

CESHIRE EAST COUNCIL

Briefing Note: Strategic Planning Board

Date of Meeting: 5th May 2010

Report Of: Planning Policy Manager

Title: Summary of the New Community Infrastructure Levy Regulations

Portfolio Holders: Cllr David Brown (Performance & Capacity)
Cllr Jamie Macrae (Prosperity)

1.0 Introduction

The Planning Act 2008 provided broad powers to enable local authorities to introduce a planning charge on development, referred to as the Community Infrastructure Levy (CIL), with the intention of helping to fund the infrastructure necessary to bring about the proposals for development identified in Local Development Frameworks. The detailed legislative framework¹ to bring this into effect came into force on 6th April 2010. This briefing note provides a summary of the key features of CIL, how it is to be implemented, and the proposed relationship between CIL and planning obligations.

2.0 Key Features

- CIL is intended to be more transparent, provide greater legal certainty, be broader (and fairer) in the range of developments that contribute, and be more predictable on the level of contribution required than the existing planning obligations (or Section 106) system that it will largely replace.
- Local authorities are not required to introduce CIL but opportunities for financing infrastructure through the existing planning obligations system are proposed to be reduced in the future²
- It is intended that infrastructure provision will continue to be provided in the main by core public funding streams, with CIL being used to bridge the funding gaps identified by local authorities.
- CIL monies can only be spent on the infrastructure identified by local authorities as being needed to support the development of their area. This should focus on new infrastructure provision but can be used to either increase the capacity of or repair failing existing infrastructure. It should not be used to remedy pre-existing infrastructure deficiencies unless they will be made more severe by new development.
- Up to 5% of CIL revenues can be used to recover the costs of administering CIL.
- The statutory definition of infrastructure which can be funded by CIL is broad and includes transport, flood defences, schools, hospitals and other health and social care facilities. This means that facilities such as play areas, parks and green spaces, cultural and sports

¹ The Community Infrastructure Regulations 2010

² New Policy Document for Planning Obligations Consultation, CLG, March 2010

facilities, district heating schemes and police stations and other community safety facilities can be funded by CIL.

- Providing affordable housing is not permitted through CIL and will continue to be delivered through planning obligations, as these should be delivered on site and tailored to the particular circumstances of the site.
- CIL monies may be passed to other bodies or used to provide infrastructure outside of a local authority's area where this will benefit or support the development of their area. For example, CIL revenues can be given to the Environment Agency for flood defence or another local authority to deliver a large sub-regional transport project.
- Local authorities may 'prudently' borrow against future CIL income or backfill early funding provided by a financier, such as the Homes and Community Agency, to ensure that infrastructure is delivered when the need arises.
- A short CIL report must be prepared annually and made available on the Council's website by year end, detailing relevant CIL information for the past financial year including revenue received, revenue spent (in total and by itemised infrastructure scheme) and revenue unspent. This could be included in the Council's Annual Monitoring Report on the local development plan.

3.0 Implementing the CIL Charge

Procedure

- CIL should normally be implemented when an up-to-date development plan is in place, although a draft plan may be used when a local authority is intending to have a joint examination of their core strategy and CIL charging schedule.
- The CIL charging schedule will form part of a local authority's Local Development Framework but will not be part of the statutory development plan.
- The production and approval of a charging schedule, setting out the CIL rates for an area, is required before CIL can be implemented. This will need to draw on the infrastructure planning that underpins the development strategy for the area, as the local authority will need to identify both the infrastructure funding gap that CIL is intended to support and a selection of the projects or types of infrastructure likely to be funded. CIL money may be spent on different projects to those identified during the rate setting process.
- The Council, as a charging authority, will need to prepare evidence to show that the proposed CIL rates strike the right balance between the desirability of funding infrastructure and the impact this will have on the economic viability of development. Different rates may be implemented in different parts of the Council's area or for different types of development to reflect variations in land values and viabilities respectively.
- The process for preparing a charging schedule is similar to that which applies to development plans in that the public must be consulted and an independent public examination held, the findings from which will be binding. However, the Council is not obliged to adopt the final schedule and may instead opt to submit a revised charging schedule to a fresh examination.
- The charging schedule must be formally approved by full council and kept under review, although there is no fixed end date.

Application

- CIL rates will be expressed in the charging schedule as pounds per square metre of net internal floorspace for all classes of development.

- Most buildings will be liable to pay CIL. Structures which are not buildings, such as pylons and wind turbines, and changes of use that don't result in an increase in floorspace will not be liable to pay CIL.
- To ensure CIL does not discourage redevelopment it can only be levied on the net additional increase in floorspace of any given development i.e. the floorspace of existing buildings to be demolished can be deducted. Minimum thresholds for CIL liability are set at 100 square metres of floorspace and a charge of £50.
- CIL charges must be updated annually in line with an inflation index of construction costs.
- CIL will be charged on new buildings permitted through some form of planning permission, including permitted development rights.
- The planning permission will identify the buildings that will be liable for a CIL charge and the land on which the chargeable buildings will stand. Any existing buildings to be demolished and deducted from the CIL floorspace liability will be situated on this land.
- CIL charges will become due from the date that a chargeable development commences and normally payable within 60 days, although large liabilities (of over £10,000) may be paid in installments. The amount of charges due, the payment procedure and the possible consequences for not following this procedure will be set out in a liability notice issued when the planning permission is granted.
- The responsibility to pay CIL runs with the ownership of the land on which the CIL liable development will be situated, although anyone can come forward and assume CIL liability for the development.
- Relief from CIL can be obtained by a charity landowner, where the chargeable development will be used mainly for charitable purposes, or where the development is used as social housing. The Council may offer CIL relief in exceptional circumstances, subject to conditions, and consider claims for relief on a case by case basis.
- The Council may accept transfers of land as a payment 'in kind' for the whole or part of a CIL charge but only if this is done to use the land to provide or facilitate infrastructure to support development in the Council's area. Such payments are only acceptable for CIL amounts over £50,000 and where an agreement to make the in-kind payment was agreed before development commenced.
- To ensure payment, the regulations provide for a range of proportionate enforcement measures, such as surcharges on late payments, a stop notice on development, the seizure and sale of assets, and short prison sentences.

4.0 The Relationship between CIL and Planning Obligations

- Planning obligations (S106 contributions) and CIL have two distinct purposes; the former enables the grant of planning permission, while CIL is intended for general infrastructure contributions to support area development.
- The Government is currently consulting on changes to the planning obligations system with the aim of ensuring that it can operate in a complementary way with CIL. These will in essence limit planning obligations to those site specific impacts which cannot be provided for through CIL. The CIL regulations have scaled back the way planning obligations operate in relation to Circular 5/05, prevented double charging of contributions and limited the pooling of S106 contributions.

- The policy tests for planning obligations currently detailed in Circular 5/05 have been made statutory. This means that, when determining a planning application that is capable of being charged CIL (whether there is a local CIL in operation or not), it is a legal requirement for any planning obligation to meet all of the following tests:
 - a) Necessary to make the development acceptable in planning terms;
 - b) Directly related to the development; and
 - c) Fairly and reasonably related in scale and kind to the development.

For all other developments (i.e. those not capable of being charged CIL), the policy in Circular 5/05 will continue to apply.

- Once the Council has adopted CIL, the regulations restrict the local use of planning obligations so that individual developments are not charged for the same items through both planning obligations and CIL. The assumption is that the Council is intending to use CIL monies for any type of infrastructure unless it sets out more specifically on its website how CIL monies will be spent. Consequently, the Council could not seek a planning obligation contribution towards any infrastructure unless it is clearly excluded from CIL.
- The regulations prevent the pooling of S106 contributions that may be funded via CIL, once CIL has been adopted locally or after 6th April 2014. However, if the Council has excluded an item of infrastructure from being funded by CIL, it may pool planning obligation contributions from no more than five developments to mitigate the cumulative impacts of these developments.
- For provision that is not capable of being funded by CIL, such as affordable housing or maintenance payments, there are no restrictions in terms of the numbers of obligations that may be pooled, but they must have regard to the wider policies set out in Circular 5/05.

For further information:

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