

**Cabinet**

**19 March 2014**



**County Durham Plan and Community  
Infrastructure Levy Charging Schedule:  
Submission**

**Key Decision R&ED/01/14**

---

**Report of Corporate Management Team  
Ian Thompson, Corporate Director, Regeneration and Economic  
Development  
Councillor Neil Foster, Cabinet Portfolio Holder for Economic  
Regeneration**

---

**Purpose of the Report**

1. This report advises Cabinet on the comments received following the final statutory consultation on the Pre-Submission Draft version of the County Durham Plan (the Plan) and the Community Infrastructure Levy (CIL) Draft Charging Schedule. It proposes that Cabinet recommends that Full Council approves both documents for Submission. The Full Council meeting is being held on the 2<sup>nd</sup> of April. The Plan and the CIL Charging Schedule (including Regulation 123 list) will then be submitted to the Secretary of State for Examination by the end of April.
2. A separate report on the financial implications to the Council of the County Durham Plan has also been prepared.

**Background**

3. All Local Planning Authorities have a statutory requirement to prepare and maintain an up to date development plan for their area. The County Durham Plan has been prepared during a time of significant change, the Localism Act has introduced a number of important reforms to the planning system and the National Planning Policy Framework (NPPF) is a streamlined framework replacing the previous national planning policy guidance, which local plans must be in conformity with. The NPPF also encourages the timely development of local plans and contains a presumption in favour of sustainable development.
4. The Pre-Submission Draft was the fifth and final stage of plan preparation. An extensive round of consultation, including nearly 100 events, was undertaken on the Pre-Submission Draft from the 16<sup>th</sup> October until the 9<sup>th</sup> of December 2013.

5. An Adopted Local Plan provides the confidence and direction to allow the Council's economic ambitions to be delivered. If the Council did not have an up-to-date Plan, planning applications would then be assessed in accordance with the NPPF. This would increase the likelihood of new developments being assessed and decided in an unplanned way and reduce the Planning Authority's ability to resist inappropriate development.
6. The Community Infrastructure Levy Regulations (as amended) came into force on the 6<sup>th</sup> April 2010 and give local authorities the option of charging a levy on new development. The CIL ensures that most new development makes a proportionate and reasonable financial contribution to delivering the infrastructure identified in the Infrastructure Delivery Plan (IDP). The IDP identifies existing and future infrastructure deficiencies that need to be addressed if the County Durham Plan's vision for growth is to be achieved. It also shows how, when and where the Council and its partners will address these deficiencies. It was agreed by Members in 2012 but is continually being updated as more up to date information is obtained.
7. It should be noted that the CIL is not a direct replacement for Section 106 Agreements. Section 106 will continue to be used for site specific infrastructure, such as access roads or education provision and also for securing affordable housing. Due to low land values in some parts of County Durham it is important that CIL and Section 106 contributions are set at a level that does not prevent development happening.
8. There is one additional document, the Minerals and Waste Policies and Allocations Document, which will be prepared to complement the minerals and waste policies of the Local Plan. It will contain detailed development management policies and any non-strategic minerals and waste allocations which are considered necessary to meet the future needs of County Durham. Work on the document will commence once the Local Plan has been adopted.

### **Content of the Submission Draft County Durham Plan**

9. The County Durham Plan seeks to guide the future development of County Durham to improve the lives of its existing and future residents. It is therefore a Plan that seeks to meet the differing needs of our communities. The Plan sets the policy framework up to 2030 to support the development of a thriving economy in County Durham while at the same time protecting those things that are important to us all. With improved economic performance central to the Plan, it identifies a number of sites for new employment, new housing, new shopping and new infrastructure to accommodate the growth needed to achieve these ambitions. It also provides the basis for appreciating and enhancing the environment in which we live.
10. The ambition of improving the County's economy is based on increasing the economic performance of the County by enabling a step change in the role and function of the main towns and Durham City to act as economic

drivers, whilst ensuring the rest of the County shares in the benefits of economic prosperity. The Plan seeks to create the conditions, including a better environment for business and the necessary infrastructure, that are needed to enable an increased proportion of the working age population in employment, with all the benefits to residents health, wellbeing and prosperity that follow as a result.

#### Quantity of New Development

11. In order to meet the needs of present and future residents of County Durham and to deliver the Plan's Objectives, the Submission Draft proposes the following levels of development up to 2030:
- **Housing:** At least 31,400 new homes of mixed type, size and tenure;
  - **Employment Land:** 399 hectares of general employment land for office, industrial and warehousing and 100 hectares of specific use sites
  - **Retail:** 9,500 sqm (gross) of new retail floorspace.

#### Spatial Approach

12. Sustainable development and maximising opportunities for delivery are the core principles of the Spatial Approach. Therefore the preferred approach is for development to be delivered in accordance with the following:
- The Main Towns will be the principal focus for significant retail, housing, office and employment providing better transport and service provision with Durham City as the sub-regional centre;
  - The Smaller Towns and Larger Villages will function as the primary local employment and service centres and will continue to meet the needs of dispersed local communities across County Durham, supporting levels of growth commensurate with their sustainability, physical constraints, land supply and attractiveness to the market;
  - Other settlements, not covered by criteria a and b, will deliver smaller but significant levels of development commensurate with their size to meet their social and economic needs and contribute to regeneration;
  - To allow smaller communities to become more sustainable and resilient and to encourage social and economic vitality, development that delivers community benefits, social cohesion and sustainability will be permitted, particularly if it benefits nearby communities that individually lack facilities; and
  - In rural areas, development that meets the needs of the local community, for instance affordable housing and economic diversification, including appropriate tourist development, will be permitted providing the countryside is protected from wider development pressures and widespread new building.

13. An important aspect of the Plan is its deliverability. Previous approaches to new development relied heavily on public sector funding to ensure the viability of sites in areas of deprivation, focusing all efforts on these communities. This scale of funding is no longer available and is unlikely to be for some time to come. Therefore to secure new development we have established a better understanding of the market. As a result new development is directed to locations that are attractive to the development industry but that will still deliver regeneration and economic growth across the County. Furthermore to enable the provision of affordable housing during times of depressed market conditions, then development must be allowed in those areas where there is sufficient land values to fund them. Concentrating development in places with a proven track record of delivery is therefore essential, but this must not be to the exclusion of other areas which will be allowed to meet local needs and continue to regenerate. The distribution and allocation of housing, employment and retail sites reflect the Plan's Spatial Approach.

### CIL Draft Charging Schedule and Regulation 123 List

14. The viability evidence indicates that there is enough additional profit to justify a CIL charge. Due to different land values and market conditions across the County the viability evidence indicates that different levels of CIL can be charged in different areas. The four zones that have been identified are one for the Durham City and Chester-le-Street area, one for West Durham, one for the housing market renewal areas and one for the rest of the County. The different charging rates for each type of development in each zone are shown in the table below.

Type of Development	Durham and Chester-le-Street	West Durham	Rest of County Durham	Housing Market Renewal Areas
Residential Development	£60/m <sup>2</sup>	£30/m <sup>2</sup>	£15/m <sup>2</sup>	£0
Large retail – 1,000 m <sup>2</sup> or above	£150/m <sup>2</sup>	£150/m <sup>2</sup>	£150/m <sup>2</sup>	£0
All other A class development (shops and similar establishments; financial and professional services; food and drink (classes A3-5))	£0	£0	£0	£0
All B class development (business, industry, storage and distribution)	£0	£0	£0	£0
Student Accommodation	£150/m <sup>2</sup>	£150/m <sup>2</sup>	£150/m <sup>2</sup>	£0
Extra Care	£0	£0	£0	£0

15. The CIL will be used to fund items of infrastructure that are important for the delivery of the proposals in the County Durham Plan and be set out in what is known as a 'Regulation 123' list. A number of suggestions were put forward during the consultation period (see Appendix 5, available in the Member's Resource Centre) but it considered that the most appropriate projects are those that were included for consultation namely:
  - The Northern Relief Road;
  - Horden Rail Station; and
  - The Bishop Auckland to Barnard Castle Multi User Route.
16. The mechanisms for how CIL is to be collected and spent will need to be agreed before the Charging Schedule is finally adopted.

## **Consultation**

17. During the final consultation, 116 organisations and 1271 individuals submitted a total of 3993 representations. Three petitions were also submitted regarding the Praxis Site, Ferryhill (506 names), Bevan Crescent, Wheatley Hill (187 names) and Save our Fields, Trimdon Station (373 names). A petition with 1192 names was also re-submitted by the Durham City Green Belt campaign.
18. All representations made have been reviewed and carefully considered and it has been concluded that, subject to minor text and formatting changes which need to be made, there are no matters arising from the representations that call into question the soundness of the Plan or the legality of its preparation that would prevent it being submitted to the Secretary of State in its current form. A Consultation Feedback Report is included at Appendices 6a and 6b (available in the Member's Resource Centre) which sets out how we consulted on the Plan and a summary of the key issues raised and our response. A Schedule of Minor (Additional) Modifications is also included at Appendix 2 (attached to this report) which sets out the changes to the Plan that are required either in response to representations made or those identified by officers on further examination of the Plan.
19. Key areas of challenge have predominantly been to housing allocations at Bevan Crescent, Wheatley Hill, East of Mill Lane, Sherburn Village, and the Green Belt sites around Durham City including Sniperley Park, North of Arnison and Durham Northern Quarter. Policies receiving most representations included:
  - 3 – Quantity of Development;
  - 6 – Durham City;
  - 8 – Durham City Strategic Sites;
  - 9 – Western Relief Road;
  - 10 – Northern Relief Road;
  - 14 – Green Belt; and
  - 32 – HMOs and Student accommodation.

20. Having carefully considered all of the concerns and challenges raised in the representations it is considered that it is not appropriate to substantially change the Submission Draft version of the Plan. It is therefore not necessary to carry out any further consultation before submission of the Plan to the Secretary of State. Therefore any outstanding issues will be resolved at the Examination in Public.
21. During the consultation on the CIL Draft Charging Schedule, 16 organisations and 8 individuals submitted a total of 50 representations. It should be noted that many of the representations referring to the CIL were submitted against Policy 5 of the Plan.
22. Again all representations made have been reviewed and carefully considered and it has been concluded that there are no matters arising from the representations that call into question the reasonableness of the Charging Schedule or the legality of its preparation that would prevent it being submitted to the Secretary of State in its current form. A Consultation Feedback Report is included at Appendix 7 (available in the Member's Resource Centre). A Schedule of Changes is also included at Appendix 3 (attached to this report).

### **Supplementary Planning Documents**

23. A number of Supplementary Planning Documents (SPD) also accompany the Plan and give more detail on the strategic allocations that enable the delivery of the Spatial Approach. These were approved by Members in September 2013 and were consulted on alongside the Plan. A Schedule of Changes is attached at Appendix 8 (available in the Member's Resource Centre). Although these will be sent to the Secretary of State accompanying the Plan it should be noted that they will not be examined separately by the Inspector but rather form part of the evidence base for the Examination. They will be adopted by the Council at the same time as the Plan and will reflect any relevant changes to the Plan made by the Inspector.
24. In order to clarify the form of development envisaged and to address the concerns of residents an SPD for the Durham Northern Quarter is also to be prepared. This will be submitted at the same time as the Plan but given the timescales will only be subjected to targeted consultation during its preparation. It will therefore only carry limited weight but will aid the Inspector in his considerations. Full consultation on the SPD will take place after the Examination in Public.
25. There will be other draft SPDs prepared following Examination in Public which will cover the following topics:
  - Developer Contributions and Affordable Housing;
  - Houses in Multiple Occupation and Student Accommodation;
  - Built Environment;
  - Historic Environment; and
  - Natural Environment.

## **Evidence**

26. A robust and credible evidence base is integral to preparing a sound Local Plan. Members have previously agreed many of the documents that form the evidence base for the Plan and the CIL including the Strategic Housing Market Assessment (SHMA), the Employment Land Review and the Affordable Housing and CIL Development Viability Study amongst many others. Updating and strengthening of the documents which form the evidence base has been undertaken prior to Submission. However as this exercise has been mainly about expanding on the justification of individual policies rather than any new full studies which will also be referred to when considering planning applications, such as the SHMA, it is not necessary to obtain Cabinet approval.

## **Sustainability Appraisal and Habitats Directive**

27. Sustainability Appraisal (SA) is a statutory process integrated into the preparation of all aspects of the Plan. The process measures the potential impacts of the Plan on a range of economic, social and environmental considerations, and includes the requirements of Strategic Environmental Assessment (SEA) Directive<sup>1</sup>.
28. The SA concluded that the Plan contributes positively towards a range of key issues. Where negative effects were identified the mitigation proposed by the SA will be embedded within the development and delivery processes of policies and sites.
29. Representations to the SA came from three sources. The Environment Agency, who had no concerns; The City of Durham Trust, who had concerns regarding the SA being presented in a 'balanced format' and on 'residual impacts'; and 194 responses from individuals and community groups that questioned the objectivity of the SA.
30. The Council is confident that the combined SA and SEA process undertaken in support of the Plan, from Issues and Options to Pre-Submission Draft, was legally and procedurally compliant with regards to the relevant European and UK legislation and guidance, including its impartiality.
31. Natural England raised no issues with regard to the soundness or legal compliance of the Plan with the Habitat Directive<sup>2</sup>. In fact they have recommended the Council's proactive approach to avoiding adverse impacts on European designated sites and our commitment to encouraging the provision of suitable green infrastructure with new housing, to other local authorities as an example of best practice.

---

<sup>1</sup> And legislation transposing this Directive into UK law.

<sup>2</sup> And legislation transposing this Directive into UK law.

## **Soundness of the Plan**

32. The focus of the recent consultation was on soundness and legal compliance with the statutory procedures that must be followed when preparing the Plan.
33. Considering carefully the representations received, and following legal advice, it is considered that the Plan is sound and has been prepared in accordance with the duty to co-operate and all legal and procedural requirements. It is considered that no significant changes to the Plan are necessary prior to its submission to the Secretary of State for Communities and Local Government for Independent Examination.
34. Minor (additional) modifications to the Plan can be made without further consultation. These modifications will not alter the meaning of the Plan and are considered to be minor. Notwithstanding this position and in the interest of good practice it is proposed that officers continue to discuss issues raised during the consultation period with stakeholders in the run up to the Examination to further minimise their areas of concern. It is proposed that authority is given to the Director of Regeneration and Economic Development in consultation with the Portfolio Holder for Economic Regeneration to continue discussions, prepare and present evidence and suggest to the Inspector any edits and consequential changes necessary to the Plan.
35. The Inspector, in examining the Plan and in light of representations made, may conclude that 'modifications' are required to make it sound and capable of adoption. Any 'main modifications' made in relation to soundness will in almost all cases need to be the subject of further consultation. It is accordingly proposed that Council authorises the Director of Regeneration and Economic Development to ask the Inspector under section 20(7C) of the Planning and Compulsory Purchase Act 2004 to recommend modifications to the Plan, to ensure that modification, if required, can be made to make it both compliant with requirements of subsection (5)(a) and sound.

## **Duty to Co-operate**

36. The Localism Act introduced the Duty to Co-operate with neighbouring authorities when preparing plans. County Durham borders a number of County, District and Unitary Councils and a National Park Planning Authority and we have greater interaction with some more than others. The Council has taken its responsibility very seriously on this matter and has created protocols with appropriate groups of authorities to ensure that the correct liaison takes place. To reflect the close relationship the County has with Tyne and Wear and particularly those local authorities south of the Tyne namely, Gateshead, Sunderland and South Tyneside a Memorandum of Understanding (MoU) has been prepared. The MoU sets out how the authorities will comply with the duty to co-operate and clarifies the responsibilities of the partners both individually and collectively and



establishes guidelines for joint working in accordance with the governance arrangements set out in the MoU. The Council has been operating to the guidelines within the MoU since the Duty was introduced in 2011 but ahead of the Examination it was thought helpful to have the MoU formally agreed. A full copy of the MoU is attached at Appendix 4 (attached to this report).

### **Timescale and Next Steps**

37. Subject to Full Council approval on the 2<sup>nd</sup> April 2014 the Plan and CIL Draft Charging Schedule will be submitted to the Secretary of State for Communities and Local Government by the end of April 2014 for independent examination. The Pre Hearing Meeting is likely to be held at the beginning of June and the Examination in Public (EIP) in middle to late July 2014. Immediately following the EIP into the Plan, a similar EIP is to be held in respect of the draft CIL Charging Schedule. After examination and following consultation on any modifications proposed by the Inspector, the Council will be asked to adopt the Plan and CIL Charging Schedule. This should take place early in 2015. However the timescale for adoption of the Plan and CIL Charging Schedule is dependent on the issues and matters to be identified by the Inspector following Submission, the length of the EIPs and any modifications proposed.
38. It should also be noted that as the Plan progresses towards adoption, greater weight can be attached to the emerging policies for Development Management purposes.

### **Recommendation**

39. Cabinet is asked to recommend to Full Council that:
  - 1) The following documents are approved
    - i. The Consultation Feedback Reports in Appendices 6a, 6b and 7;
    - ii. The amendments identified in the 'Schedule of Minor (Additional) Modifications' to the Plan, Community Infrastructure Levy Draft Charging Schedule and the SPDs in Appendices 2, 3 and 8 and the Regulation 123 List set out in Paragraph 15 of this Report;
    - iii. The Memorandum of Understanding attached at Appendix 4; and
  - 2) Authorisation is given for formal submission of the County Durham Plan and the CIL Draft Charging Schedule, Regulation 123 List and associated submission documentation to the Secretary of State pursuant to Section 20 of the Planning and Compulsory Purchase Act and Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012 and Section 212 of the Planning Act 2008 and Regulation 19 of the CIL Regulations (as amended) 2010; and
  - 3) Authorise the Director of Regeneration and Economic Development in consultation with the Portfolio Holder for Economic Regeneration to:

- a. approve the submission of the documents required to be submitted alongside the Plan to the Secretary of State as required by Section 20 of the Planning and Compulsory Purchase Act and Regulation 22 of The Town and Country Planning (Local Planning) (England) Regulations 2012 for consideration at public examination;
  - b. continue discussions with key parties and suggest to the Inspector any edits and consequential changes necessary following Council approval up to and during the Examination; and
- 4) Authorise the Director of Regeneration and Economic Development to ask the Inspector appointed to hold the Examination in Public to recommend modifications to the County Durham Plan Submission Document under Section 20(7C) of the Planning and Compulsory Purchase Act 2004 required to make it compliant with Section 20(5A) of the Act and sound.

**Background Papers:**

County Durham Local Plan –Submission Draft (2014)  
 County Durham Local Plan – Pre-Submission Draft (2013)  
 County Durham Local Plan – Preferred Options (2012)  
 County Durham Local Plan – Policy Directions (2011)  
 County Durham Local Plan – Issues and Options (2010)  
 County Durham Local Plan – Issues Paper (2009)  
 National Planning Policy Framework (CLG, March 2012)  
 County Durham Local Development Scheme (June 2012)  
 County Durham Statement of Community Involvement (June 2012)  
 The Sustainability Appraisal of the Plan (2013);  
 Habitat Regulations Assessment (2013);  
 Rural Proofing Baseline Report (2012);  
 Defining Economic Growth in the County Durham Plan (2012);  
 Retail and Town Centre Uses Study (2010 and 2013);  
 Open Space, Sport and Recreation Needs Assessment (2010);  
 Playing Pitch Study (2011);  
 Strategic Flood Risk Assessment (2010);  
 The Economic Case for the County Durham Plan (2012);  
 County Durham Settlement Study (2012);  
 County Durham Employment Land Review (2012);  
 Transport Modelling for County Durham Plan (2011/12 and 2013);  
 AECOM Durham Relief Road Studies: Western and Northern Route (2011);  
 Strategic Housing Land Availability Assessment (2013);  
 Strategic Housing Market Assessment (2013);  
 Strategic Employment Sites Study (2012);  
 County Durham Green Infrastructure Strategy (2012); and  
 Durham City Green Belt Assessment Phases 1, 2 and 3;

---

**Contact: Mike Allum Tel: 03000261906**

---

---

## **Appendix 1: Implications**

---

### **Finance –**

The Regeneration Statement and the County Durham Plan outline the approach for investment which includes Durham County's council's capital programme.

The Examination in Public will could cost up to £400000, including the costs of the Planning Inspector, legal advice and the employment of a Programme Officer and possibly an assistant. Provision has been made in the Planning and Asset reserve to cover this cost.

### **Staffing –**

The Spatial Policy Team's work programme will reflect the requirements of the CDP Project Plan.

### **Risk –**

A risk assessment has been completed and three reportable risks has been identified, details of which are attached in Appendix 9.

### **Equality and Diversity / Public Sector Equality Duty –**

Equality and Diversity has been an integral part of policy development in the County Durham Plan. The vision as outlined in the Regeneration Statement is to *shape a County Durham where people want to live, work, invest and visit and enable our residents and businesses to achieve and maximise their potential* – this will have a positive effect on all residents, employees and visitors. Detailed Equality Impact Assessments have been and will be carried out for individual strategies or projects.

### **Accommodation –**

None.

### **Crime and Disorder –**

None.

### **Human Rights –**

None.

### **Consultation –**

Further consultation is not required before Submission of the Plan however there may be a further round following the Examination in Public to consult on any Modifications made by the Inspector.

### **Procurement –**

None.

### **Disability Issues –**

None.

**Legal Implications –**

Legal opinion has been sought from the Council's in-house legal team and all the policies in the plan. Advice has also been received from external legal specialists on particularly complex topics, such as the funding of the relief roads. A barrister has also been appointed to assist the Council through the Examination in Public.

**APPENDIX 9**  
**Reportable Risks**

<b>Risks associated with agreeing the decision.</b>			
<b>Risk Description</b>	<b>Potential Impact</b>	<b>Measures to mitigate the risk (if not already in place state implantation date)</b>	<b>Risk Owner</b>
Public dissatisfaction to the proposed strategic plans being centred mainly around Durham City.	Reputational damage.	Ongoing consultation with the public in all areas of the County communicating the full County Plan not just focussing on the area itself. Modifications to the plan have been made in response to public opinion. Formally responded to every representation made.	Ian Thompson
Opposition to the alterations to the Green Belt.	Reputational damage. Legal challenges. Increased costs. If opposition successful CDP would have to be re-written.	Ongoing consultation with the public providing in depth information about the proposals for altering the green belt. Studies completed to identify the most sensitive areas. Complete transparency of proposals has been maintained. Considered alternative approaches.	Ian Thompson
<b>Risks associated with not agreeing the decision.</b>			
Delay in the social, economic and environmental regeneration	1. Inability to attract inward investment, employment; housing development etc. 2. Local economy will suffer. 3. Social inequalities may increase. 4. Public dissatisfaction. 5. Reputational damage.		Ian Thompson