



Report of	Meeting	Date
Director of Development, Preston City Council	Central Lancashire Strategic Planning Joint Advisory Committee	29 September 2016

## REVIEW OF THE COMMUNITY INFRASTRUCTURE LEVY

### PURPOSE OF REPORT

1. To update members of the Joint Advisory Committee on the government's review of the Community Infrastructure Levy.

### RECOMMENDATION(S)

2. The Joint Advisory Committee is recommended to note the current position with regard to the timing of a review of the Community Infrastructure Levy.

### EXECUTIVE SUMMARY OF REPORT

3. This report provides an update to the report to the Joint Advisory Committee presented in July 2015.

### REASONS FOR RECOMMENDATION(S)

4. For Members of the JAC to be aware of the current position.

### ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

5. N/A. The local planning authorities will have to comply with legislation.

### BACKGROUND

9. This note provides an update in relation to the review of CIL that was reported to the Joint Advisory Committee in July 2015. Since that report, which focused on the implications of policy changes in relation to the Code for Sustainable Homes, and recommended members to note that there was no immediate need to carry out a review, the government has

commissioned its own review of the Community Infrastructure Levy and a decision on that is expected to be imminent.

10. The Community Infrastructure Levy for the three Central Lancashire authorities was adopted at various dates in July and August 2013 following an examination held in April 2013. The levy came into effect on 1<sup>st</sup> September 2013 in Chorley and South Ribble and on 30<sup>th</sup> September 2013 in Preston.
11. The National Planning Practice Guidance indicates that charging authorities must keep their charging schedules under review and should ensure that levy charges remain appropriate over time. For example charging schedules should take account of changes in market conditions, and remain relevant to the funding gap for the infrastructure needed to support the development of the area.
12. The guidance goes on to say that when reviewing their charging schedule, charging authorities should take account of the impact of revised levy rates on approved phased developments, as well as future planned development.
13. Charging authorities may revise their charging schedule in whole or in part. Any revisions must follow the same processes as the preparation, examination, approval and publication of a charging schedule (as specified under the Planning Act 2008, particularly sections 211-214 as amended by the Localism Act 2011, and the levy Regulations).
14. Government does not prescribe when reviews should take place. However, in addition to taking account of market conditions and infrastructure needs, the guidance advises that charging authorities should also consider linking a review of their charging schedule to any substantive review of the evidence base for the relevant Local Plan. The Government suggests that even if the original charging schedule was not examined together with the relevant Plan, there may be advantages in coordinating the review of both.

#### **CORE STRATEGY POLICY 27**

15. The principle issue driving consideration of a review in 2015 was the alleged increase in costs of development that would arise from full implementation of the Code for Sustainable Homes as set out in Policy 27 of the Central Lancashire Core Strategy.
16. The issue of increasing costs arising from these increasing levels in housing was an issue before the Inspector who conducted the examination of the CIL charges in April 2013 and was also the subject of the Judicial Review brought by Fox Strategic Land and Property Limited, part of the Gladman group of companies.
17. From his report it was clear the Inspector's expectation was that a review of CIL would be carried out to reflect the increasing costs to development arising from the introduction of Code level 6 from January 2016, and that review would be carried out in 2015.
18. Following the adoption of the CIL charging schedule by the three authorities Fox Strategic Land and Property Limited sought and was granted permission to pursue a judicial review of the CIL charge for residential use on a number of grounds, the relevant one in this case being:

*'Whether it was unlawful to adopt the charging schedule for dwelling-houses without allowing for the potential effects of a requirement in development plan policy, due to come into effect in January 2016, that new housing must meet Level 6 of the Code for Sustainable Homes (ground 4).'*

19. The hearing was held on 10<sup>th</sup> March 2014 and the judge, Lindblom J., issued his judgment on 17<sup>th</sup> April 2014 dismissing the claim on all grounds.

### **POLICY CHANGES**

20. While the need for a review of the CIL charge has been cast in terms of an assumption that Code Level 6 will come into effect in January 2016, Government Policy in relation to the Code for Sustainable Homes has itself changed. Local Planning Authorities with policies in place in adopted plans can continue to seek energy efficiency levels equivalent to Code for Sustainable Homes level 4 until such time as building regulations are amended to require an equivalent level, at which point S1 of the Planning and Energy Act 2008, which is the statutory basis for CS Policy 27, will be amended to no longer apply to dwelling houses.
21. What this means for a review of CIL is that any review is going to have to be carried out in the context of a requirement on site for energy efficiency levels equivalent to Code level 4 of the Code for Sustainable Homes. Clearly the situation has changed since the point was raised in the CIL examination and at the judicial review. Developers are providing equivalent to code level 4 energy efficiency measures and contributing the CIL charge so the implication is that development is viable at this level of energy efficiency and the current CIL charge.

### **GOVERNMENT REVIEW OF CIL**

22. The government commissioned a review of CIL, which was carried out by an independent panel between November 2015 and March 2016. The panel was chaired by Liz Peace, formerly chair of the British Property Federation. The other members of the panel were:
- Andrew Whitaker (Home Builders Federation),
  - Gilian MacInnes (Planning Advisory Service),
  - Tom Dobson (Quod Planning),
  - Steve Dennington (LB Croydon)
  - Michael Gallimore (Hogan Lovells)
  - Councillor John Fuller, Leader of South Norfolk District Council.
23. The panel reported to government in June 2016 and the government's response is now expected to be imminent. On the 12<sup>th</sup> September Nathaniel Lichfield & Partners, planning consultants published a list of possible amendments to the CIL regime. Whilst this is speculative it is consistent with information from other sources suggesting that most, if not all of the changes, will find their way into the amended scheme.
24. Those changes are:
- Simplified Regulations and National Planning Practice Guidance to accompany them
  - The removal of the Regulation 123 infrastructure list and section 106 pooling restrictions i.e. councils would be able to negotiate with applicants and communities where receipts will be spent
  - Strategic sites would not be liable to CIL, or if they were to be, the liability would be a low rate per sq. m.

- CIL (possibly to be renamed?) would be a charge on all development
- There would be no 'other' charges (via section 106) for small and medium sites but major developments would be liable to CIL and section 106 payments
- Ideally, there would be a clear integration of CIL and section 106 with a review of the local plan-making process (pursuant to the Local Plans Expert Group's work)
- There would be scope for charging authorities to borrow against forecast CIL receipts
- There would be a prescribed method of CIL calculation, with any 'indexing' potentially linked to the Retail Price Index or any other freely available, reputable Index
- Greater recognition of combined governance and how this could assist in funding large scale infrastructure projects (such as the Mayoral CIL is doing for Crossrail)

25. Some of these have potentially significant implications for the Central Lancashire authorities and for the City Deal arrangements. In particular the abolition or reduction of CIL charges on strategic sites may affect the North West Preston Strategic Location although it is not clear at present how widely the net would be cast in terms of defining a strategic site. In fairness, the question of whether there is a need to set lower levels of CIL in large strategic sites, to reflect the site specific infrastructure costs applicable and lower land values arising from releasing a large site at once, is something that has always been an issue to take into account in assessing viability and CIL charges. The counter argument at North West Preston has always been that it is not one site but a number of sites in the same broad location and this has been reflected in landowners' expectations of land values, which have remained high.
26. Other implications may be more positive, particularly the removal of pooling of S106 contributions, a CIL charge on all development and indexing against a readily and publicly available index such as RPI rather than BCIS as at present. It is expected that all these changes will require changes to legislation: NLP comment *"We can rest assured that the Panel's recommendations are highly likely to lead to still more legislative changes (and possibly, more wide-reaching reform), when the review report is launched this autumn"*.
27. Given that the government's response now appears to be imminent and may be in the next month or two, it may be worthwhile holding back on any local CIL review until it is clearer what we might be required to do as part of that review.

Report Author	Ext	Date	Doc ID
Mike Molyneux	01772 906703	September 2016	***