

Environment & Transport Select Committee
15 December 2014

**The Community Infrastructure Levy
& the Horley Master Plan**

Purpose of the report: Scrutiny of Services and Budgets

The purpose of the report is to:

Update the Select Committee with regard to the funding and the delivery of Horley Master Plan infrastructure and service improvements;

Explain the changes to the way in which developer contributions can be secured for infrastructure provision as a consequence of the introduction of the Community Infrastructure Levy; and

Outline Reigate and Banstead Borough Council's proposals with regard to the planned introduction of the Community Infrastructure levy in Spring 2016.

Executive Summary

1. The Horley Master Plan (HMP) is a comprehensive and co-ordinated strategy to deliver 2,600 new homes supported by an extensive package of infrastructure and service improvements.
2. As part of the HMP the County Council and the Borough Council identified a range of public transport, highways, education, recreation and community improvements that would be required.
3. The Plan makes clear that the Councils will seek to secure this infrastructure and service improvements by negotiation with developers.
4. This includes both developers direct provision, such as on site infrastructure, as well as financial contributions towards infrastructure and service improvements.
5. It is envisaged that the majority of the developer provision and financial contributions will be secured through Section 106/278 agreements relating to two strategic housing sites – the North East Sector (NES) and North West Sector (NWS) – which in total will deliver 2,200 homes.

6. To date two Section 106 agreements (S106) have been completed for the NES (710 dwellings) and a separate agreement has been negotiated for the NWS (1,510 dwellings).
7. Other contributions are currently being secured through the Horley Infrastructure Tariff, which is a standardised charge paid on every new residential unit on smaller sites (380 units).
8. As part of its commitment to the HMP, the County Council has already defrayed considerable expenditure to deliver a number of key infrastructure and service improvements in advance of developer contributions being received.
9. The introduction of the Community Infrastructure Levy will however fundamentally change the way in which developer contributions are secured.
10. CIL Regulations will mean that the use of S106s will be considerably scaled back.
11. Moving forward Section 106 agreements will only be used to secure site specific infrastructure or contributions which are necessary to approve a planning proposal which would otherwise be considered unacceptable in planning terms.
12. CIL on the other hand is a general levy which will be applied to the majority of new development. CIL will become the mechanism for raising funds for infrastructure that is needed more generally as a result of, and to support, growth in a particular area.
13. Reigate and Banstead Borough Council is planning to introduce CIL in Spring 2016 and is presently consulting on its Draft Preliminary Charging Schedule.
14. The Borough Council is proposing to introduce differential rates for residential development including a levy of £120 per on new homes in urban areas and a higher levy of £180 per sqm for the NWS.
15. The purpose of a higher rate for the NWS is to ensure that in the unlikely event that the S106 is not signed, or the Consortium resubmits a fresh application for the development after CIL has been adopted in the Borough, sufficient developer contributions can still be pursued for the identified infrastructure and to deliver the HMP.
16. Under this scenario, the Councils would continue to secure some elements of the infrastructure from the NWS through S106, whilst other elements would need to be pursued through CIL.
17. An assessment of the contributions that would be received under this S106/CIL scenario demonstrates that this would secure a similar amount of funding to that which has been negotiated through the current S106.
18. CIL Regulations also mean that from April 2015, Councils will no longer be able to pool more than five S106s together to pay for a single infrastructure project or type of infrastructure. In effect this means that the Horley Infrastructure Tariff will no longer be able to be applied after April 2015.

19. To avoid the risk of falling foul to this pooling restriction, it is important that the County Council fully considers what infrastructure should be secured through S106 agreements and what should be pursued under CIL.
20. Importantly CIL is not ring-fenced and as such the Borough Council, as the charging authority, will be able to allocate CIL receipts as it wishes, provided that is in accordance with the CIL Regulations. Currently therefore the County Council has no certainty about how much CIL funding might be secured for HMP infrastructure and service improvements.
21. In light of the above is recommended that discussions take place with the Borough Council with a view to securing formal agreement to how tariff and CIL receipts will be allocated, once CIL is adopted, to ensure that the identified package of HMP infrastructure and services can be funded.

The Horley Master Plan

22. The Horley Master Plan (HMP) is a comprehensive and overarching strategy to deliver 2,600 new homes in Horley, supported by a range of infrastructure and service improvements.
23. Reigate and Banstead Borough Council's adopted Local Plan (2005) provides the policy framework for the HMP and further guidance is contained in the Horley Infrastructure Provision SPD (2008).
24. The HMP allocates two major sites for the majority of the 2,600 homes. Two new neighbourhoods - the North East Sector (NES) and the North West Sector (NWS) – will provide 710 and 1,510 dwellings respectively and a further 380 dwellings will be built on a number of smaller sites around the town.
25. The HMP recognises the importance of planning for the cumulative impact of development. The plan therefore identifies a wide range of infrastructure and facilities that are necessary to ameliorate the impact of the development and to ensure that it is integrated well with the existing urban area.
26. The HMP is clear that all of the planned development should provide a fair proportion of the costs of this infrastructure.
27. Development is expected to provide either direct provision of infrastructure, linked to the two strategic housing sites such as new roads, school sites etc, or direct financial contributions towards infrastructure and services to be delivered by either the County or Borough Council.
28. In 2005, prior to the adoption of the Local Plan, the County's Executive agreed the package of infrastructure and service provision that would be required and authorised the completion of all relevant S106 and 278 agreements. A summary of the agreed contributions is outlined below.

Forecast of Developer Contributions agreed by SCC including both direct provision and financial contributions

Passenger Transport Fastway bus service infrastructure. Cost of running Fastway over 10 years Dial a ride Horley Station	£10.5m
Highway works Access roads and junctions improvements Traffic calming Cycling and pedestrian facilities	£10.5m
Education Primary education (inc. two x 1 FE sites) Secondary education Post 16 provision	£10.0m
Community services Library & community info. centre Youth provision	£1.0m
Total	£32m

HMP Funding & Delivery

29. Funding for infrastructure and service improvements has to date been secured in two main ways.

Section 106 agreements

30. It is anticipated that the vast majority of the infrastructure and service improvements will be secured through Section 106 (S106) agreements, which have been negotiated for each of the two strategic housing allocations – the NES and the NWS.
31. To date two separate S106s have been signed, both relating to the NES. The NES is well advanced and it is anticipated that it will be fully built out by 2015, delivering 710 homes.
32. Another S106 has been negotiated for the NWS. Although there has been considerable delay in the completion of this agreement, it is anticipated that it will be signed imminently.

Horley Infrastructure Tariff

33. To secure contributions from smaller sites in Horley, the Borough Council adopted the Horley Infrastructure Tariff (the tariff) and the basis for this is set out in the Horley Infrastructure Obligations SPD.
34. The tariff is a uniform charge payable on each new residential unit on smaller sites (up to 380 units).
35. Contributions are collected towards a variety of improvements, as set out in the table overleaf

Horley Infrastructure Tariff Contributions per residential unit	
Public transport	
Community Travel Plan	£202
“Fastway” quality bus route works	£1,217
Bus services and other costs	£1,055
Cycling and pedestrian facilities	£669
Highway works	£227
Town centre public realm works	£446
Education	
Primary	£5,211
Secondary	£2,623
Post 16	£134
Community services	
Library and Youth service	£407
Total payable to SCC	£11,784
Recreation and Leisure	
Horley Day Centre	£108
Town Park	£1,226
Leisure Centre	£1,302
Allotments	£32
Riverside Green Chain	£1,362
Total payable to RBCC	£4,033
TOTAL	£16,224

36. To date contributions have been secured from 259 units which represents two thirds of the total that is planned for smaller sites.

Infrastructure delivery to date

37. As part of its commitment to the HMP, the County Council has already defrayed considerable expenditure to deliver a number of key infrastructure and service improvements in advance of developer contributions being received (see Part 2 annex 1).
38. To date this includes works to Longbridge roundabout and the A23/Massetts Road as part of core bus route improvements; Fastway bus running costs; the construction of a new transport interchange and works to Horley station; the delivery of a new youth centre; and the completion of a new one form entry primary school in the NES.

The Community Infrastructure Levy
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39. The Community Infrastructure Levy (CIL) is a standardised charge which local planning authorities, as “charging authorities”, can decide to levy on new development.
40. CIL is intended to provide a fair and transparent means to ensure that developers contribute towards the cost of providing the general infrastructure that is necessary to support growth, in line with the local authorities' development plan.

41. This includes both local and sub-regional infrastructure such as flood defence, highways and transport facilities, education, health facilities, open space, recreation and sport.
42. Under the CIL regulations, money collected through the levy can be used to fund the provision, improvement, replacement, operation or maintenance of infrastructure.
43. CIL is levied in pounds per square metre of the net additional increase in internal floorspace and is charged on any development where the gross internal area of new build exceeds 100 sqm and on one or more dwellings of any size.
44. CIL is effectively a development tax. It is compulsory and non-negotiable, though some development is exempt, including social housing, charitable development and self-build.
45. The CIL Regulations require 15% of CIL income to be spent on “neighbourhood projects” at the local level.
46. Charging authorities can set one standard rate or, if justified, specific rates for different areas and types of development.
47. The rate(s) (at pounds per sqm) set in a charging schedule must be based on appropriate and available evidence and must aim to strike a balance between the desirability of funding (in whole or in part) the estimated total cost of infrastructure required to support the development of the area, taking into account other actual and expected sources of funding; and, the overall potential effects of the levy on the economic viability of development across the area.
48. When a charging authority introduces CIL, the intention of the regulations is that the use of S106 requirements should be scaled back to those matters that are directly related to a specific site and which are necessary to make the development acceptable in planning terms, which might include, for example, a new road, play areas and affordable housing.
49. Regulation 123 of the CIL Regulations state that charging authorities must set out a list of those projects and/or types of infrastructure that it intends to fund through levy income. To avoid developers being “double charged” any infrastructure identified on this list cannot then be secured through S106 agreements.
50. Importantly, from April 2015, Regulation 123 also limits the use of planning obligations where there have been five or more obligations in respect of a specific infrastructure projects or a type of infrastructure entered into on or after 6 April 2010.
51. For charging authorities, the process for putting a CIL in place is as follows:
 - Public consultation on the Preliminary Draft Charging Schedule (PDCS)
 - Public consultation on a draft charging schedule
 - Charging schedule examination

- Examiner's report published
- Approval of the charging schedule by a resolution of the full council of the charging authority

Reigate and Banstead's Community Infrastructure Levy

52. Following the adoption of its Core Strategy earlier this year, the Borough Council now wishes to press ahead with the adoption of CIL.
53. In November 2014 the Borough Council's Executive approved its PDCS for public consultation, which is backed up by supporting evidence.
54. This includes the Infrastructure Delivery Plan (IDP) which identifies and prioritises all the infrastructure works and projects needed to support planned development in the borough over the next 15 years. The IDP was initially prepared following consultation with relevant service providers, including the County Council, to support the Core Strategy and will be reviewed at regular intervals.
55. Secondly the Council has undertaken a detailed economic viability study, in order to demonstrate that the proposed charges do not prejudice the delivery of development in the borough. This study assesses the ability of a range of hypothetical but typical housing and commercial development schemes to pay CIL.
56. Taking account of the infrastructure funding gap, viability evidence and the specific requirements of the regulations and practice guidance, the Borough Council are proposing the following levy rates, outlined in the table below:

RBBC Proposed CIL Charges	
Development Type	Proposed charge (per square metre of net additional floorspace)
New housing in the urban area	£120
New housing in the Horley North West Sector	£180
New housing in the Sustainable Urban Extensions and the rest of the borough	£240
Convenience retail (supermarkets)	£160
All other types of development	£Nil

57. It should be noted that as explained earlier, the CIL Regulations require 15% of CIL income to be spent on "neighbourhood projects" at the local level. The Town Council in Horley will be responsible for spending the 15% "neighbourhood allowance" in their area.
58. To inform the consultation on the PDCS the Borough Council has prepared a draft Regulation 123 list, which is outlined in the table below.

RBBC's regulation 123 list

Project or type of infrastructure	Exclusions
Education facilities - Primary schools - Secondary schools - State-funded early years provision	Site-specific facilities whose need is directly and wholly created by a specific development and therefore necessary to make it acceptable in planning terms, specifically including: -The primary school, early years provision and associated facilities to be located within the Horley North West Sector
Highways and transport - Strategic road network - Local road network - Public transport - Pedestrian and cyclist facilities - Public realm	On and off-site works to highways, pedestrian and cyclist facilities and public transport provision required to serve a new development and necessary to make it acceptable in planning terms, specifically including: - The A217 and A23 spine roads serving the Horley North West Sector - Pedestrian and cycle route works between the Horley North West Sector and Horley Town Centre - Physical works and service running costs to enable the provision of a bus service between the Horley North West Sector and Horley Town Centre
Healthcare facilities - Primary care (GPs) - Acute care - Healthy living initiatives	Site-specific facilities whose need is directly and wholly created by a specific development and therefore necessary to make it acceptable in planning terms

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Implications of CIL for the HMP**Securing contributions from the NWS**

59. The NWS is the largest strategic housing allocation in the Borough and its delivery, as well as the contributions it makes to infrastructure, is key to the HMP.
60. The Borough and County Councils have been working with the NWS development consortium over a number of years to negotiate a comprehensive package of infrastructure and service improvements to make the development acceptable in planning terms.
61. The S106 has been engrossed and is presently in the process of being signed by the respective parties. As such it is anticipated that the agreement will be completed and the associated outline planning consent issued and implemented prior to CIL being formally adopted by the Borough Council.

62. In these circumstances, the development would continue to be bound by that S106 agreement. Any reserved matters applications would fall outside of CIL and any amendment applications under section 73 of the Town and Country Planning Act 1990 would only be liable for CIL insofar as regulation 128A of the Community Infrastructure Levy Regulations 2010 (as amended) dictates.
63. However, in the event that the S106 has not been signed, or the Consortium resubmits a fresh application for the development after CIL has been adopted in the borough, the Councils may wish to revisit the mechanism(s) through which it is most appropriate to secure the various contributions.
64. Whilst for some elements of infrastructure, the S106 agreement is likely to remain the most appropriate method to secure delivery or contribution (for example on-site works or works towards which only the NWS is contributing), other elements – particularly where the NWS was making a partial contribution to a wider project – are likely to be more appropriately pursued through CIL as this will provide greater flexibility over spending and pooling.
65. In recognition of this, the assessment of viability which has been carried out for the NWS – and therefore the resultant charge – makes a significant allowance for contributions through S106 (approximately £21.5m or £14,270 per unit).
66. Taking account of the evidence, and mindful of the national CIL guidance which advises charges are not set too close to the margin of viability, the Borough Council is proposing a charge of £180/sqm for housing in the NWS.
67. Importantly, under this scenario, the combined infrastructure contributions which would be secured from the NWS – at £43.2m – would be comparable to the total secured through the current S106 agreement (see Annex 2)
68. In order to be totally confident that the County Council does not fall foul of pooling restrictions it is very important that full consideration is given to what infrastructure the authority would like to be pursued through CIL and what should be secured through S106, representations then being made to the Borough Council in respect of its 123 list as is necessary.

Securing contributions from remaining small sites

69. To date contributions have been secured from two thirds of the 380 new homes that were originally anticipated to come forward on smaller/windfall sites.
70. Based on an assessment of current outstanding planning permissions in Horley it is forecast that contributions will be secured through existing agreements from at least a further 61 units in the next two years.
71. Whilst it is possible that contributions may be secured from a greater number of exiting agreements, this is considered to be less certain as a result of uncollectable contributions and the fact that as the pooling

restrictions come into force in April 2015, the Borough Council will no longer be able to apply the tariff.

72. The remainder of the contributions from smaller sites are likely to be collected by the Borough Council through CIL, Annex 3 shows the total forecast of remaining income that will be received from these remaining sites.
73. However importantly, as Annex 4 demonstrates, provided CIL funds are allocated to the HMP the County Council should receive sufficient income to cover both current and planned expenditure.

Ring fencing of contributions

74. CIL is not ring fenced and as such the Borough Council, as the charging authority, will be able to spend and allocate CIL receipts as it wishes, provided that is in accordance with the CIL Regulations.
75. The Borough Council acknowledges that a transparent process is needed to enable the prioritisation of how CIL receipts are spent and recognises that this is likely to involve infrastructure providers bidding for money.
76. However the Borough Council also recognises in an Executive report that
“it is also important that existing commitments to long-term infrastructure projects continue to be fulfilled once CIL is in place. This is particularly the case for the Horley Masterplan and other regeneration areas (such as Redhill and Preston), where both the Council and County Council have already defrayed up-front expenditure.”
77. The Borough also acknowledges that
“in practice, it is likely that the majority of the money collected through CIL will be passed to partner organisations, in particular the County Council for education and transport provision”
78. Although the above should be acknowledged, due to the considerable money that has already been defrayed in Horley and the significant further infrastructure and service improvements that have been identified, the County Council should enter into discussions with the Borough Council to ensure sufficient funding will be made available.
79. The best way in which this would be achieved would be for the two authorities to enter into an appropriate agreement which commits to support the infrastructure and service improvements that have been identified as part of the HMP.
80. This could include a commitment to cover the payment of any ‘shortfall’ in small sites income. It could also ring fence any monies collected through CIL for the infrastructure improvements that both parties have identified are required, in the scenario where the S106 for the NWS is not completed, or the NWS consortium submit a new application for the development after CIL has been adopted.

Conclusions:

81. CIL regulations will bring about a fundamental change to the way in which developer contributions are sought towards infrastructure provision.
82. Once adopted CIL will fund general infrastructure improvements within a local area that support growth.
83. CIL will not replace S106 agreements and S106 agreements will still have an important role in securing infrastructure which is critical to the grant of planning permission
84. The Borough Council is planning to introduce CIL in 2016 and is currently consulting on their Preliminary Draft Charging Schedule.
85. The Borough Council is proposing a higher CIL rate for the NWS which should be supported. This is an approach which will help to ensure that the NWS continues to provide an appropriate and sufficient level of infrastructure funding in the unlikely event that the S106 is not signed or the consortium submit a new application once CIL has been adopted.
86. The County Council needs to fully consider which elements of infrastructure in Horley it wishes to continue to be secured through S106 and what should be pursued through CIL.
87. CIL monies are not ring fenced and can be spent by the charging authority as it wishes provide that it is in accordance with the CIL regulations.
88. The County Council should therefore enter discussions with the Borough Council with a view to reaching an agreement to fund the existing infrastructure and service improvements planned in the HMP through CIL receipts as far as is necessary.
89. The County also need a commitment to fund any gap in funding from smaller sites that might arise from the inability to apply the tariff after April 2015.

Recommendations:

90. It is recommended that the Select Committee endorse:
 - a) The principle of the Borough Council's proposal to charge a higher levy for residential development in the North West Sector
 - b) Officers making formal representations on the Borough Councils Preliminary Draft Charging Schedule including its Regulation 123 list, as necessary
 - c) The two authorities work together to reach agreement by way of a memorandum of understanding to ring fence monies to ensure that there is sufficient funding to deliver the identified infrastructure in and service improvements in the HMP.

Next steps:

91. The next steps are:

- The County Council considers what is included and excluded from the Regulation 123 list
- The County Council provides feedback to the Borough Council on the Preliminary Draft Charging Schedule, making formal representations to the consultation where necessary
- The County Council formally approach the Borough Council with a view to commencing joint discussions to prepare a memorandum of understanding

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Sources/background papers:

- The Adopted Local Plan (2005) Reigate and Banstead Borough Council
- Horley Infrastructure Provision Supplementary Planning Document (2008) Reigate and Banstead Borough Council
- Community Infrastructure Levy: Preliminary Draft Charging Schedule Executive Report (13 November 2014) Reigate and Banstead Borough Council
- Horley Master Plan Executive report (2005) Surrey County Council
- Community Infrastructure Regulations

Consultees:

- Trevor Pugh (Surrey County Council)
- Dominic Forbes (Surrey County Council)
- Paul Druce (Surrey County Council)
- Caroline Smith (Surrey County Council)
- Billy Clements (Reigate and Banstead Borough Council)
- Luci Mould (Reigate and Banstead Borough Council)