained that serviced land as opposed to unserviced land was a major factor for development cost viability. He estimated that in the Bracknell area, serviced land had a value of around £1.5 million per acre, compared to some £120,000 for unserviced green-field land. Viability was also affected by an LA's Development Policies, for example on the required percentage of affordable housing. The HBF recognise that whilst some prospective developments will not be viable, CIL should not prevent development from occurring. The HBF's view is that CIL rates should be affordable and the Industry should be content they are fair. To achieve that, LA's should explain the cumulative impact of both large and small developments, demonstrating that the CIL rates are necessary and viable. AW also counselled against setting CIL rates which are viable for major developments but not for smaller developments. AW encouraged the Council to involve the house building industry in Bracknell Forest in the determination of CIL rates. AW advised that the issue was not so much with the viability methodology, more the accuracy of the inputs to it. Industry could assist by advising as to their costs and their approach to viability. AW cautioned against modelling Bracknell Forest CIL rates on a London Borough's, as the circumstances are very different; indeed Bracknell is very different to many other areas.

- 4.25 We were told that the HBF were disappointed that CIL is not as easy to operate as it might have been. The HBF consider that the CIL Regulations lack balance between the obligations of developers on the one hand, and Planning Authorities on the other. The HBF regard affordable housing to be an issue. Developers will be 'squeezed' between landowners who want the highest land price, and LAs which want to maximise affordable housing. The HBF would like to see the Affordable Housing component included in CIL.
- 4.26 AW considered that house builders were happy to consider direct build of infrastructure (e.g. the new school at Jennets Park) and this could be achieved by offsetting the cost against the CIL liability.
- 4.27 The HBF had reservations about passing CIL income on to Town & Parish councils, because CIL was to address cumulative infrastructure needs, and these were best actioned by the borough councils. To the extent that T&PC's spent CIL income meeting local needs, this could leave the borough councils short of funds for meeting the infrastructure needs of the whole borough.

### Visit to Portsmouth City Council

- 4.28 On **21 June**, two members of the Group visited **Portsmouth City Council (PCC), meeting Councillor Lee Hunt, Chair of Planning Committee, Jacqueline Boulter, Principal Planning Officer, and Claire Upton Brown, Assistant Head of Planning**, to learn about their experience of introducing CIL thus far. PCC are more advanced in introducing CIL than most other councils. Portsmouth has some 207,000 residents, the Council's annual budget is some £600m (including schools), and they receive around 1200 planning applications annually. It is a Unitary Authority, with some joint working with Hampshire County Council. Portsmouth has a large need for affordable housing, and the Council see the CIL as providing added confidence for planning future infrastructure developments, which included a new bridge over part of Portsmouth Harbour.
- 4.29 The PCC officers gave us a briefing on the introduction of the CIL to date, and their experience of lessons to be learnt. This had commenced on 1 April 2012; consequently it was still early days: no CIL monies had actually been received yet, and only small schemes had passed through the CIL process (with no land offered in lieu of cash). We were impressed by PCC's 'quick reference guide to CIL'. The main matters arising in the ensuing discussion were:
- a) The results of PCC's CIL Examination had been positive, and the Examiner had recognised that there is a limit to the viability work that can sensibly be carried out.
  - b) PCC employed a consultancy to carry out their CIL Viability Assessment work. They carried out appraisals for a variety of sites and uses. This generated a set of 'sensible' CIL rates comfortably below the maximum rates theoretically achievable. PCC regarded a 'Basic' rate of £105 per M<sup>2</sup> (for every development unless stated otherwise) to be appropriate.
  - c) PCC decided to treat all areas of the city the same and wanted to keep the charging schedule as simple as possible. The meeting noted that Bracknell Forest had more diversity in its development scene than Portsmouth.
  - d) PCC's list of infrastructure key projects requiring CIL funding totalled some £208 million, requiring CIL funding of some £85m. PCC saw the need for good communication to counter confusion externally over: the contribution of CIL income towards funding the £85m; the basis of the infrastructure list; the relationship between CIL and S106; and that CIL is a non-negotiable charge.

PCC saw the need to make efforts to engage and inform regular users of the planning system about the CIL in the run-up to its implementation date.

- e) PCC had received few responses to their CIL consultations (10 on the first, and 11 on the second), and none from residents. Some developers commented in their response to the consultation that the draft CIL rates were too high, but they did not support this with evidence. PCC had not received any feedback on the £53 hotel charge. No rates were changed as a consequence of the consultation.
- f) No-one indicated that they wished to speak at the Examination. There were written representations from the Council, mainly on the viability work, in response to the Examiners questions.
- g) PCC are giving further thought to their policy on CIL exceptional circumstances relief. This was seen to be a complex issue, requiring extensive disclosure by developers and the policy may have EU State Aid implications.
- h) Officers commented that some people seeking planning permission for small developments were trying to argue for no CIL charge, for example on the basis that the attic to be converted was already in some form of use. The Council was maintaining a firm application of the CIL regulations and policies, though they recognise that it remains difficult for individual householders to understand the justification for CIL. It was noted that some small developments will pay a lot more in CIL than they would have under S106.
- i) PCC's Regulation 123 list was agreed by Cabinet and cleared at the same time as the CIL Examination outcome. The list is based on the information in PCC's Core Strategy. The Annual Monitoring Report would be the vehicle for updating the Regulation 123 list.
- j) CIL notifications were being handled, and liability assessed by the same officer in the PCC's Planning Team who is responsible for coordinating S106 Notifications. The officer works closely with the Finance team, for example on the raising of invoices. The enforcement and building control teams were being used to identify liable developments. A separate team is responsible for chasing payment of the amounts due, and bad debt recovery.
- k) PCC use the 'Uniform' IT package, though calculations were being made outside the system, and the outcome of the calculations was then stored on the system.
- l) PCC have payment terms allowing payment by instalments. In the consultative process, they had received comments and concerns about phasing of payments.
- m) PCC do not have Parish & Town councils, consequently they have not yet decided where to pass on the required percentage of CIL income to. One possibility was forming Neighbourhood Panels, with Councillor representatives included in them.
- n) PCC did not experience a glut of planning applications in the run-up to the introduction of CIL, and had endeavoured to process all outstanding planning applications in advance, as applying the CIL charge would have fundamentally altered the viability assumptions of most of the developments, possibly affecting their delivery.
- o) Officers described how the next phase of work around CIL was to design the arrangements for handling CIL income. The income would accrue to the Capital Programme. It would need co-ordination to ensure it was applied to meeting strategically important infrastructure needs, in a prioritised manner, all under the umbrella of the Council's Regeneration Strategy. This might require some form of infrastructure project plan, to show how the CIL income is spent.

4.30 On **18 July**, the Group met to take stock of its progress to date, and to determine future planned activity. The Group noted that the Infrastructure Projects list for the CIL would need to form part of an overall cohesive plan for the Borough's development, alongside other drivers including the Local Enterprise Partnership. Further to the submission of our interim recommendations to the Executive (see

paragraph 5.2), Officers advised that the public consultation on the CIL Preliminary Draft Charging Schedule was underway, with a closing date of 13 August.

### **CIL Consultation Responses**

4.31 On **14 September** the Group reviewed the responses received to the consultation on the Preliminary Draft Charging Schedule for the CIL, which were greater in number than expected, and which covered a wide range of issues. Officers advised that the responses showed there was still a lot of confusion about CIL and Section 106, and some disagreement over how much money is effectively 'in the pot'. A consistent message is that there is only one 'pot' of developer money available for CIL/S.106/remediation of the effects of development/providing associated infrastructure/providing affordable housing, and there cannot be any 'double counting' – i.e. adding to the limit of what is affordable. All councils are in the position with CIL, being very new, that they cannot be certain whether the presence of a charge has prevented a development from progressing. However, 'Open Book' appraisals are now in widespread usage and that helps build understanding and assurance. In response to members' questions, the following points arose:

- a) The misunderstandings shown by some respondents underlined the need for a good Communications Strategy for the introduction of CIL, explaining more fully what CIL comprises and how it is designed to be of benefit to the Borough as a whole, so as to manage expectations and concerns better.
- b) A particular requirement was the need to justify more persuasively the geographical delineation of CIL charging zones.
- c) The thrust of the responses was not unexpected, but the level of detail had been greater than expected.
- d) Officers saw the need to commission more consultancy work to provide answers to those responses which challenged the viability assessment. Before the next formal stage in the process of setting the CIL rates, officers would probably seek an open and detailed discussion with some developers on the viability rates, using the 'open book' process. Separate CIL rates might be needed for some major development sites.
- e) The additional work meant that the timescale for the CIL project was being put back. The Infrastructure Delivery Plan (IDP) was due to be refined by early November. Examination should take place in the Spring of 2013, aiming for implementation of CIL in the Autumn of 2013.
- f) Nationally, more councils were now progressing to the CIL Examination stage. BFC was ahead of most councils in the Berkshire locality in introducing CIL.
- g) The Council's objective for CIL remained – of achieving the right balance between attracting good development for the Borough whilst also maximising income to fund delivery of the works in the Infrastructure Delivery Plan.
- h) It was clear that developers wished to carry out developments in Bracknell Forest, but the current economic climate made it difficult for developers to secure approval from their Boards for developments at lower than 15% profit. Access to finance remained the main obstacle to development.
- i) S.106 rates will need to be increased, in line with the increased costs of providing infrastructure.
- j) Production of the updated Infrastructure Delivery Plan (IDP), had been delayed, and we were told that some of the consultation responses sought further justification of the costs of individual items in the IDP.

## Governance

4.32 The Group was advised that a number of governance issues were being addressed by the CIL officer working group, including the key principles on CIL. These included:

- a) The Capital Programme machinery would probably be used for CIL, though there were additional needs for prioritisation and being able to adjust to changing circumstances.
- b) Officers were considering possible software solutions, with the ICT Team's assistance. The current expectation was that the Council's Planning IT system would be usable for CIL purposes.
- c) The Government's regulations on the 'meaningful proportion' of CIL receipts for passing on to Town & Parish councils were not now expected until 2013.

We return to these points in our conclusions and recommendations at paragraph 5.7 – 5.8, 5.14 and 5.18.

4.33 On **2 October** two members of the Group attended a conference on CIL at **Huntingdonshire District Council** (HDC), as they were among the first councils to implement the CIL. HDC is a district council, with a population of 166,000 and an estimated 14,000 dwellings are expected to be built there in the next 14 years, generating an estimated £33million in CIL. HDC officers described the steps taken by that Council to introduce CIL and drew attention to various learning points.

Particularly noteworthy points included:

- a) A lot of property developments had previously made no S.106 contribution, being infill development; and this had not made a fair contribution to infrastructure costs.
- b) HDC estimated they would receive some £33 million in CIL during their planning period. This would be well short of their infrastructure funding gap of c.£121m, consequently they needed to identify further sources of funding.
- c) HDC, due to the complexity of CIL, had developed a 'SharePoint' bespoke IT system to administer CIL, which we saw demonstrated and which appeared to have extensive functionality. This was based on CIL process maps which HDC had developed. CIL is a long process, so a good system with work-flow emails and thorough work processes was seen to be needed.
- d) HDC had not received any CIL receipts to date. HDC, in close collaboration with their Local Strategic Partnership (LSP) had decided to 'bank' their CIL receipts in the first year, giving them time to work out their governance arrangements and in particular how to prioritise and handle the spending of CIL income.
- e) HDC had given plenty of advance warning to all of the implementation date for CIL. HDC had cleared all pending planning applications before CIL started. There had been no rush of planning applications in the run-up to CIL commencing. Since the commencement of CIL, the flow of planning applications had been light.
- f) HDC had deliberated at length on whether to apply a CIL charge on health developments, and finally decided to levy a charge, on the basis of viability assessments. HDC had adopted a separate treatment for major housing sites in excess of 200 units. Nevertheless, HDC had been very careful not to be seen to be 'double counting'. For example they had made use of an affordable housing element, and an on-site S106 to build a primary school.

- g) HDC have used their Local Strategic partnership (LSP) as it represents all the partner organisations including the T&PCs, to act as 'honest broker' in recommending to the HDC Cabinet what the CIL money should be spent on.
- h) These recommendations were based on a Business Plan (BP) which had been devised by the LSP. HDC envisaged submitting the BP to their Cabinet once annually, incorporating some flexibility to meet changes in between times. Detailed work on the BP was carried out by the LSP's 'Growth and Infrastructure Group', supported by an officer working group.
- i) The T&PC's retain their autonomy to spend their 'meaningful proportion' of CIL as they see fit, but they are being *encouraged* to identify their own local priorities, using the shared business planning process.
- j) HDC carried out detailed viability assessments of varying sized retail developments to support their differential rate change at 500 M<sup>2</sup>. HDC had opted for CIL rates of 40-50% of the viable 'headroom', and had ensured this was a corporate decision. HDC advised that, when setting rates, it was important to keep challenging assumptions and asking 'what if...?'
- k) HDC stressed the importance of early engagement with local communities.
- l) HDC advised everyone to be aware of the complexities in the day-to-day management of CIL, as the regulations have many complex requirements.
- m) HDC had spent a good deal of time and money devising their CIL arrangements, and they anticipated this being at least 5% of the expected CIL income.

### **Analysis of CIL Consultation Responses**

4.34 On **26 October** the Group reviewed the 31 responses received to the public consultation on the preliminary draft CIL charging schedule, which had run from 25 June to 13 August, together with draft views by officers on the responses. These covered a wide range of issues. Many of the comments related to the Viability Assessment, and there were also some detailed comments on the Infrastructure Delivery Plan, many seeking justification for the infrastructure requirements and the estimated costs. Officers advised that none of the responses presented fundamental difficulties, but many responses reflected misunderstanding of the CIL Regulations, particularly that rates must be set on viability and not used as a policy tool. Several respondents thought that CIL should relate to the specific impacts of the development being charged, like S.106. The key points made in the representations were:

- a) Greater clarity was sought on what infrastructure will be funded via CIL and what will remain as S106.
- b) Concern that the assumptions in the viability model do not reflect the high S106 costs associated with some of the major strategic sites.
- c) High rates applying to large strategic sites will make them unviable and adversely affect delivery of housing.
- d) Requests that the Council adopt an exceptions policy in accordance with the provisions of the regulations to allow some flexibility on sites which would be unviable with CIL.
- e) Objections that CIL charging for SANG will not satisfy the Habitat Regulations.
- f) The charging zones were not seen to be properly justified.
- g) Requests for special consideration of certain housing types (mobile homes and care homes).
- h) The proposed instalments policy was not seen to be flexible enough, nor offered a sufficiently long payment period.

- 4.35 In view of these responses, officers decided to propose the Council consider introducing an exceptions policy and possibly an exemptions policy; to carry out further specific viability work on a limited number of key strategic sites (including meeting with landowners / developers); consider some adjustment to the CIL charging zone boundaries; to pursue alternative SANG agreements in some cases; and to prepare an updated Infrastructure Delivery Plan to support the next version of the CIL schedule.
- 4.36 In discussion and in response to members' questions, the following points arose:
- a) Some members were concerned at the cross subsidisation from those parts of the Borough with higher CIL rates, towards those other parts of the Borough where the CIL rates were lower or nil.
  - b) The Group was concerned that CIL income was likely to fall significantly short of the 'funding gap' for infrastructure requirements, as identified in the Infrastructure Delivery Plan (IDP) submitted to support the Council's case for the Site Allocations Development Plan Document (SADDPD).
  - c) Officers had invited developers of the major sites to send in their own company information to assist in the viability assessments. The further work on this by BNP Paribas was anticipated to be completed by 9 November.
  - d) In most housing development cases, CIL was expected to generate more income than S106 would have done. This was particularly the case with infill developments.

### **Governance Update**

- 4.37 The Group saw the usage of the 'meaningful proportion' of CIL monies by Town & Parish councils (T&PC) to be a very important issue. Very few restrictions applied in practice, and it would be necessary for the Council to win over T&PCs to the infrastructure list and the benefits to the community at large by pooling and investing CIL monies in major infrastructure projects. Government regulations on the 'meaningful proportion' of CIL to be paid over to T&PCs were not now expected until 2013. Even when that percentage is announced, T&PCs would still not know how much they would receive or when, as this depended on the flow of approved planning applications and progress on developments, for example.
- 4.38 Officers described what was being done to arrange officer resources, short of a dedicated CIL officer, and systems for the introduction of CIL. Officers were exploring using the additional CIL software package for the UNIFORM Planning system currently in use. The raising of invoices, debt chasing and related finance functions would probably be handled by the department's finance team. Officers were proceeding on the assumption that the Capital Programme apparatus would be used to prioritise and determine CIL – funded projects (see paragraphs 5.7 – 5.8 below). The Group expressed the importance of having a transparent process, including Non-Executive Member involvement, for the allocation of CIL priorities and monies.

### **Prioritisation and Approval of CIL-Funded Capital Projects**

- 4.39 On **26 November**, the Group met the **Borough Treasurer, Alan Nash (AN)**, to discuss the prioritisation and decision-taking process for the capital programme, and how CIL-funded projects might be handled in that apparatus. We were shown a flow diagram, setting out possible key steps in the initial stages of identifying prospective CIL income from developments, the identification of infrastructure schemes, determination of funding sources and prioritisation, by reference to the Infrastructure Delivery Plan. This would involve consultation with Ward Members and the

appropriate Executive Member. These possible steps led to the existing steps for review, consultation and approval of capital schemes, leading to their implementation. This enabled integration with the Council's current financial planning processes. The existing process incorporated the gathering of ideas for capital programme schemes, and refining the list through consideration by the Corporate Management Team and the Executive, and then the Majority Group. The draft budgets each year incorporated the proposed capital programme. The Group considered that the flow diagram could usefully be amended to show how CIL monies are used to meet infrastructure bids from external organisations. An example would be Thames Valley Police asking for space in community centres. This required an open and transparent process.

- 4.40 AN pointed to a particular difficulty in anticipating how much CIL income would arise, and its timing, though this was a common problem with various funding streams. Best estimates of prospective income would need to be made, based on the information available, consequently it might be appropriate to forecast a range of income rather than an exact figure. CIL liabilities would be firmed up for individual developments on granting of planning permission. Larger developments might comprise a number of staged planning applications and starts to groups of housing units. The CIL liability would be fixed and automatic, though in some cases S106 might be negotiated additionally (for example to meet affordable housing requirements). If offered, land might be taken in lieu of CIL.
- 4.41 AN advocated a pragmatic and flexible approach, particularly whilst the Council felt its way forward with the CIL scheme in its early stages. AN described how the Council already held various S106 monies dedicated to certain purposes, but where there was insufficient funding to complete the schemes concerned. As no further S106 funding was expected to be available for those schemes, AN said that additional CIL and/or other funding would need to be identified to complete the schemes, alternatively the schemes would need to be scaled down to make them affordable; the Group was sceptical of the feasibility of this in all cases. AN added that there needs to be a means of assessing risks applying to the developments liable to CIL, also projects to be funded from CIL income. This would better enable decisions to be reached on the extent to which funding was needed from the Council's own resources, other non-CIL income, and possibly borrowing, in order to fund any essential infrastructure works on time; in the context of housing developments, some types of infrastructure works needed to be funded and delivered before any construction of housing could commence (and the related CIL income to the Council actually commencing).
- 4.42 The Group reviewed the summary of changes to the Infrastructure Delivery Plan (IDP), which would be among the documents for the forthcoming Examination. Most of the transport costs had increased, also some schools-related costs. Officers explained that these changes would not impact on the CIL rates, which were determined more by viability in Bracknell Forest's – and most other councils' - circumstances.

#### **Update on the CIL Viability Assessment**

- 4.43 Officers updated the Group concerning the further, site specific, viability assessment work. This had taken longer than anticipated, it seemed that some of the sites would not be viable developments if the CIL rates in the Provisional Draft Charging Schedule were to be applied. Therefore, there may be a case for having an exemptions policy to deal with exceptional circumstances, which might reduce CIL income. This delay meant that the planned date of January 2013 for Executive

consideration might need to be deferred. Furthermore, there may be a need for another round of public consultation.

- 4.44 On 17 January 2013, the Working Group met for the final time to receive updates on the further viability assessment by BNP and to consider its draft report.

## Conclusions and Recommendations

- 5.1 From its investigations, the Working Group (the Group) has drawn the following conclusions, on which we have based some recommendations to the Council's Executive.

### Interim Conclusions and Recommendations

- 5.2 During the course of its work, the Group decided that some of its emerging conclusions and recommendations needed to be raised with the Council's Executive before they made their decision on the preliminary draft charging schedule for the Community Infrastructure Levy (CIL). We sent these interim views to the Leader of the Council in a letter dated 16 May 2012. The Executive considered those views at their meeting on 12 June, at which a member of the Group was present. As a consequence of our recommendations, the Executive decided to:
- a) Amend the originally proposed nil CIL rate for Hotels to £25 per m<sup>2</sup>
  - b) Commit to reviewing the CIL rates 12-18 months' from commencement of charging (recognising that there is limited experience of operating CIL, its level must be set on the basis of assumptions and potential changes in development economics as we move through the economic cycle)
  - c) Increase the number of charging zones from three to four so that rates can be better related to geographical variations in viability; and,
  - d) Increase the maximum proposed CIL rate for housing to £220 per m<sup>2</sup>.

We believe that the work we have done since May, along with the dangers of setting the charging rates too low, has borne out our interim recommendations.

### General

- 5.3 The CIL is a very significant development in getting property developers to make a fair contribution towards paying for the infrastructure needed by people living in Bracknell Forest, both now and in the future. The Group believes that CIL presents an opportunity, but there are a number of risks and disadvantages to CIL, which we summarise below. Also, the CIL scheme is more complex than many people thought it would be at the outset, the government regulations are not yet complete, and the market reaction to the imposition of CIL charges has yet to be tested in practice. This latter point is particularly important when much of the country is dependent on building and other private sector activity to stimulate the economy and move us out of recession; we believe that public bodies have a duty to nurture and not put at risk the confidence of the private sector to invest in Bracknell Forest.
- 5.4 The Council is well ahead of the majority of other councils in preparing for the CIL. At the CIL conference we attended, with over 100 other council representatives from across England, a show of hands at the outset indicated that about half of those present were in councils 'working their way towards consultation', and a smaller number were 'thinking about it'. Only a small number had completed their consultation phase. This and other evidence indicates that very few local authorities have fully 'made the jump' on CIL so far, and many seem to be holding back. In short, there is a lot at stake in deciding on the best way forward, and a cautious approach is commended.

**Recommendation 1** The Executive should proceed carefully with the planned introduction of CIL, after fully assessing the risks, advantages and oft overlooked disadvantages of the scheme.

## The Borough's Infrastructure Needs

- 5.5 The Borough's infrastructure needs are extensive, reflecting the constantly growing demands for school places, roads and many other needs presented by a growing population: some 10,700 additional homes are expected to be built in the twenty years ending in 2026 (in this respect it should be noted that the SADPD Inspector has cast doubt on this figure and indicated that a further 2,000 houses may be needed to comply with legal requirements. If this should be the case it will have a number of important implications, not least the viability and relevance of the current 'Infrastructure Delivery Plan' (IDP). The currently assessed cost of the broad infrastructure items needed to support that growth in the Infrastructure Delivery Plan is £126 million in the next 15 years. It is not possible to accurately predict the availability of public funding a long way into the future as this will depend, among other things, on the spending priorities of future governments. However, it is clear that in the short to medium term there is a significant gap between available funds from government and other agencies and the cost of infrastructure needed to support and mitigate planned growth.
- 5.6 Government planning regulations require councils to produce an IDP for their area, and we are satisfied that this plan is basically sound. The IDP will require constant monitoring and regular review. A subset of that plan has been used to compile the 'Regulation 123 list', which lists those items or types of infrastructure that the Council intends to fund through CIL. The Council cannot then seek a planning obligation contribution towards the same infrastructure.

**Recommendation 2** Particular care should be taken in drawing up the 'Regulation 123' list. It should not include any items where a S106 contribution would deliver a larger and more appropriate contribution towards meeting infrastructure needs. Of equal importance will be the need to include items in the Regulation 123 list where pooling of contributions from multiple sources will be needed after April 2014.

## Determining priorities

- 5.7 It seems fairly clear that the income from CIL charges will be far from sufficient to meet all the Borough's infrastructure needs. A key danger would be to assume that income from CIL will very significantly fund the IDP. Other uncertainties include: councils cannot predict accurately how much the income from CIL will be, or when it will arrive; some infrastructure – such as schools expansion – can attract government or other funding; and the timing of infrastructure requirements varies, with some needing to be in place before the developments commence. All this requires an effective means of fairly and transparently determining priorities of individual infrastructure projects.

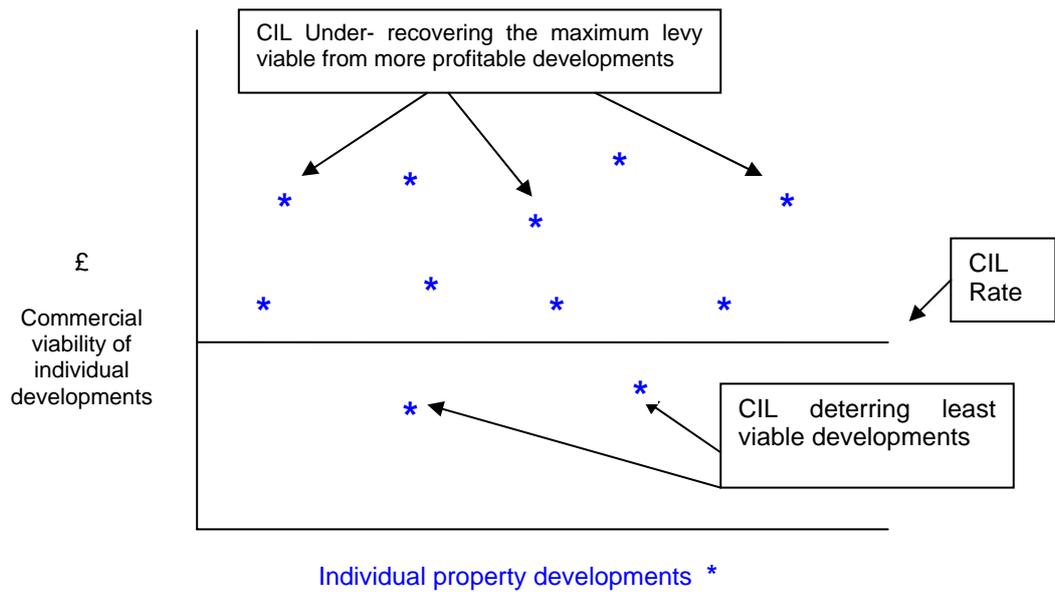
**Recommendation 3** To assist consistent, transparent and informed planning and prioritisation, for every prospective infrastructure project a standard set of information should be produced. This should include any timing constraints, the sources of funding and its expected contribution to the Borough's infrastructure. This should ideally include some common ranking scores, showing how each meets the priorities set in – what needs to be - a clear and comprehensive infrastructure plan for the whole Borough. This is likely to require better integration of information and processes.

- 5.8 The Group concurs with the view that the Capital Programme apparatus would be an efficient and tested vehicle for marshalling prospective projects and ensuring they are properly and transparently approved by elected Members. However, we do not think this adequately meets the need for enhanced partnership input into decision-making, particularly in relation to Town & Parish Councils (see paragraph 5.14 below).

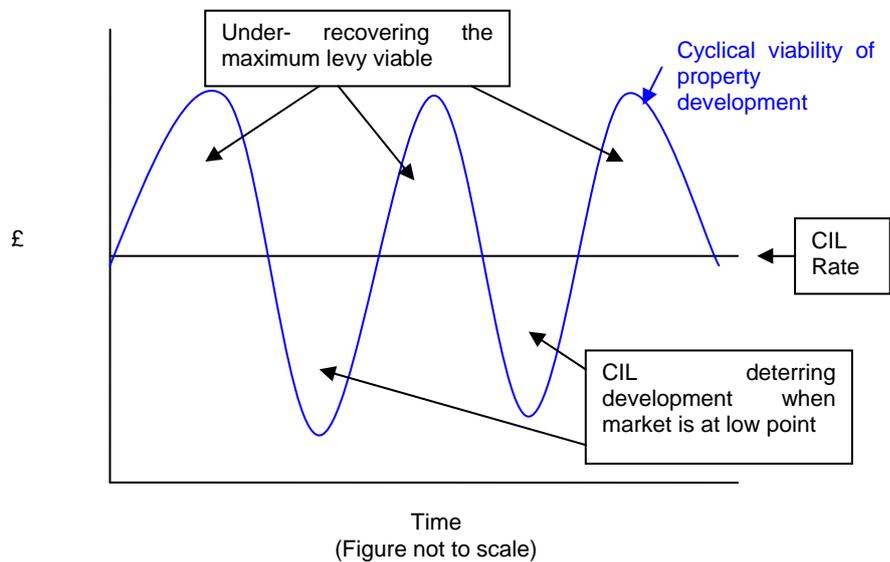
**Recommendation 4** The Capital Programme apparatus is enhanced for use in CIL-funded projects, particularly to: incorporate the input of non-executive and ward members, along with other partners' input to decision-making; and to show how CIL monies are used to meet infrastructure bids from external organisations.

### **CIL Charging Rates**

- 5.9 In determining what the CIL charges should be, there is a balance to be struck between simplicity and maximising income. Due to the nature of the CIL scheme, the fixing of the levy rates by geographical area and type of development is much cruder than the S.106 agreements which are tailored to the unique circumstances of individual developments. The Council has endeavoured to allow for this by adopting rates well below the assessed average viability of developments to be able to bear a levy charge. This is intended to allow the developer, for example: to meet any affordable housing requirements and other specific requirements to be met through a S.106 agreement, and to give a 'margin' for site-specific conditions. The viability of every site is different, for example by its location, site conditions, type of development and the interests of the land owner. The Council has partly recognised this by adopting charging boundaries which distinguish, for example, the higher residential property values in Ascot, Sandhurst and Binfield. But lines on a map can give rise to anomalies, and there is clearly a trade-off between simplicity of uniform charging levels on the one hand, alternatively having multiple CIL rates which are not unduly beneficial or harmful to individual developments. The government's CIL regulations recognise that however low the CIL rate is pitched, some developments may be insufficiently viable to cope with the charge. This is illustrated in the diagram overleaf:



5.10 A further issue arises with fluctuations in the property market. The CIL rates were determined at a time when the returns on most property developments were at a low point in the market cycle. That market changes over time, as illustrated below. The effect could be, that when the market reaches the height of profitability, developers could afford to pay a higher CIL levy to the Council; whereas in a market downturn, they could not afford the levy.



5.11 The reaction of the market to the Council's CIL rates has yet to be seen, market conditions change over time, and we have yet to learn what the CIL rates in adjoining boroughs are - and the impact which that might have on Bracknell Forest. For all those reasons, and the need to derive the maximum CIL income reasonably obtainable, so as to fund essential infrastructure, the CIL rates should be regularly reviewed.

**Recommendation 5** That due to the many variables and uncertainties, the CIL rates are fundamentally reviewed after one year of operation, in consultation with major property developers, and at least at two yearly intervals thereafter.

### **The Balance Between Using CIL and other Mechanisms to Secure Developer Contributions towards Infrastructure Costs**

5.12 Unavoidably, there will still be a future need for Section 106 agreements in relation to some property developments. The Council needs to decide on an appropriate balance between that means of securing developer contributions and using CIL; the Council does not have to introduce CIL, and should only do so if it is advantageous. At this stage, and due to the many variables and uncertainties, it is not clear where the best balance lies, but what is clear is that putting all the eggs in either basket would not be the right answer.

CIL has advantages over S.106 as:

- It is simpler to operate, with no expensive legal agreements
- It derives financial contributions from smaller developments which would not usually attract S.106 agreements
- It is estimated to generate more income overall than S106 alone would.
- It allows more 'pooling' of charges towards major infrastructure works
- There is more flexibility over the usage and retention of income from CIL charges

S106 has advantages over CIL as:

- Unlike CIL, it does not cause any development to become unviable. It more accurately reflects what is fair and affordable for each property development
- There is no automatic 'passporting' of a proportion of income on to T&PCs.

**Recommendation 6** More work is done to assess the best balance between the usage of CIL as opposed to S.106, so as to get the best and fairest contributions towards infrastructure costs, without risking destabilising the property development market. It will be important to exclude from the CIL Infrastructure list those projects where S106 presents a more financially viable route for the Council.

### **Governance**

5.13 The Group considers that there are a number of important governance issues to be addressed if the CIL is to be run safely and well.

a) Partnership working with Town and Parish Councils

5.14 Partnership working in Bracknell Forest has always been a strength, and the opportunity presented by CIL should be taken to forge even stronger partnership working with the Town and Parish Councils (T&PC). The regulations on a 'meaningful proportion' of CIL income to be passed on to

T&PCs have been continually delayed and are not now expected until later in 2013. However, the recent Ministerial announcement indicates that the proportion to be passed over is now much higher (at up to 25%) than originally expected. Subject to the terms of those regulations and the introduction of CIL, the T&PCs will be able to decide for themselves how to spend these monies, hence no-one knows what is to be paid over, when, or what purposes it could be applied for. A further complication will arise in that some parts of the borough will generate little CIL income, yet their infrastructure needs may be significant, and vice-versa. The challenge, in a tight financial climate will be to respect the autonomy of individual T&PCs over the funds at their disposal, whilst ensuring that essential infrastructure needs of everyone who lives in Bracknell Forest are provided for.

**Recommendation 7** That the Executive reach a concord with the T&PCs on an equitable means of deploying the CIL funding allocated to them for the essential infrastructure needs of both their respective areas and for everyone who lives in Bracknell Forest. This is even more significant in the light of the recent Ministerial statement.

b) Member approval for decisions

- 5.15 The Group regard it to be significant that Government has required the CIL charging schedule to be approved by Full Council. There is also, through the budget process, Member approval of the Capital Programme. To achieve confidence in the CIL scheme, particularly in its early stages, the Group consider it to be important to maintain a good level of member involvement in decisions on CIL-funded works. This could extend to the application of CIL Exemptions, which is currently under consideration by officers, on the grounds that as the CIL charging rates are to be approved by Full Council, any decision not to apply them in a particular case should be made by councillors and not officers.

**Recommendation 8** The Executive should ensure that all Members are given proper opportunity to participate in CIL decisions. As a minimum, this should extend to Ward Members being involved in decisions on CIL-funded projects and spending of CIL monies raised through developments in their wards; and the application of any CIL exemptions should be approved by the Council's Planning Committee, who are best placed to exercise that judgement.

c) Identifying and managing risks

- 5.16 The Group considered there are a variety of significant financial and other risks associated with the introduction of CIL, for example:
- i. It is uncertain when and how much CIL income will actually arise, and the extent to which it is insufficient to pay for important infrastructure works. The Council's Strategic Risk register has 'Infrastructure And Maintenance of Assets' as a red rating, but not identifying any additional risks from CIL. This issue should be addressed immediately and a specific risk rating allocated to funding raised by CIL bearing in mind the time scales involved.
  - ii. Adjoining boroughs had not all published their CIL rates, and their position relative to the Bracknell Forest rates might result in developers shunning some boroughs and being very active in others.

- iii. Whether T&PCs would be willing to act in partnership, using their 'meaningful proportion' of CIL income to contribute towards important infrastructure of benefit to all, for example new schools.
- iv. CIL rates which are too high or too low could have profound effects on income flow and the level of development in the Borough.
- v. Macro-economic effects, such as the availability of mortgage finance, energy prices, and the level of unemployment presented various risks to the housing and development market and hence CIL income. In some ways, availability of mortgage finance may have a greater impact on the developing housing market and therefore the money actually raised via CIL.
- vi. The rationale and operation of CIL might not be communicated effectively, or understood well enough.

Nevertheless, the Group acknowledges that, should the Council not introduce CIL, there would be even greater risks to securing developer contributions towards infrastructure costs.

**Recommendation 9** The risks applying to the introduction and operation of CIL should be identified, enumerated, and a strategy be recorded for dealing with them. In view of the significance of CIL, this should be referred to in the Strategic Risk Register.

d) Staffing

- 5.17 The Group was encouraged to see that a Council-wide CIL officer working group was well established, and working through the key principles on CIL. Currently, the policy co-ordination of the CIL development, along with much of the detailed work, lies with the Head of Spatial Policy, who has other duties. We are concerned that knowledge of CIL is with a very small number of officers. In our view, the complexities of CIL, the need to design work systems and make all the necessary preparations means that this load needs to be shared quite soon, if this important income generation activity is to run well. Indeed, there is a serious issue as to whether or not, given the broad range and impact of CIL and its affect on many key infrastructure projects, it should be a planning-led function. Bearing in mind that it has a commercial and strategic effect on so many Council functions, that overall responsibility should lie in the Chief Executive's Office.

**Recommendation 10** The staffing requirements for the design and operation of the CIL scheme should be fully assessed and provided for. Capacity building and knowledge sharing need to be stepped up. Consideration should be given to moving responsibility to the Chief Executive's Office as this is by no means a mainly planning function.

e) Information Systems

- 5.18 The Group noted that reports from other councils were that the more commonly used ICT systems for Local Authority Planning functions were not readily suitable for administering CIL, also that officers were exploring possible software solutions, with the ICT Team's assistance. The current expectation was that the Council's Planning IT system would be usable for CIL purposes. This work, which needs to be based on sound workflow processes, will of course

need to be brought to a conclusion and tested in good time before CIL commences.

f) Reporting the Collection and Usage of CIL

- 5.19 The government's regulations require annual reporting of the key details on CIL transactions. Given the need to retain the confidence of the property development industry, and to transparently show how monies are being deployed to meet the Borough's infrastructure needs, it is important that the reporting format is developed soon and regular reports commenced within one year of full Council approval to the CIL arrangements.

**It is recommended to the Overview and Scrutiny Commission that:-**

- 5.20 This report of the Working Group is adopted.
- 5.21 The Working group is stood down unless/until further Regulations affecting CIL are published and materially affect the conclusions and recommendations of this report.
- 5.22 The Overview and Scrutiny Commission request from the Executive regular updates on any further developments in the CIL project, and arrange for prior consultation with the Commission on any new CIL proposals.
- 5.23 The Environment, Culture and Communities O&S Panel is asked to monitor the outcome of the Public Examination of the Site Allocations proposals.

## Glossary

BP	Business Plan
CIL	Community Infrastructure Levy. A levy that local authorities can choose to charge on new developments in their area to fund infrastructure.
HBF	Home Builders Federation
HDC	Huntingdonshire District Council
IDP	Infrastructure Delivery Plan
LA	Local Authority
LSP	Local Strategic Partnership
O&S	Overview and Scrutiny
PCC	Portsmouth City Council
SADDPD	Site Allocations Development Plan Document. A plan required under Planning Regulations, showing which areas of land are intended for housing developments and other purposes.
Section 106 funding	Contributions sought by local authorities from developers under Section 106 of the Town and Country Planning Act 1990, as amended, towards the costs of providing community and social infrastructure, the need for which has arisen as a result of a new development taking place.
'The Group'	The Working Group of the Overview and Scrutiny Commission.
T&PC	Town and Parish Councils. There are two Town and four Parish Councils in the Borough of Bracknell Forest, providing localised public services

**BRACKNELL FOREST COUNCIL**  
**OVERVIEW AND SCRUTINY COMMISSION**  
**WORK PROGRAMME 2011 – 2012**

Terms of Reference for

**COMMUNITY INFRASTRUCTURE LEVY OVERVIEW AND SCRUTINY WORKING GROUP**

**Purpose of this Working Group / anticipated value of its work:**

1. The purpose is to make an input to designing the arrangements for the introduction of the Community Infrastructure Levy (CIL), and to contribute to the formulation of the CIL charging levels.
2. The principal anticipated value is to help ensure that the CIL arrangements properly protect the Borough's interests and generate an appropriate level of funding to contribute to the Borough's infrastructure needs.

**Key Objectives:**

1. To build members' understanding of how the CIL will operate, including the legal parameters and financial implications, and the likely effect of CIL on both property development and helping to fund infrastructure needs
2. To ensure that the Town and Parish Councils are appropriately engaged in the CIL, that their interests are taken into account, and that there are sound arrangements for their usage of CIL monies passed to them in accordance with government regulations.
3. To ensure that this major change properly safeguards the interests of Borough and its residents, specifically in relation to income.
4. To ensure that the Borough's infrastructure needs have been properly identified and prioritised.
5. To consider whether the proposed CIL charges are set at an appropriate level, specifically in relation to the viability of the CIL Charging Schedule for inspection in public.
6. To ensure that the CIL governance arrangements are sound.
7. To understand – and apply as necessary - the lessons learnt by other local authorities which have already progressed their CIL arrangements.
8. To gain an understanding of private sector developers' views about CIL
9. To make recommendations to the Executive and others as necessary on the issues at 1-8 above and specifically:
  - a) possible alterations to the Constitution consequent on the introduction of CIL;
  - b) the format and scheduled charging levels of the CIL; and
  - c) the administration and usage of CIL income.

**Scope of the work:**

1. All material issues connected with the successful introduction of the Community Infrastructure levy in Bracknell by June 2013. Specific issues to cover include:
  - a) The content of the Infrastructure Delivery Plan, including cost information.
  - b) Examples of CIL Charging Schedules from other local authorities.
  - c) Meeting the Executive Member, also the Director chairing the CIL Project

<ul style="list-style-type: none"> <li>d) Meeting the Borough Treasurer to fully understand the financial consequences of CIL.</li> <li>e) Meeting the Borough Solicitor to fully understand the legal requirements pertaining to CIL.</li> <li>f) Learning from one of the 'pathfinder' councils<sup>3</sup> their experience of introducing CIL thus far.</li> <li>g) The calculation of the 'Viability gap', the case for any differential CIL rates, any proposals for exemptions and exceptions, and the draft schedule of CIL charges once available.</li> <li>h) The governance arrangements for CIL, including reporting.</li> <li>i) The arrangements for Town &amp; Parish Councils receiving and using a proportion of CIL income.</li> </ul>
<p>2. Throughout its work, the Working Group will keep the T&amp;P Councils engaged and informed, as set out by Cllr Leake at the initial meeting on 23 February.</p>

**Not included in the scope:**

Anything unrelated to, or unaffected by the Community Infrastructure Levy.
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**Terms of Reference prepared by:** R M Beaumont

**Terms of Reference agreed by:** The Working Group

**Working Group structure:** Councillors Leake, Angell, Mrs Birch, Heydon, Virgo and Worrall

**Working Group Lead Member:** Cllr Leake

**Portfolio Holder:** Councillor Mrs Ballin. **NB** – the usage of CIL income will be applied to a wide range of Council activities within the portfolios of other Executive Members.

**Departmental Link Officer:** Bev Hindle

**BACKGROUND:**

1. At its meeting on 10 January 2012, the Executive received a report on the Community Infrastructure Levy (CIL) and resolved:
  - That the Overview and Scrutiny Commission be invited to establish a working group to support the development of the Council's first Community Infrastructure Levy;
  - That the Commission considers inviting a representative of the Town and Parish Councils onto the working group.
  
2. The report to the Executive explained that the CIL will become the key mechanism by which the Council will secure money to create and modify infrastructure to ensure the impact of development is mitigated. The levy is important for the entire Council and all

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<sup>3</sup> Newark & Sherwood, Shropshire CC, and Redbridge LBC.

its services and therefore it would be beneficial if a representative group of Members were to support the creation of it.

3. CIL is a standardised tariff system for collecting contributions towards infrastructure provision from developers of residential and commercial development. It is up to Councils whether or not to introduce a CIL, but if they do not, then by April 2014, they will not be able to continue with their own system via s106 planning obligations for pooled contributions as the Council presently does through the 'Limiting the Impact of Development' Supplementary Planning Document. CIL is very important for Bracknell Forest where planned development will result in the need for significant highway improvement works and a new secondary school, among other infrastructure requirements.

### **SPECIFIC QUESTIONS FOR THE PANEL TO ADDRESS:**

1.	The nature, timing and estimated cost of the Borough's infrastructure needs
2.	The calculation of the 'viability gap' (see scope of review, above)
3.	Is there a sound case for any differential CIL rates, exemptions and exceptions?
4.	The estimated income from CIL and Section 106.
5.	What has the experience of other councils been of CIL to date?
6.	What do private sector property developers think about how CIL should be applied in Bracknell Forest?
7.	The financial and other risks associated with the introduction of CIL
8.	The Governance arrangements for the use of CIL income, to ensure funds are used fully and properly, and there is open annual reporting
9.	Do the arrangements with Town & Parish councils provide for their proper participation in the CIL?

### **INFORMATION GATHERING:**

#### **Witnesses to be invited**

<b>Name</b>	<b>Organisation/Position</b>	<b>Reason for Inviting</b>
One or more councils which have already progressed their CIL arrangements	TBC – possibly Portsmouth, and Newark & Sherwood	To learn about the experience of other councils in introducing CIL
Representative(s) of private sector property developers	TBC	To learn about the perspective of private sector property developers about the CIL
Anthony Lee	BNP Paribas	To understand the Borough's CIL Viability Assessment and receive views on the development of CIL nationally
Councillor Mrs Ballin Vincent Paliczka Alan Nash Alex Jack Bev Hindle Max Baker	Bracknell Forest Council	To be informed about CIL, and to understand the roles and actions of the Executive Member and Officers involved in CIL

## Site Visits

Location	Purpose of visit
TBC	It is likely that one or more visits will need to be made to meet the other councils which have already progressed their CIL arrangements

## Key Documents / Background Data / Research

1.	Localism Act 2011 sections relating to CIL and associated government regulations
2.	DCLG guidance on CIL
3.	BFC Major Infrastructure Schedule/ Infrastructure Delivery Plan
4.	BFC Preliminary draft CIL Charging schedule

## TIMESCALE

**NB** – Timescale to be reviewed when updated timeline for introducing CIL is available

Starting: February 2012

Ending: June 2013

## OUTPUTS TO BE PRODUCED

A report containing recommendations as necessary to the Council's Executive.

## REPORTING ARRANGEMENTS

Body	Date
Overview and Scrutiny Commission: Report of the Working Group for the Commission's adoption	TBC. The ongoing nature of the work up to the introduction of the CIL might require an interim report before a final report in c. June 2013

## MONITORING / FEEDBACK ARRANGEMENTS

Body	Details	Date
Overview and Scrutiny Commission: - Progress reports to each Commission meeting	A brief summary of the progress of the Working Group, for information and discussion	29 March 2012 and subsequently
Parish and Town Councils Liaison Group: - Progress reports to each meeting	A brief summary of the progress of the Working Group, for information and discussion	28 March and subsequently

For further information on the work of Overview and Scrutiny in Bracknell Forest, please visit our website on <http://www.bracknell-forest.gov.uk/scrutiny> or contact us at:

Overview and Scrutiny, Chief Executive's Office, Bracknell Forest Council, Easthampstead House, Town Square, Bracknell, Berkshire, RG12 1AQ, or email us at [overview.scrutiny@bracknell-forest.gov.uk](mailto:overview.scrutiny@bracknell-forest.gov.uk) or telephone the O&S Officer team on 01344 352283