



Report of	Meeting	Date
Director (Business, Development and Growth), Chorley Council	Central Lancashire Strategic Planning Joint Advisory Committee	3 April 2018

SUPPORTING HOUSING DELIVERY THROUGH DEVELOPER CONTRIBUTIONS – SUMMARY OVERVIEW

PURPOSE OF REPORT

- To inform Members of the MHCLG's consultation on "Supporting housing delivery through developer contributions" this proposes changes to the Community Infrastructure Levy and Section 106 Planning Obligations.

RECOMMENDATION(S)

- That the report be noted.

EXECUTIVE SUMMARY OF REPORT

- A national consultation has been launched on a number of detailed proposals on the Community Infrastructure Levy such as removing the restriction of Section 106 pooling towards a single piece of infrastructure where a local authority has adopted CIL and speeding up the process of setting and revising CIL to make it easier to respond to changes to the market.

Confidential report Please bold as appropriate	Yes	No

CORPORATE PRIORITIES

- This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all	X	A strong local economy	X
Clean, safe and healthy communities	X	An ambitious council that does more to meet the needs of residents and the local area	X

BACKGROUND

- The CIL for the three Central Lancashire authorities was adopted in August 2013 and the levy came into effect on the 1 September 2013 in Chorley & South Ribble & on the 30 September 2013 in Preston.
- The Community Infrastructure Levy (CIL) is intended to be used for general infrastructure

contributions whilst Section 106 obligations are for site specific mitigation. The Government's intention was to ensure that the CIL and S106 are used to complement one another as methods of securing infrastructure and community benefits.

7. The Community Infrastructure Regulations 2010 (as amended) restricts the use of planning obligations where there have been 5 or more obligations in respect of a specific infrastructure project or type of infrastructure entered into on or after 6 April 2010.
8. The intention of CIL was to create a more transparent way of charging for development contributions, which was less time consuming as it is non-negotiable and does not rely on the agreement of numerous parties to draft, agree, create, and sign a legal agreement. Nor is there a requirement for a Local Authority to prove the CIL contributions meet the statutory tests which are applied to S106 contribution requests:
 - Necessary to make the development acceptable in planning terms
 - Directly related to the development
 - Fairly and reasonably related in scale and kind to the development
9. In November 2015, the Government commissioned an independent review into the Community Infrastructure Levy (CIL), and its relationship with planning obligations. The Review was published in February 2017. It found that the system of developer contributions was not as fast, simple, certain or transparent as originally intended.
10. The Government announced a package of reforms at the Autumn Budget 2017 in response to the CIL Review. These reforms are intended to complement the proposed changes to viability in the National Planning Policy Framework (NPPF) and make the system of developer contributions more transparent and accountable.

SUPPORTING HOUSING DELIVERY THROUGH DEVELOPER CONTRIBUTIONS (CONSULTATION)

11. The MHCLG published this consultation setting out that the current system of developer contributions is not working as well as it should, is too complex and uncertain. The Government proposes reforms and changes which will provide continuity and certainty for developers in the short term. **Annex A** of the consultation poses 34 consultation questions and further details of the proposals. The government considers these reforms will benefit the local authorities who administer them, developers who pay them and the communities in which development takes place. The reforms that are being proposed in this consultation will enable the necessary supporting infrastructure to be built and to continue to support the delivery of affordable housing. The reforms proposed are:
 - 12 **Reducing complexity and increasing certainty:**
 - **Remove the S106 pooling restriction** in areas:
 - that have adopted CIL;
 - where local authorities fall under a threshold based on the tenth percentile of average new build house prices, meaning CIL cannot be feasibly charged (those authorities where average new build prices are within the lowest 10% of those in England would have restrictions removed); or
 - where development is planned on several strategic sites.

The government will retain the pooling restriction in other circumstances by ensuring that other tariff based approaches are avoided by local authorities that have taken a policy decision not to implement CIL. The changes will avoid the unnecessary complexity that pooling restrictions can generate.

- **Ensure that requirements for setting and revising a CIL charging schedule are proportionate**, by replacing the current statutory formal consultation requirements (two stages of consultation) with a requirement to publish a statement on how an authority has sought an appropriate level of engagement. This would be considered by an Examiner

through the CIL examination process, and would allow authorities to set schedules more quickly and to expedite revising them in response to changes in circumstance.

- **Streamline the process for local authorities to set and revise CIL charging schedules** by aligning the requirements for evidence on infrastructure need and viability with the evidence required for local plan making. This will reduce the burden on local authorities and make introducing CIL more attractive, providing greater clarity on the appropriate evidence base.
- **Improvements to the operation of CIL** to include a more proportionate approach to administering exemptions. Exemptions available for CIL need to be granted by the charging authority prior to the start of works on site. A developer must submit a Commencement Notice to the charging authority prior to the start of works on site to confirm exemption. Failure to do so results in the exemption being removed, the full levy liability then becomes due immediately, and any ability to pay the levy in phases is removed. The Government proposes to relax the Commencement Notice requirement by providing a 2 month grace period for developers to submit a Commencement Notice in relation to exempted development but is also asking for clarification whether a small penalty should be applied. Further improvements include clarifying how indexation is applied where a planning permission is amended; and extending abatement provisions to phased planning permissions secured before the introduction of CIL (this provision does not apply to Chorley).

- 13 **Supporting Swifter Development:** Viability Assessment is a process of assessing whether a site may be financially viable, by looking at whether the value generated by a development is more than the cost of developing it. The interpretation of existing policy has led to an increase in the use of viability assessment in planning application negotiations to such a degree that it causes complexity and uncertainty and results in fewer contributions for infrastructure and affordable housing than required by local policies. Viability assessments are often withheld from the public on the grounds of commercial confidentiality, which has generated concern over transparency and how viability assessments are used to inform decisions.

The Government proposes as part of the revised National Planning Policy Framework consultation (also published March 2018) to:

- **Improve viability assessment in plan making** and ensure that where a proposed development accords with all relevant policies in the local development plan (e.g. provision of affordable housing) there is no need for a viability assessment to accompany the planning application. This will reduce scope for delays and protracted negotiations at the planning application stage.
- **Enable transparency and accountability** by expecting all viability assessments to be conducted on an open book basis, be publically available and to use the government's recommended definitions of key factors, as set out in guidance.

- 14 **Increasing Market Responsiveness:**

- **Allowing CIL charging schedules to be set based on the existing use of land, rather than on the basis of the type and scale of the proposed development.** This will allow authorities to set rates which better reflect the uplift in land values between a proposed and existing use. Rather than setting a flat rate for all development of the same type (residential, commercial, etc.), a local authority will have the option to have a different rate for different changes in land use (agricultural to residential, commercial to residential, industrial to residential). This will allow local authorities⁵ to better capture an amount which better represents the infrastructure needs and the value generated through planning permissions. Local authorities will continue to have the ability to set CIL at a low or zero rate to support regeneration.
- **Simplify the charging of CIL on complex sites.** Some complex sites for development may have multiple existing uses. This could create significant additional complexity in assessing how different CIL rates should be apportioned within a site, if a charging authority has chosen to set rates based on the existing use of land. In these circumstances, the Government proposes:

- encouraging the use of specific rates for large strategic sites (i.e. with a single rate set for the entire site)
 - charging on the basis of the majority use where 80% of the site is in a single existing use, or where the site is particularly small; and
 - other complex sites could be charged at a generic rate, set without reference to the existing use of the land, or have charges apportioned between the different existing uses.
- **Indexation Changes** CIL charges are applied at the point development is permitted and indexed to the build costs which reflects changes in contractor costs, and is used to account for changes in the costs of delivering infrastructure. However, contractor costs do not necessarily increase at the same rate as house price inflation. Since 2001, average annual house prices across England and Wales have risen faster than contractor costs. This means the impact that a rate has on the viability of development reduces over time, and the local authority collects less than could otherwise be the case. To address these issues the Government proposes to **Index residential development to regional or local authority house prices. For non-residential development the Government could index commercial development to a factor of house prices and Consumer Price Index (CPI), or to CPI alone.** This will ensure that charging schedules stay up to date in terms of the impact on viability. This reduces the need for local authorities to revise charging schedules, and creates more long-term certainty for developers. Indexation could be applied on a regional or local authority basis, to account for differing housing markets in different areas.

15 Improving Transparency and increasing accountability:

- **Remove regulatory requirements for Regulation 123 lists** which do not provide clarity or certainty about how developer contributions will be used. The Government proposes to remove the restrictions on section 106 obligations in regulation 123 and replace Regulation 123 lists. (The Regulations (paragraph) 123 provides for a charging authority to set out a list of projects or types of infrastructure referred to as the 'Regulation 123 List'. It is at the charging authorities discretion as to which projects are allocated funding and how much. This is a 'living' document and is the subject of on-going update and monitoring)
- **Amend the CIL Regulations to require the publication of annual Infrastructure Funding Statements in an open data format** that explain how the spending of any forecasted income from both CIL and section 106 planning obligations over the next five years will be prioritised and to monitor funds received and their use.
- **Local authorities** are being asked if they want may to seek a sum as part of 106 planning obligations for monitoring planning obligations
- Giving **Combined Authorities and planning joint committees with statutory plan-making functions the ability to introduce a Strategic Infrastructure Tariff (SIT)**, in the same way that the London Mayoral CIL is providing funding towards Crossrail. The SIT would be additional to CIL and viability would be examined in public. Consultation will be undertaken on whether it should be used to fund both strategic and local infrastructure.

NEXT STEPS

- 16 Each authority will provide a separate response to this consultation by 10 May 2018 whilst Central Lancashire officers will make sure the responses are aligned.

Report Author	Ext	Date	Doc ID
Alison Marland	01257 515281	21/03/18	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/685428/Developer_Contributions_Consultation.pdf