
Community Infrastructure Levy – Progress update

SYNOPSIS

This report provides an update of progress in developing the Community Infrastructure Levy.

1 Introduction

- 1.1 The purpose of this report is to provide an update on work undertaken to prepare the Community Infrastructure Levy (CIL) and explain the key issues for consideration.

2 Background

- 2.1 CIL was introduced under the Planning Act 2008 and defined within the CIL Regulations 2010 (as amended) as a more transparent mechanism to secure funding and support planned growth. The levy takes the form of a charge per square metre of additional floorspace on most new development.
- 2.2 Local authorities can choose to charge CIL, but the ability to pool Section 106 agreements to fund off-site infrastructure will be restricted from April 2014 (proposed to be extended until April 2015), making it more difficult to deliver larger scale items of infrastructure.
- 2.3 To apply CIL, local authorities are required to produce a CIL charging schedule setting out the rates for the area. These must be set against planned levels of development, as outlined within the adopted development plan, and supported by robust viability assessment and evidence of infrastructure requirements that demonstrate a funding gap to support setting CIL.
- 2.4 The regulations prescribe that the CIL charging schedule is subject to two stages of public consultation followed by independent examination. The first stage of consultation on the preliminary draft charging schedule was undertaken during November and December 2012, resulting in a number of consultation responses being received.
- 2.5 The Government published revised statutory guidance on CIL in April 2013. The revised guidance and consultation responses have resulted in a number of issues for consideration in preparing the draft CIL charging schedule and supporting information.

3 Draft Charging Schedule

- 3.1 This section focuses on issues requiring further consideration in the preparation of the draft CIL charging schedule.

Differential residential rates

- 3.2 The viability consultants have advised the Council that the ability of residential schemes to make CIL contributions varies depending on area. The consultants suggest residential uses within certain villages (including Gretton, Middleton, Cottingham, Rockingham and East Carlton) can absorb a higher CIL rate than the rest of the Borough. However, the consultants advise that the Council may wish to adopt a single rate across the Borough if little development is expected in these areas. Representations from Northamptonshire County Council promote higher rates where supported by viability evidence.

Officer recommended approach

- 3.3 It is recognised that sales values are quite variable throughout the Borough and the evidence supports the differential charging rates and areas proposed. Significant development is not planned within these villages and a uniform rate will make implementation of CIL simpler; however, relatively high levels of windfall development have

been achieved in the past and a lower rate is likely to lead to less funding being secured for infrastructure required to support development. **It is therefore recommended that differential rates between higher value villages and the rest of the Borough are retained as supported by the viability evidence.**

Differential retail rates

- 3.4 The viability evidence also indicates the potential to set a differential rate for convenience based supermarkets and superstores and retail warehousing uses (over 280 square metres) within the Borough, as these types of retail use are capable of generating greater surplus land values. Alternatively, the consultants suggest that a more nominal rate could be set to correspond with comparison and all other retail uses within the town centre. Northamptonshire County Council support differential retail rates to reflect viability evidence.

Officer recommended approach

- 3.5 It is recognised that the evidence suggests that convenience based supermarkets and superstores and retail warehousing uses above a certain threshold can bear a greater degree of CIL. The viability assessment also indicates that development in the town centre can absorb a CIL rate. However it is likely that a significant proportion of such new retail development will involve recycling existing retail floorspace. Consequently, retail development would generate little new additional floorspace that would be chargeable for CIL; as such a nil rate is considered more appropriate. **It is therefore recommended that differential rates for retail uses above a certain threshold be applied.**

4 Implementation of CIL

- 4.1 There are several issues that the Council should consider with regards to the implementation of CIL. These matters do not need to be subject to Examination, and the Council is able to amend its position in the future where appropriate. It is therefore recommended that the Council continues to keep these issues under review, as more authorities implement charging schedules, and that a final decision is not made on the following issues at this stage. However, an agreed Council position on these matters may prove useful during Examination.

Payment by Instalments

- 4.2 In most cases, CIL payment is due within 60 days of the commencement of development; however, the Council can introduce payment by instalments, which would allow phased payments over longer periods.
- 4.3 Consultation responses have requested an instalment policy be introduced to spread the CIL charge over the development, to improve plan deliverability, particularly on larger phased sites.

Officer recommended approach

- 4.4 This is an important concern as without this the burden of CIL will be early in the development process and therefore have a significant adverse impact on cash flow; an issue that has previously been acknowledged by the Council by agreeing in principle to allow deferral of developer contributions. Without some form of instalment policy developments would effectively become unviable; however, any such policy must also balance the need for infrastructure to be delivered in a timely manner. Most charging authorities have adopted an instalment policy alongside their CIL charging schedule. **It is recommended that an instalment policy be introduced within the forthcoming draft charging schedule**

Payment in Kind

- 4.5 The CIL Regulations allow charging authorities the opportunity to accept transfers of land as a 'payment in kind' for the whole or part of CIL, but only where the land is intended to provide or facilitate the provision of infrastructure to support planned development.

Representations requested the Council consider accepting payment of land in lieu of CIL to assist development delivery.

Officer recommended approach

- 4.6 Where a charging authority chooses to accept payment, in whole or in part by land, the relevant proportion of the cash value of the Levy receipts must still be provided for neighbourhood funding. Payment of CIL in the form of land transfer is at the discretion of the charging authority and it is suggested this approach should only be accepted where it will be more desirable for the Council to receive land instead of money.
- 4.7 **It is therefore recommended that the Council accept payment in kind, but only where the proposed land transfers would serve the wider infrastructure needs of the borough.** The potential benefits or otherwise of allowing payment in kind should be kept under review.

Provision of Discretionary Relief

- 4.8 The CIL Regulations make provision for charging authorities to offer exceptional relief where sites are rendered unviable through exceptional circumstances.
- 4.9 Relief can only be offered where the applicant enters into a Section 106 agreement for on-site infrastructure. The cost of complying with the S106 must be considered greater than the CIL charge and meeting the cost of CIL, and the S106 would have to be proven to make the development economically unviable. Charging authorities must also be satisfied that relief would not constitute notifiable state aid.
- 4.10 Representations received in response to the consultation support discretionary relief from CIL in exceptional circumstances, to improve development delivery. Furthermore, discussions with Northamptonshire County Council have supported exceptional circumstances relief, where costly on-site infrastructure is required.
- 4.11 The viability evidence suggests urban extensions are the only type of site likely to qualify for relief due to the high levels of residual S106 required and substantial greenfield infrastructure costs.
- 4.12 Introducing an exceptional circumstances policy may encourage developers to submit invalid requests for relief from CIL, which could create an additional administrative burden. However, it is considered that this type of relief would only apply in limited circumstances, and it would be the responsibility of the applicant to demonstrate the Regulation tests have been met having already secured in principle support for development and negotiated a S106 agreement.
- 4.13 The viability evidence recognises the costly on-site requirements associated with urban extensions; therefore it is considered that the Council indicate an intention to allow relief from CIL where exceptional circumstances arise in line with the Regulation tests.
- 4.14 It is acknowledged that this type of relief should only be offered as a last resort once other considerations, such as reducing the level of S106 contribution, have been exhausted.
- 4.15 The Council's decision to offer exceptional circumstances relief is not part of the legal process of developing a charging schedule and can be withdrawn or amended at any time with 14 days' notice. It is advised that the potential benefits or otherwise of offering exceptional circumstances relief be kept under review.

CIL and Section 106

- 4.16 Planning obligations secured through S106 agreements can still be used to provide affordable housing and site specific infrastructure required to mitigate the direct impacts of development. The regulations prevent the Council using CIL monies and Section 106 contributions to fund the same piece of infrastructure from the same development. In addition, the Council will only be able to pool S106 towards a single piece, or type, of infrastructure from up to five developments. This is backdated to any S106 agreement signed since April 2010. These rules will require the Council to have a well organised and

co-ordinated approach to the use of S106 and CIL in order to optimise the delivery of infrastructure.

- 4.17 Officers are preparing a developer contributions supplementary planning document (SPD) in line with the scope agreed at Local Plan Committee in September 2013. A full consultation draft SPD will be prepared for the approval of Local Plan Committee in spring 2014, and made available to inform the CIL Public Examination.

5 Issues to be taken into account:-

Policy Priorities

CIL is a funding mechanism to assist in delivering the strategic infrastructure needs and support the development of the area. Investment in infrastructure to match a step change of growth in homes and jobs is a key aim of the adopted Core Spatial Strategy and Corporate Service Plan.

Financial

The introduction of CIL will spread the requirement for developer contributions more fairly across most new development; at present, only a proportion of new development makes any form of contribution. Further work will be required to consider financial implications of implementing CIL.

Legal

Town and Country Planning Act (2008)

Community Infrastructure Levy Regulations 2010 (as amended)

Localism Act (2011)

Performance Information

None directly related to this report.

Best Value, Human Rights and Community Safety

None directly related to this report.

Equalities and Sustainability

None directly related to this report.

Risk Management

The Council can decide whether or not to adopt a CIL; however, restrictions to Section 106 agreements will prevent the Council securing contributions from development towards the delivery of wider infrastructure needed to support growth.

A balance must be struck between funding infrastructure and the impact on development; either development could be made unviable by high CIL rates, or insufficient funds will be raised to deliver the required infrastructure if rates are set too low. It should be noted that CIL will only provide part of the funding mechanism for development.

6 Conclusion

- 6.1 Considerable progress has been made to prepare and implement CIL; however, the issues discussed within this report require consideration prior to publishing the draft charging schedule for consultation. It is anticipated the draft charging schedule will be presented to Members at the next Local Plan Committee meeting with the aim of consulting early in the New Year.

7 Recommendation

It is recommended that Members endorse the suggested approach to issues considered within this report.

Appendices

None

Background Papers

Report to Local Plan Committee (26.09.2013) [Scope of Developer Contributions SPD](#)

Report to Local Plan Committee (25.10.2012) [Community Infrastructure Levy: Preliminary Draft Charging Schedule](#)

[The Community Infrastructure Levy Regulations 2010](#)

[The Community Infrastructure Levy Regulations \(Amendment\) 2011](#)

[The Community Infrastructure Levy Regulations \(Amendment\) 2012](#)

[The Community Infrastructure Levy Regulations \(Amendment\) 2013](#)

CLG (April 2013) [Community Infrastructure Levy Guidance](#)

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