



Report of	Meeting	Date
Joint LDF Officer Team	Central Lancashire LDF Joint Advisory Committee	8 November 2011

IMPLEMENTING THE COMMUNITY INFRASTRUCTURE LEVY AND INFRASTRUCTURE PLANNING UPDATE

PURPOSE OF REPORT

1. To provide a detailed insight into the practical issues of deciding to implement the Community Infrastructure Levy (CIL) and how the infrastructure planning process can be used to inform this.

RECOMMENDATION(S)

2. That the report be noted.

EXECUTIVE SUMMARY OF REPORT

3. Although CIL is a simple concept, implementing it is quite involved. The District Councils as the Charging Authorities have the overall control and final say on how spending priorities are set and how the bulk of collected monies are actually spent. The exception to this is the 'meaningful proportion' to be spent in local neighbourhoods which is the subject of a current national consultation. The actual delivery of new infrastructure will often rest with other agencies but their role will be directed through the infrastructure priorities set by each District Council. Decisions about spending priorities and working arrangements with other agencies do not have to be taken now. Neither are authorities bound by sticking with the draft charge rates consulted on at the first stage. So there is no need to not go ahead with the initial consultation using the charge rates recommended by our consultants.

REASONS FOR RECOMMENDATION(S)

(If the recommendations are accepted)

4. To ensure Members are fully conversant with CIL and the latest work on infrastructure planning.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

5. None

BACKGROUND

6. Members have previously received two reports prepared for the Joint Advisory Committee meetings in March and September 2011, these respectively introduced CIL and explained how Charging Schedules are prepared. Invited Members will also recall that a CIL workshop was held on 3 October facilitated by the appointed development viability consultants. Fundamentally CIL is a straight forward concept of charging new built development contributing towards the cost of strategic infrastructure based on a square metre of floorspace basis according to an overall strategic assessment of viability and infrastructure needs.. However as with many simple concepts the practicalities of implementation are more complex. Appendix 1 reproduces a series of commonly occurring questions and answers about CIL although to a limited extent this is still evolving as evidenced by the current Government consultation on neighbourhood spending and affordable housing – Appendix 2.
7. In terms of infrastructure planning Members are aware that a joint Central Lancashire Infrastructure Delivery Schedule has been prepared to inform the preparation of the Core Strategy. For CIL purposes the significant aspect is the funding gap at the District Charging Schedule level and informing what will be the priorities for infrastructure delivery, particularly for spending levy monies.

DETAILED ASPECTS OF IMPLEMENTING CIL

8. CIL is an opportunity to capture significantly more in the way of developer financial contributions than through Section 106 planning obligations, especially as the use of the latter for infrastructure purposes is being progressively restricted by the Government. However use of planning obligations will still be appropriate to deliver infrastructure provision on the site of the contributing development. Therefore although adopting CIL is optional even when it is implemented many developments in the future would be likely to be subject to both Section 106 and CIL provisions.
9. In two-tier areas District Councils are the CIL Charging Authorities. With the exception of a 'meaningful proportion' of CIL monies being spent in local neighbourhoods it is the Charging Authorities that decide how the money collected is spent. There is no obligation to pool CIL monies with any other authority or infrastructure provider.
10. However District Councils are in practice not going to be responsible for delivering the entire infrastructure needed to benefit their area and therefore passing CIL monies to the relevant provider agencies is likely to be a common occurrence. Those agencies cannot 'demand' payment, agreement with the Charging Authority would need to be reached as to which infrastructure projects are to be CIL funded and to what extent.
11. Similarly some benefits to the local area will arise from infrastructure provided in a neighbouring area. But again the extent to which one charging authority may financially support an infrastructure project in a neighbouring authority's area will be at the discretion of the donating authority. A consensus would ideally be sought with all the parties involved.
12. All decisions on spending CIL monies, whether to support District or sub-regional infrastructure, should be based on priorities agreed firstly by the individual Charging Authority and then (for sub-regional projects) with neighbouring authorities. Such priorities can be reviewed at any time but are likely to be reconsidered at least annually to reflect any changing circumstances.

13. In Central Lancashire the consultants' research shows CIL monies envisaged to be collected will not meet the whole funding gap identified to date through the infrastructure planning. CIL could possibly cover between a third and a half of the overall funding gap. Such a level of shortfall is common amongst the first authorities elsewhere in the country adopting examiner supported Charging Schedules. The reason a large funding gap is not an over-riding concern is that it is generally accepted other funding opportunities will come along over the 15 year planning period. Also the economy is at a low ebb at the moment, however with any economic upturn in the future development viability can be expected to improve and so the ability and opportunity to levy higher CIL rates would arise at such a time. It may prove opportune to review the charge rates after 2 to 3 years
14. Notwithstanding a future improvement in the economy it is currently appropriate to review in a number of ways the previously produced joint Infrastructure Delivery Schedule (IDS) which was prepared to inform the Core Strategy. However for CIL as is necessary to demonstrate a funding gap for each Council's Charging Schedule. A way of achieving this is to divide the IDS into District parts. This is only practically possible by using the physical location of each infrastructure project although some of these (eg transport schemes) cross District boundaries or are presently indeterminate – a residual Central Lancashire schedule will need to be retained for such projects. Members will appreciate this split is not a perfect solution in establishing who benefits from particular infrastructure projects. For example a park and ride scheme will be located in one area but is likely to be used by residents from a wider area. The infrastructure evidence base for CIL would also benefit from a fuller technical report – what can be termed an 'infrastructure delivery plan' although this would still only be a background document to the Charging Schedule setting and examination process.
15. Infrastructure projects can be prioritised in a number of ways as how essential or desirable they are, such as in achieving the objectives of the Core Strategy and/or helping to deliver key development sites. Officers are working on such an approach and seeking to distinguish between whether projects would be likely to be CIL and/or Section 106 funded. The outcome of this work will be presented to Members at a later date.
16. CIL monies will initially come in slowly after a Charging Schedule is adopted as new development is granted planning permission, as CIL rates applied to it and construction is started. At first most new development being built will have been granted planning permission before CIL was brought into force locally. However assuming for example all new housing is liable to paying CIL then at say a rate of £70 per square metre a typical 90 square metre house will be charged £6,300 and if between 400 and 500 such dwellings are built in a year the annual amount due to be collected will range from £2.52 to £3.15 million, just from residential development.
17. Setting CIL rates is not a precise science. The Government and examining inspectors expect a broad strategic approach to be followed which may render some development unviable. **Producing preliminary draft charge rates for initial consultation does not commit authorities to sticking with those rates at the next, what can be called, 'preferred' draft stage.** Also the rates in the Charging Schedule are subject to examination by an independent examiner who will consider the representations made by third parties.
18. Although there remain uncertainties as to how CIL might evolve nationally in terms of such aspects as affordable housing funding and passing monies to local neighbourhoods there are no reasons to delay the Charging Schedule preparation process in Central Lancashire. The initial evidence has been prepared and although it will be subject to the findings of the initial consultation stage, it provides a thorough basis for consultation.

19. The consultants have so far found that , although development viability across Central Lancashire varies, given the variations in land costs, house values, a single residential charge is common to all three charging authorities. This approach will allow for greater flexibility in the use of developer contributions in the slightly higher viability areas, as these areas are also the ones most likely to require greater 'on site S106' infrastructure. Some use based charges related to retail are also proposed. The recommendation for the first (preliminary draft) stage that the same rates be consulted on for each District/ Charging Authority. It is envisaged that the Charging Schedules will be presented for executive approval in each Council in November.
20. Members should appreciate that having the same CIL charge rates across Central Lancashire may not be the final outcome of the Charging Schedule preparation process. There may well be some scope for each Charging Authority to adopt justifiably different rates. This will be for each Council to decide upon based on their attitude towards developer risk, providing the rate does not put the bulk of the development at risk. Although it would still be appropriate for rates to be complementary rather than conflicting across Central Lancashire. Members are reminded CIL rates cannot be based on policy grounds, they can only be justified on development viability evidence.

Background Papers			
Document	Date	File	Place of Inspection
Community Infrastructure Levy – Detailed proposals and draft regulations for reform - DCLG	October 2011		Lancastria House, Preston Civic Offices, Leyland Union Street Offices, Chorley County Hall, Preston

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COMMUNITY INFRASTRUCTURE LEVY – QUESTIONS AND ANSWERS

- Q1. What forms of development does CIL apply to?
- A1. Most forms of built development over 100 square metres in gross internal floor space and all new built dwellings irrespective of size.

- Q2. Are there any exceptions?
- A2. Yes CIL does not apply to buildings that are not normally used by people – such those that just house machinery, for example a pumping station, and relief from CIL applies to:
 - Social housing
 - Development by charities for charitable purposes

- Q3. Is CIL negotiable?
- A3. Only in highly exceptional circumstances when certain development (typically large strategic sites) can be exempt from CIL if it is to provide (through S.106 obligations) on-site infrastructure and where an additional CIL charge would render the development unviable

- Q4. Does CIL apply to conversions of existing buildings?
- A4. Only to any additional 'external' floor space over 100 square metres that is created, CIL is not chargeable on added floor space within the existing building – such as a mezzanine floor

- Q5. On a cleared redevelopment site is the previous floor space deducted from the newly built floor space to determine the amount of CIL payable?
- A5. Only to any extent that the previous floor space was used for at least 6 months in the previous 12 months.

- Q6. Unit of charge?
- A6. Per square metre of additional gross internal floor space.

- Q7. Where there is a County Council and a District Council administering in an area which authority can charge CIL?
- A7. The District Council is the charging authority

- Q8. Who is liable to pay CIL charges?
- A8. The regulations ensure that the developer or landowner are liable depending on circumstances.

- Q9. When is the charge due for payment?
- A9. On commencement of the development (and payable within 60 days thereof)

- Q10. What actions can charging authorities take for non-payment?
- A10. A stop notice can be served as well as a summons for payment

- Q11. Can payments be made in instalments?
- A11. Yes, if the charging authority has an instalment policy, in such cases the payments are due at certain times irrespective of actual progress with the development

- Q12. What actions can charging authorities take for late payments?
- A12. A stop notice and a summons for payment

- Q13. Are there any limitations on what CIL monies can be spent on?
- A13. Yes only on infrastructure (widely defined) required to support development of the area (capital and revenue costs), CIL monies cannot be spent on remedying deficiencies in

existing infrastructure (unless this would be made worse by new development) or cover pre-existing running costs of such

- Q14. Can charging authorities retain any collected CIL monies to cover their CIL set up or ongoing collection costs?
- A14. Yes within limits, these limits are currently being consulted on (see Appendix 2)
- Q15. Can CIL monies be spent outside the charging authority's administrative area?
- A15. Yes provided it supports the development of the donating area
- Q16. Can CIL monies be passed to another agency that will provide the infrastructure?
- A16. Yes but there is no obligation on the Charging Authority to do this
- Q17. On what basis are CIL charge rates set?
- A17. The broad economic viability of different types of development in the area or sub-area subject to an 'appropriate balance' being struck with the costs of meeting the funding gap
- Q18. Can nil/zero CIL rates be set?
- A18. Yes where that is justifiable in terms of development viability
- Q19. Can a development be subject to both s106 and CIL in terms of infrastructure contributions?
- A19. Yes, but increasingly s106 is being limited by regulations to just contributing to on-site infrastructure provision
- Q20. Can CIL obligations be met by payments in kind?
- A20. Yes, such as a donation of land for an infrastructure project
- Q21. Can a development granted planning permission prior to CIL being introduced be required to pay CIL?
- A21. No, not unless the permission expires
- Q22. Can CIL rates vary from use to use?
- A22. Yes based on differences in viability
- Q23. Can CIL rates vary from place to place within a single charging authority area?
- A23. Yes if there are spatial differences in development viability, but the sub-areas need to be shown on a map and justifying such precise boundaries can be difficult
- Q24. Do CIL regulations apply in Enterprise Zones?
- A24. Yes development in Enterprise Zones will be liable to the same CIL rates as elsewhere in the District unless the viability of development within the Zones is different and as a result different rates are included in the Charging Schedule
- Q25. Are CIL rates subject to automatic annual increases arising from changes in construction costs?
- A25. Yes a nationally recognised construction cost index is used
- Q26. Can CIL rates be reviewed at any time?
- A26. Yes at any time but a new Charging Schedule will need to be produced and justified through the same preparation stages as with the preceding Schedule
- Q27. What controls or incentives are there to ensure that CIL receipts are spent once they are collected?
- A27. Charging Authorities are required to regularly publish updates on expenditure

CIL CHANGES CONSULTATION

The Government are consulting on two main measures that would affect the operation of the levy locally:

- What the 'meaningful' proportion of CIL monies collected from development in a neighbourhood should be spent in that neighbourhood
- Whether local authorities should have the choice of funding affordable housing by CIL monies as well as through Section 106 planning obligations

The consultation paper also confirms two other operational matters:

- Charging authorities are to be required to publish information on levy receipts and expenditure as soon as reasonably practical
- Development granted planning permission through Neighbourhood Development Orders and Community Right to Build Orders will not be subject to the levy until 2013

'Meaningful' Proportion of CIL Monies to be Spent in the Local Neighbourhood

This is a provision of the Localism Bill. The intention of the provision is to 'give local authorities and their communities the means and flexibility to manage the impacts of new development and ensure that they share in the benefits of growth'.

The consultation document does not propose a minimum percentage figure for the proportion, the Government seeks suggestions on the percentage should be. In parished areas the recipient body of the neighbourhood funding will be the parish council. Elsewhere in non-parished areas the suggestion is that the local authority should engage with local residents, businesses and other interests to determine how local neighbourhood proportion will be spent.

Parish Councils will be able to use the money passed to them for any infrastructure of their choice (including contributing to District Council projects) provided that it supports the development of the area and can be used to cover the on-going revenue costs of this infrastructure. As with CIL monies generally parish councils will not be able to use their proportion to remedy existing infrastructure or to help with the running costs of such. Charging authorities are expected to pass monies to parish councils promptly and at least after 6 months of being received. Parish Councils will be required to report at least annually on their receipts and expenditure.

To avoid there being an embarrassment of riches being due to a parish council from large developments in sparsely populated areas a per household cap mechanism is proposed. Suggestions are sought as to what that cap level should be, expressed per council tax dwelling. No indication of the level is expressed in the consultation document

COMMENTARY - The consultation document gives few clues to what is meant by a 'meaningful' proportion of total CIL monies. The provision implies that after the normal process of granting planning permission (probably with appropriate conditions, planning obligation and an overall CIL contribution) has been completed there will be 'something more to do' locally to make a new development acceptable to or in the local community.

Although not required to do so Parish Councils ought to indicate in advance what local infrastructure they intend to fund if only to coordinate this with the District Council's intentions. Clearly the Government recognises situations may arise where the normal meaningful proportion will be too high but choosing a universally applicable level will be difficult to do as local neighbourhood infrastructure requirements will vary greatly.

The main issue in non-parished areas is how to gain a clear understanding of what the local neighbourhood comprises and needs given a likely lack of representative bodies.

Funding Affordable Housing through CIL

There are no proposals to change the delivery of on-site affordable housing through Section 106 planning obligations applied to market housing schemes. However in circumstances when off-site of affordable housing provision is appropriate the suggestion is there could be an option of using the CIL charge. The consultation paper also proposes the relaxation of the pooling of Section 106 affordable housing monetary contributions –ie not being limited to 5 developments contributing to the pool. It also appears that a local authority could use both mechanisms to fund off-site affordable housing. Not surprisingly the consultation paper suggests that local authorities make clear their intended delivery means of achieving affordable housing.

COMMENTARY – This is a complicated area. Planning obligations are negotiated, CIL charges are fixed. Affordable housing contributions, whether they constitute on-site provision or off-site monies, impact on development viability in much the same way as CIL charges. This implies that CIL rates would need to vary between sites where on-site affordable housing through s106 is intended and where CIL is to be used for affordable housing provision. This may well prove very difficult to implement.

Removing the Administrative Cap for Charging Authorities

Currently charging authorities can use a proportion of CIL monies collected to fund the administration costs of operating the level. Currently this is capped at 5% of receipts less expenses of up to 4% of receipts incurred in collecting the levy. The Government are proposing to remove the 5% gap (in recognition of the likely cost of operating CIL at the neighbourhood level, on-going reporting etc) but not remove the 4% cap on the collection element. Charging authorities will in effect be able to recoup the full cost of all other administrative tasks.

COMMENTARY – This is clearly a helpful move that should more fully cover all the costs of operating CIL.