*PART 1 – PUBLIC DOCUMENT	AGENDA ITEM No.
	8

TITLE OF REPORT: COMMUNITY INFRASTRUCTURE LEVY

REPORT OF THE STRATEGIC DIRECTOR OF PLANNING, HOUSING AND ENTERPRISE
PORTFOLIO HOLDER: COUNCILLOR TOM BRINDLEY

1. SUMMARY

1.1 This report considers whether or not the Council should look to implement a Community Infrastructure Levy (CIL) in North Hertfordshire. CIL is a way of collecting money from new developments to help pay for infrastructure costs. It is optional for each district whether or not to introduce it. There are arguments both for and against CIL in terms of how much money might be collected and how the system might be administered. Having considered the arguments officers suggest that, in its current form, CIL would not be the best way of maximising either affordable housing or monies for infrastructure in North Hertfordshire. It is therefore suggested that for the time being CIL is not pursued. The issue can be looked at again once the Local Plan is complete.

2. RECOMMENDATIONS

2.1 That Cabinet resolves not to pursue a Community Infrastructure Levy for North Hertfordshire for the time being.

2.2 That officers be tasked with preparing a revised Planning Obligations Supplementary Planning Document before April 2015 to take into account the operation of the pooling restriction on Section 106 obligations.

3. REASONS FOR RECOMMENDATIONS

3.1 To give guidance to the development industry on the mechanisms the council will seek to use for securing contributions from developments towards the cost of infrastructure.

3.2 To enable the viability work needed to support the new Local Plan to be prepared in light of the funding mechanisms the Council intends to use.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 The Council could proceed to the next stages of preparing a Community Infrastructure Levy. However, for the reasons set out under section 8, this is not advised by officers for the time being. If the legislation or other circumstances change, the balance of arguments may change in future, so it is suggested that the option to introduce a CIL be kept under review.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

5.1 Councillor Brindley, as Portfolio Holder for Planning, Transport and Enterprise, has been kept informed on the matters set out above. Consultation on a Preliminary Draft Charging Schedule for CIL was carried out in February and March 2013.

6. FORWARD PLAN

6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on 1 July 2013.

7. BACKGROUND

7.1 The question of whether and how development should contribute some of its profits towards the local area has a long and complicated history. The grant of planning permission for development of a piece of land can significantly increase the value of that site compared to the site's previous use. After the Town and Country Planning Act 1947 the profits from developing land were effectively nationalised, with the state having the right to the difference in value between the existing use of a site and the value of the site after planning permission was granted. Through the 1950s to 1980s successive governments legislated to change who received these profits, alternating between on the one hand allowing developers and landowners to retain their profits, and on the other hand using various forms of 'betterment tax' to try and reclaim some or all of that value for the state.

7.2 Since 1990 the position has been that where a development would have an unacceptable impact on a local area, notably on the delivery of services and infrastructure, a developer may enter an agreement with the local planning authority to cover the costs of improving that infrastructure. This is allowed for under section 106 of the Town and Country Planning Act 1990, and such agreements are therefore known as section 106 obligations. Affordable housing is often secured through a section 106 obligation.

7.3 Section 106 obligations are therefore a compromise position. The state does not seek to retain the whole uplift in development value which arises from the grant of planning permission, but nor does the whole of that uplift go to landowners and developers. Instead, the state (in the form of local authorities) claims money where there are proven impacts, and the money is contractually required to be spent on addressing those impacts.

7.4 In 2004/05, the government of the time tried to introduce a 'planning gain supplement' moving back towards capturing the difference in value which arises with the grant of planning permission. The attempt was abandoned, and the principle that money has to be linked to meeting some identified deficiency therefore remains.

7.5 One of the main problems with section 106 obligations is that they have to be negotiated on a site by site basis. This can make it difficult for developers in deciding how much they should be bidding for sites. To try and overcome this uncertainty, some authorities (notably Milton Keynes initially) started introducing standard charges for new development. These charges were still collected under section 106, but were based on the argument that all development has an impact on local infrastructure and should therefore be contributing.

7.6 Following this approach, North Hertfordshire introduced a Planning Obligations supplementary planning document (SPD) in 2006, giving a formula based on the number of bedrooms for developers to calculate what their section 106 costs might be. This has led to most sites in North Hertfordshire since 2006 contributing towards the cost of infrastructure. Members may have come across the term 'unilateral undertaking' being used in connection with the 2006 Planning Obligations SPD. Unilateral undertakings are a particular type of obligation under section 106 that is only signed by the developer, instead of bilaterally by both council and developer. They tend to be used for smaller schemes.

7.7 The Government then introduced the Community Infrastructure Levy in 2010. The original intention appears to have been to try and formalise the standard charge type approaches that places like North Herts and Milton Keynes were now doing. However, the Community Infrastructure Levy is structured rather differently. It is optional whether to introduce it, but the regulations which enable CIL also curtail the ability of local authorities to continue to use section 106 obligations in the same way after 2014 (although the Government has indicate it may push the changeover date back to 2015).

7.8 Specifically, when determining planning applications after 6 April 2014 (or, as seems more likely now, 2015), local authorities will not be able to seek section 106 monies for pieces of infrastructure that they have already collected money from five other section 106 obligations for. In effect, this restriction prevents the 'standard charge' type arrangements that North Hertfordshire and other places were doing, which pooled the contributions from many different sites together. The clear intention of this pooling restriction is to encourage authorities to adopt a Community Infrastructure Levy. However, as discussed below, the way CIL has been designed means that its advantages in terms of being able to collect money from all sites do not necessarily outweigh the restrictions on section 106 obligations.

7.9 For authorities which do wish to implement a CIL, there are two stages of public consultation which must be carried out: 'Preliminary Draft Charging Schedule', then 'Draft Charging Schedule'. After both these consultations have been undertaken, an independent inspector has to carry out an examination into the proposals before the CIL can be implemented. North Hertfordshire published a Preliminary Draft Charging Schedule for consultation in February 2013. The purpose of this report is to decide whether to proceed to the next stage of preparing a Draft Charging Schedule.

8. ISSUES

How CIL would work

8.1 Unlike section 106, which is negotiated and agreed on a case by case basis, CIL is a tax. Non payment of CIL is therefore a criminal offence, and the regulations do have provisions in extreme cases to allow people to be committed to jail. As a tax, CIL has to be taken into account before any other claims can be made for the developer to fund other things. CIL cannot be used to pay for affordable housing. Therefore, for sites where affordable housing is required, a section 106 obligation or condition of planning permission will still be needed to secure the affordable housing. However, as a tax, CIL would take precedence over the affordable housing in issues where a site was of marginal viability.

8.2 CIL is charged in pounds per square metre of floorspace. It is only levied on the net increase in floorspace on a site, so previously developed sites with significant amounts of old floorspace to either re-use or demolish will potentially pay little, if any, CIL.

8.3 Under CIL there is a relief for affordable housing, meaning in effect that no CIL is collected from affordable homes. This is quite a contrast from the position in the 2006 Planning Obligations SPD, under which affordable homes actually paid slightly more towards the standard charge, based on evidence that there are more children per house in affordable homes and therefore a greater requirement for education in the area will arise.

8.4 The District Council would be the charging authority for CIL, but would not be the body which delivered most of the infrastructure. Much of the money would need to be passed to bodies such as the County Council or Highways Agency who actually deliver the infrastructure. Whilst the District Council would have the ability to decide how much

money it gave to any infrastructure provider, it is clear that this would be a complicated decision.

8.5 Of money collected under CIL, the Council would be obliged to pass 15% to local neighbourhoods to spend (subject to a cap of £100 per existing dwelling). For areas with a parish council, this money would simply be passed to that parish council. For areas without a parish council, the district would still administer the money, but would need to set up arrangements to enable the communities of those unparished areas to decide how that money was to be spent. In any area where a neighbourhood plan has been adopted, the proportion increases to 25% (not subject to any cap).

Viability

8.6 The CIL has to be based on an up to date understanding of the viability of development in an area, and of the infrastructure needs of an area. As part of the work in drafting the Preliminary Draft Charging Schedule, a viability study was carried out for the Council by Dixon & Searle Partnership, and an Infrastructure Delivery Plan was prepared in-house.

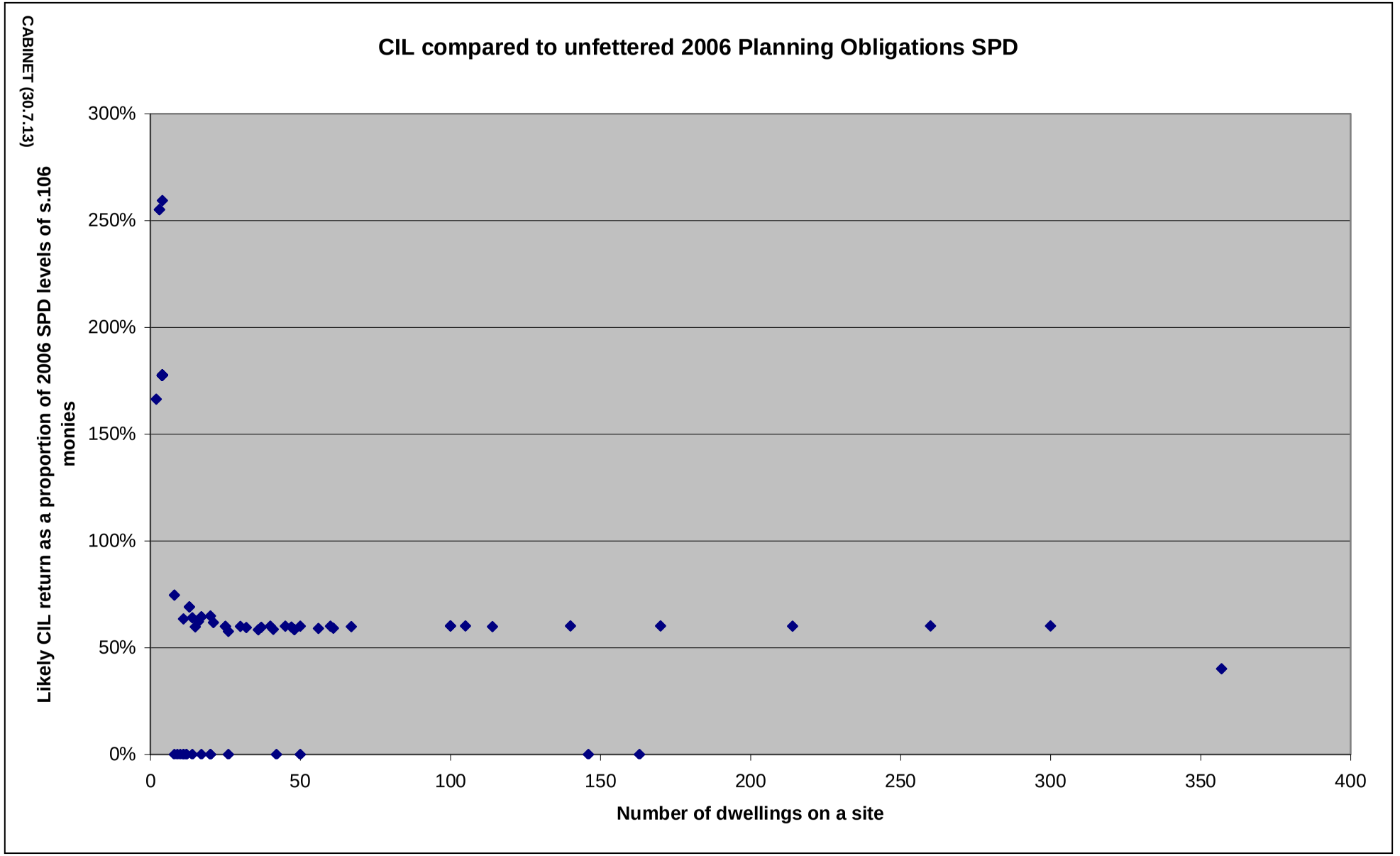
8.7 The critical issue for a council in setting the CIL rate is that it must strike a balance between the overall viability of development in the area and the need to fund infrastructure. Significant variations in the viability of development in different parts of a district can be accommodated by setting different rates. We proposed setting a rate of £120/m² for most of the district and £80/m² for the peripheries of Luton and Stevenage. These rates of CIL were considered to be the highest that could reasonably be achieved in the district so as to not put the viability of development at serious risk.

8.8 The Government has also allowed that on the largest sites (those with very significant on-site infrastructure costs) a district may set a £0/m² rate where it is shown that the on-site costs are greater than the CIL might be. Therefore, in the analysis of likely returns later on in this report we have excluded considering any sites for over 500 dwellings, as they would almost certainly be excluded from paying CIL anyway.

8.9 Because CIL is simply charged in pounds per square metre, it does not take into account the differing return profiles of smaller and larger sites. Larger sites tend to have economies of scale meaning they may make more money per house. Smaller sites are much more volatile in how much profit they make. Someone building a single detached house on their very large side garden will probably make a substantial return, but someone who has pieced together several different small parcels of land from surrounding owners and then had to pay to bring utilities onto the site will probably see a far lesser return. Developers of large sites tend to be companies who are used to paying section 106 obligations and familiar with the system, whereas developers of single dwelling sites are often individuals, often building for their own occupation and therefore not so motivated by the profit return. It is also worth noting at this point that CIL would also be payable by domestic extensions if over 100m², albeit extensions that size are rare.

8.10 The graph below shows estimated CIL returns as a proportion of the standard charges as set out in the 2006 SPD on a random but plausible sample of sixty real sites drawn from the long list currently being considered for the Local Plan. It is important to stress that this is merely a comparison with what the 2006 SPD tries to achieve, and takes no account of the restrictions being placed on the use of section 106 obligations – that is discussed further later in the report. The purpose of the graph below is more to show the differences between CIL might work and how the 2006 SPD originally worked.

CABINET (30.7.13)



8.11 It can be seen that all sites of over five dwellings would pay less under CIL than they would have done originally under the 2006 SPD – typically around 60%. There are also a good number of sites which are likely to pay very little or nothing under CIL, as they have significant amounts of existing floorspace. Conversely, sites of less than five dwellings (on the extreme left of the graph) pay considerably more than they would have had to under the 2006 SPD. Whilst the viability study says that this level should still be viable, it is clearly a much greater burden on those small sites than has previously been sought, which may create a disincentive to the delivery of those small sites.

8.12 Were the CIL rate lowered to bring the burden on those smaller sites closer to the 2006 SPD levels, it would lower still further the proportion achieved on all the sites of five or more. Alternatively, were the CIL rate raised to bring the larger sites up to the 2006 SPD levels, the smaller sites would see an even greater burden, and our viability evidence indicates that this would start to put development seriously at risk.

8.13 Whilst informative, this analysis can only be part of the picture. We need to consider how the limitation on pooling section 106 agreements might work, because this will reduce the amount that can be collected under section 106. The statutory tests introduced with the CIL regulations in 2010 (repeated in the National Planning Policy Framework) mean that S106 can only be used to levy financial contributions where those contribution are:

- necessary to make a development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

8.14 These statutory restrictions have meant that the Council has been less successful at collecting the full contributions that the 2006 SPD would seek over recent years, and appeal Inspectors have been very critical of some of contributions the Council has sought and often dismissed them as not being in compliance with the tests. These matters are discussed below under 'likely returns'.

Administration

8.15 CIL is likely to be more costly to administer than section 106. In particular, it has to be registered as a land charge, and recovery arrangements would need to be put in place. This would need input from the council's legal and financial teams as well as planning. The existing section 106 administration arrangements would still need to be maintained, given that section 106 will still be used, especially for securing affordable housing. As there is no cap on administration costs for section 106 obligations, that process should remain cost-neutral to administer.

8.16 The council is allowed to keep 5% of the CIL returns to cover its administration costs, which should be adequate, although it is worth noting that the council would need to keep running the CIL collection arrangements at all times, and in periods of less activity in the construction industry there would be a risk that the 5% would not cover the administration costs.

Governance

8.17 CIL is required to be spent on infrastructure. Only a minority of infrastructure (by cost) is actually the District Council's immediate responsibility to provide. Under the 2006 SPD, the District Council collected money for:

- Community centres;

- Leisure
- Play space;
- Pitch sport;
- Informal open space;
- Sustainable transport; and
- Waste collection.

8.18 The County Council under the 2006 SPD actually received the majority of the money on most sites, collecting for:

- Primary education;
- Secondary education;
- Nursery education;
- Childcare;
- Youth facilities; and
- Libraries.

8.19 With a CIL in place, the District Council would need to set out a list specifying what infrastructure it was funding through CIL and what infrastructure it was going to fund through other means. Whilst the District Council can change what items it puts on that list, where such a change would significantly alter the viability of development, there would be a need to consult again on the CIL and have it examined again. This is a change from CIL as first introduced – the 2010 regulations required the list of infrastructure to be prepared, but it did not have to form part of the examination and the council could change it at will. Subsequent amendments (in response to lobbying from the development industry) mean that the list does have to be considered as part of the examination and changes have to be assessed for their impact on viability and the CIL re-examined if there is a significant change to viability.

8.20 With this relative inflexibility in mind, the Council would need to come to some agreement with the County Council and any other service providers who wanted to claim some of the CIL money. It is important to note at this point that CIL was never intended to be the sole funding mechanism for infrastructure – it was the icing on the cake, albeit no-one is quite sure what the cake is supposed to be made of. Several service providers (notably the education department of the County Council) could make a case that even if the whole of CIL was applied to their service it would not cover the cost of providing new infrastructure.

8.21 Concerns have been expressed by some infrastructure providers that CIL does not guarantee funding in the same way that section 106 does. For example, a development may lead to a significant increase in the number of children living near a particular school. If there is a legally enforceable section 106 obligation enabling that school to expand, then the local education authority will not object to that development. Moreover in these circumstances the County Council as education authority is a signatory of the S106 Obligation and receives the funding directly from the developer at time that they agree. If, conversely, there is no section 106 obligation, but instead a CIL payment which may or may not be spent on education, the local education authority may well object to that development on the basis that it cannot be guaranteed that the money for the school's expansion will be forthcoming.

8.22 Using CIL, therefore, there would be some very difficult decision making processes needing to be established on how the money was to be spent. Conversely, using section 106 obligations the arguments are much more clear cut – we look at the impacts any one site has, are bound by the legal tests for when section 106 can be levied, and (crucially) are able to negotiate with the developers.

Likely returns and operation of the pooling restriction on section 106

8.23 If the Government had said that for districts not pursuing a CIL then standard charges such as our 2006 SPD could continue to be used with no pooling restriction, there would be no contest between CIL and section 106 in North Hertfordshire: section 106 would comfortably win. However, that is not the case, and we have to consider the impact the pooling restriction will have.

8.24 Using again our sample of random but plausible sites, we consider first what would have happened under the 2006 SPD without a pooling restriction, then what would happen if we managed to collect money only from the five largest sites in any given settlement, then what would happen if we managed to collect money only from the five largest sites in any given secondary education area.

	s.106 as per 2006 SPD	s.106 Restricted to only 5 largest schemes in each settlement	s.106 restricted to only 5 largest schemes in each secondary education area	CIL
Total estimated receipts generated over plan period to 2031	37,497,522	32,872,678	28,919,145	19,598,400
Total for infrastructure (after deducting administration costs and neighbourhood proportion)	37,345,178	32,812,398	28,882,977	15,678,720

8.25 These calculations are only crude estimates and will vary considerable as the precise mix of sites used and the dwelling types on them will change. However, it is quite clear that even if we are limited to only pooling the section 106 agreements from the five largest schemes in each secondary education area, there is £28.9m for infrastructure, compared to £15.7m under CIL. Restricting the calculation to only the five largest sites in each settlement or secondary education area is a way of trying to quantify what the likely impact of the pooling restriction might be on monies collected for infrastructure. There is still a risk that the 2006 SPD levels of section 106 may not be forthcoming due to the statutory limitations discussed in paragraph 8.13 above. These limitations increasingly mean that the full amounts required under the current SPD are not being collected as in many cases there is not clear justification for the collection of funds towards particular services. At the time that a decision is made to grant planning permission the Council has to identify what project the funds would be spent on and how the development relates to that project. This has proved increasingly difficult since the tests became statutory in 2010 and as more developers challenge the standard approach set out in the 2006 SPD.

8.26 This being the case, the figures in the penultimate column in the table should be treated as maxima. However, even if only 55% of the 2006 SPD targets were actually achieved, and from only the five largest sites in each secondary education area, section 106 would still deliver more than CIL.

8.27 Clearly, new mechanisms will need to be established to replace the 2006 SPD in such a way as to ensure that we are maximising the five schemes that we collect section 106 monies from. Care will also need to be taken with the legal wording in those section 106 obligations. This is discussed further under 'the way forward' below.

Neighbourhood proportion

8.28 From the perspective of the parish councils and local communities, a decision not to implement a CIL does mean that the 15% (or 25% where there is a neighbourhood

plan) of CIL receipts that goes to neighbourhoods would not be forthcoming. This is perhaps a disadvantage of not implementing CIL – and ministers have been keen to show that CIL would lead to communities which take growth receiving a financial incentive.

8.29 That said, given the figures in the table above, it is not necessarily the case that individual neighbourhoods would see less money spent on infrastructure in their areas. Any section 106 obligation will have to show a direct link between the development site and the infrastructure being funded. Therefore section 106 money is likely to be spent locally to development anyway. Moreover, as the figures show, there is likely to be more money secured via section 106 than via CIL.

8.30 The difference is therefore not so much about the amount of money that would be spent in any given neighbourhood – it is about the control of that money and the uses to which it may be put. Under section 106, the money can only spent on projects with a clear link to the development which paid the money, and the council administers the spending. Under CIL, the money can be spent on any infrastructure and in areas with parish councils they administer the spending. Of course, over 60% of the population of North Hertfordshire live in the unparished areas of Hitchin, Letchworth and Baldock – so for the majority of the CIL neighbourhood proportion the district council would still need to be administering the spending, but would have to set up arrangements to show how the community (a term not legally defined in the regulations) have decided on what to spend it.

8.31 On balance therefore, for areas with parish councils there is a disadvantage to not implementing CIL in that they take less direct control over the spending. However, it is probably a choice between more control of less money, or less control of more money. Officers suggest it is probably better to go for the greater amount of money.

Affordable housing

8.32 CIL cannot be used to fund affordable housing, neither do affordable homes pay CIL. The planning department's recent experience of negotiating section 106 obligations is that a good number of sites have some form of viability testing as part of agreeing the section 106 obligation. Negotiations on the viability of a section 106 obligation are allowed for under the Growth & Infrastructure Act 2013, with mechanisms for an appeal to the Secretary of State where a section 106 obligation is alleged to make a development unviable. The clear expectation is that a planning authority should not be unreasonable in the demands it imposes under section 106.

8.33 Under the section 106 system, all contributions are therefore weighed in the balance: both affordable housing and infrastructure. Under CIL, because the CIL is a non-negotiable tax, it has to take precedence. If there is a proven viability issue after payment of CIL, it is therefore the amount of affordable housing delivered which would be the main loser.

8.34 Again, the viability evidence does say that the proposed levels of CIL should still enable levels of affordable housing in accordance with the council's emerging policy on affordable housing. However, the viability assessment is of necessity a broad brush look at viability and a snapshot in time. There will always be sites which lie outside the 'normal' range assessed in the viability study, and circumstances will change.

New Homes Bonus

8.35 One other factor to consider is how CIL relates to New Homes Bonus. The council receives the equivalent of six years' additional Council Tax receipts for each new dwelling created plus a supplement for each of those which are affordable homes. In

effect, the Council receives under the New Homes Bonus about £7k - £8k for each new private home, and £9k - £10k for each new affordable home (spread over six years).

8.36 As we have shown, the burden on smaller sites of a CIL is likely to be greater. Whilst our viability evidence says that they will still be viable at those rates, it clearly must be a disincentive and there is likely therefore to be a proportion of small sites which are not delivered due to CIL. Whilst it is almost impossible to say how many sites that may be that do not come forward, for each one that does not, the council is therefore losing over £7k.

Consultation response

8.37 The Preliminary Draft Charging Schedule was published for consultation in February 2013. The main issues raised were:

- Support from local residents and groups if it led to more money being available for infrastructure;
- Disquiet from the development industry that the rates might be so high as to discourage development, contrary to the Government's stated aim of "significantly boosting" housing supply; and
- Detailed concerns about the proposed differential rate for large and small shops.

8.38 The full consultation responses are now available to inspect at: www.north-herts.gov.uk/cil

8.39 In light of the arguments discussed above, it is clear that CIL is not actually guaranteed to make more money available, and may actually see less money for infrastructure. As to setting it at a rate that discourages development, officers suggest that where sites are of marginal viability, section 106 offers greater scope to negotiate for the council's priorities (i.e. including affordable housing) than CIL does.

8.40 With regard to the particular points about retail rates, the Preliminary Draft Charging Schedule was proposing £120/m² for shops over 280m², and £60/m² for shops under that size. (Apart from housing and shops, no other use was held to make sufficient profit to justify a CIL.) Many in the retail industry were concerned that the differential rate was either illegal or unfair. The Government's more recent guidance on the matter confirms that such differential rates are legal, and several other authorities have now adopted such systems. However, given the overall balance of arguments about housing, and the relatively modest amount of retail floorspace anticipated compared to residential floorspace, it is not considered that the prospect of having a CIL on retail changes the overall conclusion. Therefore, the question of whether or not to have different CIL rates for large and small retail ceases to need an answer.

Conclusion and way forward

8.41 CIL appears to have been designed in a more buoyant housing market and structured for entirely parished unitary authorities, like Shropshire (one of the front runners on CIL). It is too inflexible to take account of the range of viability scenarios present in any district, especially those related to matters other than the location of the site. As a tax, it is more difficult to administer. In North Hertfordshire, it would appear that it may generate less money than even the curtailed section 106 system. It also may have unintended consequence in terms of reducing the amount of affordable housing delivered and discouraging smaller sites from coming forward. Whilst it might hand greater control to local communities over how money is spent, this is a dubious advantage as there would probably be less money to spend under CIL. It would also need more complicated governance arrangements with other infrastructure providers to

be established, and does not guarantee that particular deficiencies in infrastructure will be addressed.

8.42 The balance of arguments may change. The government has tweaked the CIL system every year since it was introduced. The original CIL regulations of 2010 have been followed up with amendment regulations in 2011, 2012 and 2013, and the government is already consulting on another round of amendments. Future amendments may tip the balance back in favour of CIL. However, this seems unlikely as the general trend of the amendments has been to make the system more onerous on local authorities.

8.43 There is also an uncertainty about how the pooling restriction on section 106 agreements actually works. The provisions are not straightforward, leaving room for argument over whether or not an authority has pooled five obligations. Further guidance (or case law after the restriction comes into effect in April 2014, or April 2015 if the Government postpones the date as it has indicated it might) may weigh against continued use of section 106.

8.44 Meanwhile, the Labour party (having originally overseen the creation of CIL) has indicated that if elected it may look to abolish both CIL and section 106 agreements, replacing them with a Community Infrastructure Fund. The details of this have yet to be worked out, in addition to the inherent psephological uncertainty of such statements by opposition parties.

8.45 Having considered the balance of the arguments above, officers recommend not introducing a CIL for the time being, albeit keeping an open mind to whether or not any future changed circumstances or evidence from the amounts of money actually being collected make it worth introducing a CIL at a later date.

8.46 The consequence of this course of action is that we will not be looking to rely on CIL as an income stream when it comes to assessing the viability of the Local Plan. Part of the preparation of the Local Plan includes assessing the viability of its proposals, and therefore we need to know at an early stage in plan preparation the mechanisms we do or don't intend to use. This is why we need to take a decision on CIL now. The viability assessment to be carried out for the Local Plan will include consideration of the viability of certain specific larger sites and general assumptions about smaller sites.

8.47 The other consequence of this course of action is that it underlines the need to update the 2006 Planning Obligations SPD. The pooling restriction does not come fully into force until April 2014, and the Government has indicated that it may change this date to April 2015. Ideally, the council should try and have a new SPD in place for that changeover date. The viability study that will be prepared for the Local Plan may be a useful input to the new SPD. Until then, the 2006 SPD still gives a good basis for identifying what forms of infrastructure may be justifiable. The development management team will need to continue to liaise with service providers to verify if there is a full justification in each case in order to satisfy the legal tests on when section 106 can be used. In the meantime, the wording of section 106 obligations (including unilateral undertakings) granted between now and the changeover date may need more careful legal consideration.

8.48 When the pooling restriction does come into force it will be partly retrospective: the council will only be able to pool five obligations that pay for the same infrastructure where those obligations have been entered into after April 2010. It will therefore be important that the new planning obligations SPD sets out how we will clearly distinguish between infrastructure projects funded prior to the pooling restriction and after it. This is likely to be through rather more specific wording for new obligations tying them to specific projects rather than broad headings.

8.49 In conclusion, therefore, we propose not introducing CIL for the time being, but working to try and prepare a new Planning Obligations SPD before the pooling restriction comes into force. The situation should be kept under review and if the balance of arguments changes (most likely due to better understanding on how the restrictions on section 106 are being implemented), work could resume on CIL after the Local Plan examination.

9. LEGAL IMPLICATIONS

9.1 The Terms of Reference for Cabinet confirm that they should exercise the Council's functions as Local Planning Authority except where functions are reserved by law to the responsibility of the Council or delegated to the Strategic Director of Planning, Housing and Enterprise.

9.2 Further legal advice on the operation of the pooling restriction for section 106 agreements may be necessary as part of preparing the new Planning Obligations SPD. The pooling restriction is contained in Regulation 123 of the Community Infrastructure Levy Regulation 2010 (as amended by the 2011, 2012 and 2013 amendment regulations).

10. FINANCIAL IMPLICATIONS

10.1 As discussed above in section 8, the decision not to implement a CIL at the present time has been taken to try and maximise the revenue available to be spent on infrastructure in the district, and may also have a positive effect on the amount of New Homes Bonus the council receives.

11. RISK IMPLICATIONS

11.1 There are risks in not adopting a CIL. The estimates of likely revenue set out above might prove significantly inaccurate. There are also risks that future reforms might change the balance of the arguments, or that the pooling restriction on section 106 agreements might prove harder to work with than anticipated. In any of these circumstances, the council could proceed to prepare a CIL.

12. EQUALITIES IMPLICATIONS

12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.3 There are not considered to be any direct equality issues arising from this report.

13. SOCIAL VALUE IMPLICATIONS

13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraphs 12.

14. HUMAN RESOURCE IMPLICATIONS

14.1 There are no new human resource implications arising from the contents of this report, although it is worth noting that had the decision been in favour of proceeding with CIL there would need to be further work in establishing precisely how its different collection arrangements would be administered, which may well have involved recruiting extra staff funded by the 5% administration fee.

15. APPENDICES

15.1 None.

16. CONTACT OFFICERS

Report author

16.1 Richard Kelly, Principal Strategic Planning Officer
01462 474847 richard.kelly@north-herts.gov.uk

Contributors

16.2 Norma Atlay, Strategic Director of Finance, Policy & Governance
01462 474297 norma.atlay@north-herts.gov.uk

16.3 Ian Fullstone, Head of Development and Building Control
01462 474480 ian.fullstone@north-herts.gov.uk

16.4 Louise Symes, Strategic Planning and Projects Manager
01462 474359 louise.symes@north-herts.gov.uk

16.5 Mary Caldwell, Development and Conservation Manager
01462 474613 mary.caldwell@north-herts.gov.uk

16.6 Simon Ellis, Principal Planning Officer
01462 474264 simon.ellis@north-herts.gov.uk

16.7 Karen Allen, Senior Planning Officer
01462 474462 karen.allen@north-herts.gov.uk

16.8 Chris Carter, Senior Planning Officer
01462 474477 chris.carter@north-herts.gov.uk

16.9 Jenny Donovan, Technical Support Manager
01462 474234 jenny.donovan@north-herts.gov.uk

16.10 Stephanie Blunt, Senior Technical Support Officer
01462 474308 stephanie.blunt@north-herts.gov.uk

16.11 Andy Cavanagh, Head of Finance, Performance and Asset Management
01462 474243 andrew.cavanagh@north-herts.gov.uk

16.12 Tim Neill, Accountancy Manager
01462 474461 tim.neill@north-herts.gov.uk

16.13 Gavin Ramtohal, Solicitor
01462 474578 gavin.ramtohal@north-herts.gov.uk

16.14 Liz Green, Head of Policy and Community Services
01462 474230 liz.green@north-herts.gov.uk

16.15 Fiona Timms, Risk Manager
01462 474251 fiona.timms@north-herts.gov.uk

16.16 Kerry Shorrocks, Corporate Human Resources Manager
01462 474224 kerry.shorrocks@north-herts.gov.uk

17. BACKGROUND PAPERS

17.1 The February 2013 Preliminary Draft Charging Schedule and the responses to it are both available at www.north-herts.gov.uk/cil