

Report to Planning Services Scrutiny Standing Panel

Date of meeting: 14 June 2011

Subject: Community Infrastructure Levy

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Committee Secretary: Mark Jenkins – 01992 56 4607



Recommendations/Decisions Required:

That the report be noted

Report:

Community Infrastructure Levy - What is It?

It is anticipated to replace section 106 planning obligations as a means of providing payment for the provision of infrastructure in a local area. The Community Infrastructure Levy (CIL) is a new financial charge which will entitle local planning authorities to charge on development taking place in their area. The money raised would be spent on local infrastructure, including on-running cost of infrastructure and therefore can be used as a revenue generator.

After April 2014, if the Council wishes to collect infrastructure charges or monies, it will have had to formally adopt a CIL as this will be the only option available and therefore collection through section 106 legal agreements will no longer be possible (although for the purposes of securing Affordable Housing through individually negotiated development projects, the Government at present intends to continue with the use of S.106 agreements). The CIL will include a charging schedule document prepared by the charging authority (e.g. local planning authority) setting out rates and a formula.

Monies raised under CIL can only be spent on "infrastructure". It is not specifically defined in the 2008 Planning Act, only defined to include a number of items, namely:

- Roads and other transport facilities
- Flood defences
- Schools and other educational facilities
- Medical facilities
- Sporting and recreational facilities
- Open spaces

Regulations may alter items in this list, but it will fall to us to determine what is to be infrastructure in our area and therefore allows flexibility to include community and cultural facilities, for example.

Pre-requisite to making a CIL payment

The statutory basis of CIL is contained in Part 11 of the Planning Act 2008 (the Act), the Community Infrastructure Levy Regulations 2010 and the Community Infrastructure (Amendment) Regulations 2011. Whilst the Regulations are in place, the charging of CIL has not automatically occurred, because before an obligation to pay CIL can arise there are a number of sequential steps which need to be undertaken and conditions satisfied before any

landowner or developer will be required to make a CIL payment. Steps and conditions required are:

- The existence of an up to date development plan
- The carrying out of satisfactory infrastructure planning in line with the above
- The creation and approval of a charging schedule
- The grant of planning permission for specified development
- A commencement of development.

Up to date development plan

The Government have indicated that the charging schedule for CIL should be treated as part of the Local Development Framework but it is not legally part of the development plan and is not a local development document.

CIL is inextricably linked to the development plan system. The advice is that charging authorities should only implement CIL where there is an up to date development strategy. It is unlikely that the Council's current Local Development Plan, consisting of saved policies from 1998 and adopted amendments 2006, would be deemed as being "up to date" and therefore there is added incentive for the adoption of a core strategy, or at least a draft core strategy for the Council.

Requirements

In order to allow a charging schedule for infrastructure we will need to identify a target amount of funding to be raised for our district, including:

- Infrastructure needs of our area
- Calculate the cost of such infrastructure
- Identify the likely phasing of development
- Identify other sources of funding and establish any shortfall in funding
- An assessment of the potential effects of CIL on the economic viability of development on our district.

CIL is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure unless those deficiencies will be made more severe by new development. There will need to be work carried out to identify infrastructure project work required as part of the CIL rate setting process, although in order to allow flexibility, the CIL revenue from developments can be spent on differing projects.

What planning permissions are open to CIL?

Not every planning permission will be liable to pay CIL: only specific developments defined as:-

- The creation of new non-residential buildings where the gross internal floor area space (and enlargement to existing buildings) is 100 square metres or more.
- The creation of residential buildings, irrespective of its size.

Anything not a "building", such as plant or machinery, golf courses, wind turbines, changes of use etc. will not pay CIL.

When is it calculated and payable?

At the time planning permission is granted. But in cases where it is subject to a condition requiring further approval before development can commence, then on the date final

approval is given. Minor commencement work will be sufficient to trigger a CIL payment and the developer must give a commencement notice to the Council before work starts on site. Payment will be due within 60 days of commencement. The exceptions are retrospective planning permissions and secondly, where permission is granted following an enforcement notice appeal. In each instances, development is treated as commencing on the day permission is modified or granted.

The CIL charge is to be expressed as a cost per square metre of gross internal floorspace across all classes of development. Specifically CIL will apply to any new build, a new building or extension, if it has at least 100m² of gross internal floorspace or involves the creation of one dwelling even if it is below 100m². There is a comprehensive regime for the enforcement of the payment of CIL monies. The Act and regulations provides opportunities for persons to review or appeal against CIL.

Who can spend CIL?

The charging authority (local planning authority) can spend monies on infrastructure, but the charging authority can also pass receipts to other infrastructure providers, such as Essex County Council (for roads and education), Environment Agency, Highways Agency, health-care trusts etc. The local planning authority can also forward funding to other bodies and this will include local parish and town council's as well as neighbourhood groups, but they must be locally "elected" bodies.

To encourage neighbourhood funding of infrastructure, there will be an expectancy to work closely with other local partners and pass through a "meaningful proportion" of the CIL revenue to locally elected bodies. At present, there is no definition of "meaningful proportion", though advice will follow in due course from the Dept of Communities and Local Government (CLG). Presumably, this would require the 'meaningful proportion' to be in line and according to evidenced Neighbourhood plans or similar, that can clearly demonstrate a local need and consensus regarding community infrastructure priorities. This however has not been verified.

Reliefs from paying the levy

The CIL regulations provide a limited number of types of relief from paying the levy, if they meet the conditions set out within the regulations:

1. A charity landowner must be granted exemption from paying the levy on their portion of the development to be used wholly or partially for charitable purposes.
2. A relief can be given by the charging authority in the case a charity exemption above if it would constitute a state aid.
3. A charging authority can also choose to offer discretionary relief to a charity landowner where the greater part of the chargeable development will be held as a charitable investment, from which the profits are applied for charitable purposes.
4. 100% relief from paying the levy must be granted on those parts of a development which are intended to be used as social housing.

The regulations also allow authorities to offer relief from paying the levy in exceptional circumstances where a specific scheme cannot afford to pay it - but there are a number of strict conditions that must be met.

Testing the Charging Schedule

The charging authority must first prepare a preliminary draft charging schedule and carry out public consultation with neighbouring authorities, residents and businesses, voluntary bodies and take into account representations made before issuing a draft of its charging schedule. There is then a charging schedule examination by a CIL examiner. Key considerations will be:-

- the charging authority has complied with the Act & CIL regulations;
- CIL rate is informed by appropriate available evidence;
- the charging authority has struck an appropriate balance between infrastructure costs, funding sources and potential impact on economic viability of development;
- *(In other words, the proposed CIL rate would not put at serious risk the overall development of the area.)*

The Examiner then has 3 responses:-

- **Approve**
- **Approve with modifications** – e.g. to ensure that CIL rate does not put development at serious risk;
- **Reject**, for example, if the charging authority has not complied with the Act or regulations or has not used appropriate available evidence.

Operation of the charging schedule can only be in the approved form recommended by the examiner. If the examiner modifies the approval and we do not like the changes, then we can elect to not approve the modified charging schedule and as a consequence, not charge CIL. The process then starts again and a revised charging schedule is published for examination. Once approved and agreed, it remains in force indefinitely.

Future of Planning Obligations (Section 106 Agreements)

Since April 2010, The CIL Regulations have provided that it is unlawful for a Planning Obligation to be taken into account when determining a planning application for a development, or any part of a development, whether or not there is a Local Levy in operation, if the Obligation does not meet all of the following tests:-

1. It is necessary to make the development acceptable in planning terms;
2. It directly relates to the development; and
3. It fairly and reasonably relates in scale and kind to the development.

There has been a marked trend for Planning Inspectors and the Secretary of State when determining appeals to not take account of s106 obligations that do not meet the above tests. This precludes Local Authorities of seeking “wider” planning benefits and limit future planning obligations to “direct impact mitigation”.

Once a CIL is in place and in any event, after April 2014, we will no longer be able to seek infrastructure revenue through planning obligations, the Governments caution here is to safeguard against possible “double charging”.

S.106 obligations will continue for non-infrastructure related situations and as stated earlier, affordable housing provision will continue to be dealt with by this existing process. Highway works necessitated by a planning application can still be provided under section 278 of the Highways Act as well as a CIL.

EFDC Timescales for Delivery

The Local Development Scheme key principles, which were agreed at the Local Development Framework (LDF) Committee on 28/3/2011, indicate the timescales for the completion of EFDC’s Local Development Framework. It is anticipated that the Development of a CIL schedule will run in parallel with the formulation of the Core Planning Strategy, the

second stage of which is anticipated to commence in the Autumn of 2011 with the Issues & Options consultation.

The Assistant Director of Policy & Conservation will prepare a draft EFDC CIL strategy for the next Planning Scrutiny Committee meeting in September 2011 and for discussion with the Planning & Technology Portfolio Holder. This will contain the preferred approaches for our District based on emerging evidence, and new guidance, having also reviewed the approach followed by some of the DCLG's selected CIL frontrunner Councils, including neighbouring Redbridge.

It is important to add that ongoing changes to the Planning system, in particular the National Planning Framework, which is anticipated to replace existing Policy Guidance, may change the course of action taken both in the preparation of the Core Strategy and supporting documents and subsequently the preparation of a CIL charging schedule for this District.

Reason for decision:

The Panel are requested to note these documents. The letters are periodically reviewed and it should also be noted that they satisfy their function of advising the recipients of where relevant information is obtainable and how their views can be made.

Options considered and rejected:

Nil

Consultation undertaken:

Nil

Resource implications:

Budget provision: Nil

Personnel: Nil

Land: Nil

Community Plan/BVPP reference: Nil

Relevant statutory powers: Town and Country Planning Act 1990 (as amended), Part 11 of the Planning Act 2008, Community Infrastructure Levy Regulations 2010, Community Infrastructure (Amendment) Regulations 2011.

Background papers: None

Environmental/Human Rights Act/Crime and Disorder Act Implications: Nil

Key Decision reference: (if required)