



East  
Northamptonshire  
Council

## Planning Policy Committee – 12 December 2011

### Community Infrastructure Levy: Detailed proposals and draft regulations for reform Consultation

#### Purpose of report

The purpose of this report is to set out a proposed response to this Consultation

#### Attachment(s)

- Appendix 1 Consultation document
- Appendix 2 Proposed Response

### 1.0 Background

- 1.1 The 2008 Planning Act established powers to create a Community Infrastructure Levy (CIL) and the concept of a new planning charge came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010. The Government then set out proposals to reform the CIL through the Localism Bill, which was given Royal Assent on 15 November 2011.
- 1.2 On 10 October 2011, the Department for Communities and Local Government published the “Community Infrastructure Levy: Detailed proposals and draft regulations for reform Consultation” document. The deadline for submission of consultation comments is **30 December 2011**. This consultation seeks views on the detailed implementation of the proposals.
- 1.3 Prior to discussing the consultation response, Members are reminded that the North Northamptonshire Joint Planning Unit is leading the work on a CIL framework to enable the individual planning authorities within North Northamptonshire to then make an informed judgment on whether or not to proceed with CIL i.e. CIL is not something that an authority is required to do. However, from April 2014 the number of S106 contributions that can be ‘pooled’ for a common infrastructure project will be limited to five – this will severely restrict the ability to raise funds for infrastructure required as a result of cumulative development.
- 1.4 Members are reminded that the Community Infrastructure Levy allows local authorities to raise funds from developers undertaking most new building projects in their area. The money can then be used to fund a wide range of infrastructure that is needed as a result of development. This includes new or safer road schemes, flood defences, schools, hospitals and other health and social care facilities, park improvements, green spaces and leisure centres. (S106 contributions will be limited (as now) to direct impacts of a development)

Members may find the following website useful to refer to for further CIL information:  
<http://www.pas.gov.uk/pas/core/page.do?pageId=122677>

### 2.0 The Consultation

- 2.1 The consultation (Appendix 1) seeks views on the following proposals:
  - implement neighbourhood funds (Chapter 1)

- allow receipts to be used to provide affordable housing (Chapter 2)
- provide transitional provisions to allow fair operation of the levy in Mayoral Development Corporation areas (Chapter 3)
- require charging authorities to report more openly and regularly on receipts and expenditure to improve transparency and understanding of the contribution that developers are making and how those funds are used (Chapter 4)
- add new Development Orders to the list of developments that may be liable to a charge (Chapter 4).

2.2 A series of questions have been provided to help respond to this consultation and a proposed response is attached for Members' consideration (Appendix 2).

2.3 Draft Regulations have also been prepared alongside the consultation, but the consultation will inform these and therefore it is not necessary to comment specifically on them. The consultation responses are to be considered before the CIL Regulations are finalised, which will then be laid before Parliament.

### 3.0 Conclusion

3.1 That the proposed response, as set out in Appendix 2, be submitted to DCLG, subject to any amendments Members may wish to make.

### 4.0 Equality and Diversity Implications

4.1 There are no equality and diversity implications.

### 5.0 Legal Implications

5.1 The consultation will inform changes to the CIL regulations.

### 6.0 Risk Management

6.1 There are no identified risks.

### 7.0 Financial Implications

7.1 Financial implications will depend on whether the authority signs up to CIL or not, in due course. There will be costs to the authority in setting up, administering and monitoring CIL, but also potential losses in funding from developers should CIL not be signed up to. Decisions about this will need to be considered following the work being carried out by the North Northamptonshire Joint Planning Unit.

### 8.0 Corporate Outcomes

8.1 The relevant Corporate Outcome is:

- Good quality of life - sustainable

### 9.0 Recommendation

9.1 The Committee is recommended to approve the consultation response for submission, subject to any alterations Members may wish to make (*Reason – to improve infrastructure provision and mechanisms for achieving this*)

<b>Legal</b>	Power:	Planning Act 2008, Community Infrastructure Levy Regulations 2010, Localism Act.
	Other	None

	considerations:				
<b>Background Papers:</b> None					
<b>Person Originating Report:</b>		Karen Britton – Planning Policy and Conservation Manager Extn: 2142 kbritton@east-northamptonshire.gov.uk			
<b>Date: 10 November 2011</b>					
<b>CFO</b>		<b>MO</b>		<b>CX</b>	

(Committee Report Normal Rev. 22)



Community Infrastructure Levy  
**Detailed proposals and draft regulations for reform**  
**Consultation**



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## Scope of the consultation

<b>Topic of this consultation:</b>	<p>The Planning Act 2008 established powers to create a Community Infrastructure Levy in England and Wales. The Community Infrastructure Levy regulations 2010 made the first use of these powers and came into effect in April 2010. The regulations allow a charging authority to levy a charge on the owners or developers of land that is developed so that they contribute to the costs of providing the infrastructure needed to support the development of the area.</p> <p>The Government set out proposals to reform the Community Infrastructure Levy in the Localism Bill. The changes would require local authorities to pass a meaningful proportion of receipts to the neighbourhoods where the development that gave rise to them took place, clarifies that receipts may be spent on the ongoing costs of providing infrastructure to support the development of the area and provides more local choice over how to implement a charge.</p>
<b>Scope of this consultation:</b>	The aim of this consultation is to seek views on the detailed implementation of the Government's proposals, including on the draft regulations.
<b>Geographical scope:</b>	Local authorities in England and Wales are able to implement a levy in their area if they choose to do so.
<b>Impact Assessment:</b>	<p>An impact assessment was published in January to accompany the Localism Bill, which can be downloaded from:  <a href="http://www.communities.gov.uk/publications/localgovernment/localisminfrastructurelevy">http://www.communities.gov.uk/publications/localgovernment/localisminfrastructurelevy</a></p> <p>The impact assessment will be updated following this consultation when draft amendment regulations are laid in Parliament.</p>

## Basic Information

<b>To:</b>	This consultation is aimed primarily at: local authorities; landowners and developers; business; and planning professionals.
<b>Body/bodies responsible for the consultation:</b>	This consultation is being run by the Community Infrastructure Levy Team within the Department for Communities and Local Government.
<b>Duration:</b>	This consultation will run for 12 weeks. It will begin on 10 October 2011 and end on 30 December 2011.
<b>Enquiries:</b>	<p>Franciane Genouillé  030 344 41473  cil@communities.gsi.gov.uk</p>

<p><b>How to respond:</b></p>	<p>We are seeking your views directly on the Government's detailed proposals for the reform of the levy, including draft regulations. Responses should be sent by email or by post please:</p> <p>Email responses to: <a href="mailto:cil@communities.gsi.gov.uk">cil@communities.gsi.gov.uk</a></p> <p>Written responses to:</p> <p>Franciane Genouillé          Communities and Local Government          CIL Team          Zone 1/E2 Eland House          Bressenden Place          London SW1E 5DU</p>
<p><b>Additional ways to become involved:</b></p>	<p>A number of briefing events will take place during the consultative period in order to engage with stakeholders who may be affected by the issues under discussion in this consultation. Please contact Franciane Genouillé on 030 344 41473 or via an email to <a href="mailto:cil@communities.gsi.gov.uk">cil@communities.gsi.gov.uk</a> for more information.</p>
<p><b>After the consultation:</b></p>	<p>A summary of responses to the consultation will be published on the Department's website within three months of the closing date i.e. in March 2012.</p> <p>Following full consideration of the consultation responses, and subject to the Localism Bill, the Department will lay regulations in Parliament, where they will be debated in the House of Commons, before coming into force next year.</p>
<p><b>Compliance with the Code of Practice on Consultation:</b></p>	<p>This consultation complies with the Government's Code of Practice on consultations, which can be downloaded from:  <a href="http://www.bis.gov.uk/policies/better-regulation/consultation-guidance">http://www.bis.gov.uk/policies/better-regulation/consultation-guidance</a></p>

## Background

<p><b>Getting to this stage:</b></p>	<p>The Government announced its plans to retain and reform the Community Infrastructure Levy in November 2010. The announcement is available at: <a href="http://www.communities.gov.uk/news/newsroom/1772640">http://www.communities.gov.uk/news/newsroom/1772640</a></p>
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## About this consultation

This consultation document and consultation process have been planned to adhere to the Code of Practice on Consultation issued by the Department for Business, Innovation and Skills and are in line with the consultation criteria, which are:

- formal consultation should take place at a stage when there is scope to influence the policy outcome
- consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible
- consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals
- consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach
- keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained
- consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation
- officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with the Data protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested. Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact DCLG.

Consultation Co-ordinator

Eland House

London SW1E 5DU

or by e-mail to: [consultationcoordinator@communities.gsi.gov.uk](mailto:consultationcoordinator@communities.gsi.gov.uk)

# Introduction

## Overview of the Community Infrastructure Levy

The Community Infrastructure Levy allows local authorities to choose to charge a levy on new development in their area in order to raise funds to meet the associated demands placed on the area and to enable growth.

The money raised must be used to provide infrastructure to support the development of the area, addressing the matters that the council, local community and neighbourhoods identify are needed for it to proceed – for example by providing new roads and transport, local amenities such as a park, community centre, a new health centre or new waste management infrastructure. Investing receipts in the local area will ensure that growth is supported and sustainable, which will in turn unlock new development and growth.

The system is very straightforward. It applies to most new buildings and charges are based on the size and type of the new development.

Single tier and second tier local authorities in England and Wales can charge and spend the levy: district and metropolitan councils, London borough councils and unitary authorities. Other bodies include the national park authorities, the Broads Authority, the Council of the Isles of Scilly and the Mayor of London. In Wales, county and county borough councils can charge, along with national park authorities. These bodies are known as charging authorities. Charging authorities may spend receipts themselves, pass funds to other bodies, such as upper tier authorities, and fund infrastructure outside their area provided that the spending supports the development of their area, for example providing strategic transport infrastructure.

Charging authorities must produce a document called a charging schedule that sets out the rate or rates they will charge. They are required to consult their residents and other interested parties in setting their rate(s) and those rate(s) must be supported by evidence, particularly concerning the impact on the economic viability of new development. Charging schedules are then considered at a public examination by an independent examiner who will check that the legislation has been complied with and that the rates that are proposed will support rather than harm new development.

## Localism Bill

Our reforms to the levy are set out at clauses 102 – 103 of the Localism Bill and are as follows:

- rebalancing the relationship between the charging authority and the independent examiner so the elected body has the final say on how they implement a charge in their area (clause 102 of the Localism Bill)
- clarifying that the Community Infrastructure Levy can be spent on the ongoing costs of providing infrastructure as well as the initial costs (clause 103 of the Localism Bill)
- requiring charging authorities to pass a meaningful proportion of receipts arising from development to other persons (clause 103 of the Localism Bill), which we will use to direct funds to the neighbourhoods where development takes place.

The Bill also contains powers for Mayoral Development Corporations to become charging authorities for their area.

We set out our commitment to consider and consult on whether to allow Community Infrastructure Levy receipts to be used to provide affordable housing during Parliament's consideration of the changes. The Planning Act 2008 already allows for this, but the current levy regulations<sup>1</sup> prevent receipts being used for this purpose. This is not therefore a matter for the Localism Bill. Consultees are invited to provide their views on allowing spend on affordable housing and the issues are set out in chapter 2 of this consultation.

## Matters for consultation

This consultation seeks views on our proposals to:

- implement neighbourhood funds (Chapter 1)
- allow receipts to be used to provide affordable housing (Chapter 2)
- provide transitional provisions to allow fair operation of the levy in Mayoral Development Corporation areas (Chapter 3)
- require charging authorities to report more openly and regularly on receipts and expenditure to improve transparency and understanding of the contribution that developers are making and how those funds are used (Chapter 4)
- add new Development Orders to the list of developments that may be liable to a charge (Chapter 4).

<sup>1</sup> SI No. 948, 2010 – the Community Infrastructure Levy Regulations 2010 (as amended).

We have published draft regulations alongside this consultation document. Consultees may wish, but do not need to, consider the regulations alongside this document. The consultation explains the effect of the draft regulations and the key questions where consultees views will particularly help to shape the policy as it is finalised.

Following the consultation, and the passage of the Localism Bill through its Parliamentary stages, we will consider the responses to this consultation and reflect on those before finalising the regulations, which will then be laid before Parliament.

# Chapter 1

## Neighbourhood funds

### Introduction

This chapter sets out how we propose to require charging authorities to pass a proportion of funds that they receive through the Community Infrastructure Levy to other bodies.

Clause 103 of the Localism Bill allows ministers to lay regulations to place a duty on charging authorities to pass a proportion of the funds that they raise through the levy to other persons. We intend to use the powers conferred by this clause to require charging authorities to allocate a meaningful proportion of the revenue generated from the levy to the local elected council for the area where the development and growth take place.

These neighbourhood funds form an important part of the Government's objective to strengthen the role and financial autonomy of neighbourhoods. This will give neighbourhoods far more ability to determine the shape of their area and to help communities accommodate the impact of new development.

This chapter seeks views on a range of issues around the application of neighbourhood funds: who should receive the funds; the proportion of receipts that are to be passed down; the timing, reporting and monitoring of payments; and the relationship between neighbourhood funds and planning obligations.

### Context

Alongside the physical barriers to new development, growth can be slowed or restricted by local concerns about its impacts. People are more likely to accept and support new development if they are satisfied that it is meeting the demands that it will place on their area and see that their communities will benefit, or at least not suffer, as a result.

Through our changes, communities that accept new development will be able to decide for themselves how the demands placed on their area are best addressed. By channelling resources close to where development takes place we will help change attitudes towards development, particularly when neighbourhoods see that the needs arising from development are being directly met and with meaningful control over the funds placed with the community itself.

We will 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.

## Implementing neighbourhood funds

The Localism Bill provides for the detail of how neighbourhood funding will work to be covered in regulations and guidance. We are proposing an approach that sets out the main requirements in regulations (where we need to ensure certainty and consistency) that are supplemented with statutory guidance (where we want to provide local authorities and neighbourhoods with flexibility).

## Parish councils in England and community councils in Wales to receive funding

We want to ensure that all neighbourhoods have a meaningful say in how the impacts of new development are managed. At the same time we need to ensure appropriate controls, transparency and accountability for public funds.

As we set out during the House of Commons' consideration of the levy clauses, we propose that the duty to pass on a meaningful proportion of the funds raised through the levy should apply where there is a locally elected council for the area where the development that gave rise to the payment takes place. That is a parish council or a town council in England or a community council or a town council in Wales ('parish or community council').

The Government believes that the requirement to pass a proportion of levy funding to neighbourhoods should apply to all charging authorities in England and Wales that choose to charge the levy. We will consult the Welsh Assembly Government on how this requirement should be framed in Wales.

## Charging authorities to retain and spend funds where no parish or community council exists

Not all areas of England and Wales are represented by parish or community councils. The geographical coverage of parishes in England is not universal. In Wales communities cover the whole of the country, but not all have elected councils.

Where no parish or community council exists, we propose that the charging authority will retain the funds and should engage with their communities in determining how to spend those receipts. We believe that this should be set out in statutory guidance rather than regulations as this approach will allow for charging authorities to determine the

appropriate approach for their area. This flexibility would allow them, for example, to determine the areas within the local authority boundary where receipts will be applied and how they engage with the residents, businesses and other interests in determining how they will be spent.

## Further matters to note

Where development crosses more than one parish or community council's boundary, the draft regulations provide that each council will receive a proportionate amount of the levy payment based on how much development is located within their area.

The Mayor of London will be exempt from the requirement to allocate a meaningful proportion of levy receipts to neighbourhood funds. London is unique in that charges can be levied by both the London boroughs and the Mayor. Given that the Mayor can only raise charges in respect of strategic transport infrastructure we do not believe that it would be appropriate to require a proportion of those funds to be neighbourhood funds. London boroughs will be required to pass on funds where a parish council is established or to consult with neighbourhoods in spending the funds.

### Question 1

Should the duty to pass on a meaningful proportion of levy receipts only apply where there is a parish or community council for the area where those receipts were raised?

### Question 2

Do you agree that, for areas not covered by a parish or community council, statutory guidance should set out that charging authorities should engage with their residents and businesses in determining how to spend a meaningful proportion of the funds?

## Meaningful proportion

We propose to specify that a minimum percentage of receipts levied from development in an area must be passed to the relevant parish or community council or, in the absence of such a body, spent by the charging authority to support the development of that area following consultation with their residents.

Charging authorities will be able to pass on a higher proportion if they want and the existing regulations already enable them to pass receipts to other bodies or persons if they wish to do so.

The draft regulations do not propose the proportion of receipts that the charging

authority should pass on. However, we are clear that the level must be sufficient to give neighbourhoods a meaningful contribution to meeting the impacts of development in their area. This needs to be balanced with the central purpose of the levy, which is to ensure that the costs of providing the infrastructure necessary to support new development are met by that development.

### Question 3

What proportion of receipts should be passed to parish or community councils?

## Capping payments

In setting the proportion of funds that must be passed to parish or community councils we are mindful of the need to consider appropriate safeguards so that funds are directed to the areas where the costs of hosting development arise.

This would address the situation that could arise where significant funding is generated from a major development in a sparsely populated area. It is essential that receipts are directed to where a contribution to the costs of hosting development is needed and we do not want money to be unspent or wasted.

We therefore propose to place a per household cap (based on the number of council tax dwellings) on the amount of money that must be passed to a parish or community council each year to prevent inappropriate amounts being passed on where there is no reason to do so. This amount would be indexed using the national All-in Tender Index published by the Building Cost Information Service of the Royal Institute of Chartered Surveyors. Where this ceases to be published, the retail prices index will be used.

### Question 4

At what level should the cap be set, per council tax dwelling?

## Use of neighbourhood funds

The Localism Bill proposes that funding passed to parish or community councils must be used to provide infrastructure to support the development of the area, as must all funds raised through the levy. The draft regulations confirm this.

Neighbourhoods will be able to spend the funds on the infrastructure that they want, for example open space provision, playgrounds and cycle paths, or by contributing to larger projects funded by other bodies such as the district or county council.

Provisions in the Localism Bill clarify that receipts may be spent on the ongoing costs of providing infrastructure. The purpose is to ensure that an appropriate range of infrastructure spending is feasible and that charging authorities and parish or community councils have the flexibility to spend on the matters that they determine are a priority for the local area. It is important to understand that the charging authority or the parish or community council will still have to demonstrate that the funding supports the development of the area; this is not about allowing councils to use the money as an alternative funding source to maintain existing infrastructure.

As with other Community Infrastructure Levy spending, neighbourhood funding could not, for example, be used to remedy pre-existing deficiencies in infrastructure provision, except to the extent that they will be aggravated by new development. The purpose of the funds is to contribute to the costs of hosting development development, not for the money to be substituted for general spending.

## Timing of payments

We propose to allow charging authorities and parish or community councils the flexibility to determine the timing of payments themselves, but the draft regulations propose a default position in the absence of such an agreement. This will allow charging authorities to agree different arrangements locally where they choose to.

Under the default position, the charging authority will be required to pass on payments within 28 days of the end of each six month period in the financial year.

## Reporting and monitoring

One of the key criticisms of planning obligations has been the lack of transparency and accountability as to how much developers contributed and what the money was being spent on.

The existing levy regulations already address these concerns by requiring charging authorities to publish draft and final charging schedules and to publish details of income and expenditure annually. However, this will be strengthened as authorities will be required to report more regularly and openly in their Authority Monitoring Reports, which will include income and expenditure of levy receipts.<sup>2</sup>

We want to maintain levels of transparency and accountability when levy funds are passed to parish or community councils. It is essential that local communities see and understand how much development is contributing to their area and how those resources are being used to mitigate its impacts.

<sup>2</sup> Draft Local planning regulations – <http://www.communities.gov.uk/publications/planningandbuilding/localregulationsconsultation>

At the same time, we do not want to create overly burdensome reporting arrangements for parish or community councils. Therefore the draft regulations propose that parish or community councils must report on levy funding and provide the information identified in draft regulation 19 (new regulation 62A(2)(a-d)). This is to ensure that it is clear and transparent where and how much levy money received by parish or community councils is being spent.

To provide parish or community councils with flexibility, the draft regulations do not prescribe a particular format for the reporting and parish or community councils can combine the reporting on levy funding with other reports that they already produce. The regulations propose that parish or community councils must report on at least a yearly basis, but we will encourage them to report more frequently where there are substantive receipts or expenditure to report on and we will do this through statutory guidance.

#### Question 5

Do you agree that the proposed reporting requirements on parish or community councils strike the right balance between transparency and administrative burden?

#### Question 6

Draft regulation 19 (new regulation 62A(3)(a)) requires that the report is to be published on the councils website, however we recognise that not all parish or community councils will have a website and we would welcome views on appropriate alternatives.

## Relationship between parish and community councils' expenditure and planning obligations

Planning obligations are agreements that establish the steps that a developer must make to address the site specific impacts that the development has on local infrastructure. These agreements are negotiated between the local planning authority and the developer. They are intended to make acceptable development which would otherwise be unacceptable in planning terms.

There is still a legitimate role for development specific planning obligations to operate alongside the Community Infrastructure Levy. Planning obligations enable a local planning authority to address site specific impact mitigation requirements without which a development could not be granted planning permission. By contrast, levy funds are ideally suited for use where the need arises from the cumulative impact across an area.

To ensure that the Community Infrastructure Levy and planning obligations operate in a complementary way, a number of provisions have been introduced in regulations to scale back the way planning obligations operate. This includes preventing developers from being charged twice for the same item of infrastructure through planning obligations and the Community Infrastructure Levy.

Charging authorities can set out how revenues raised from the levy will be spent on their website, allowing certain items to be funded by planning obligations so that there is no double charging for the same item of infrastructure (regulation 123 of the current levy regulations). Where no list is produced, then regulation 123 specifies that all infrastructure capable of being funded by the levy can not be funded through planning obligations.

We have considered how this relates to neighbourhood funds when a charging authority sets out an infrastructure list under regulation 123. We propose that parish and community councils should not be confined to spending in accordance with the charging authority's list nor should they have to produce a list. The only restriction on parish and community councils should be that set out in the regulations. This will allow charging authorities to secure planning obligations secured by Section 106 agreements without being constrained by a parish or community council's spending decisions, and will also allow parish or community councils maximum flexibility to spend as they see fit in accordance with the levy's purpose.

### Question 7

Do you agree with our proposals to exclude parish or community councils' expenditure from limiting the matters that may be funded through planning obligations?

## Removing the administrative cap for charging authorities

Regulation 61(1) of the current levy regulations allows a charging authority to apply levy funding to administrative expenses incurred by it. However, this is currently capped to 5 per cent of receipts less expenses of up to 4 per cent of receipts incurred in collecting the levy.

We propose to remove the cap on the amount of levy funding that charging authorities may apply to administrative expenses on any matter other than the collection of the levy.

We are proposing this change to provide charging authorities with more flexibility on the operation of the levy. We also want to reflect the additional role for charging authorities in delivering neighbourhood funds, particularly in engaging with residents and businesses in those areas not covered by a parish or community council. In return for this increased flexibility, we will require charging authorities to report on their levy income and expenditure more openly and more regularly to ensure that their residents see and understand how the contributions are being used. This transparency will be essential if the

levy is to successfully incentivise residents to accept new development and will help ensure that councils are open and accountable to them for their spending decisions. Within the new reporting requirements, charging authorities will be required to set out how much funding has been applied to administrative costs.

The proposals set out in this consultation would not create new burdens on collecting authority functions, which are concerned with the collection of liabilities arising when new development commences. We do not therefore propose to remove or increase the existing 4 per cent cap on the amount of levy receipts that can be used to meet the administrative costs of delivering these functions.

### **Question 8**

Do you agree with our proposals to remove the cap on the amount of levy funding that charging authorities may apply to administrative expenses?

# Chapter 2

## Affordable housing

During the House of Commons' Committee's consideration of the Localism Bill we set out our commitment to consider and consult on whether to permit levy receipts to be used to provide affordable housing. This is made possible by the Planning Act 2008 but currently the levy regulations provide that receipts may not be spent on affordable housing.

The provision of affordable housing is a priority for the Government. The consultation on the National Planning Policy Framework proposes that where local authorities have identified that affordable housing is required they should:

“– set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified... and the agreed approach contributes to the objective of creating mixed and balanced communities...”<sup>3</sup>

Planning obligations already provide local authorities with an appropriate mechanism to deliver affordable housing. This is well established practice, provides certainty for onsite delivery and supports the Government's important policy objective to deliver mixed communities. However, we recognise that there are circumstances where on-site provision may not be the most effective or efficient means to deliver local policies for affordable housing.

Therefore, we would welcome views on providing local authorities with an option to use the Community Infrastructure Levy to deliver affordable housing where there is robust evidence that doing so would demonstrably better support its provision and offer better value for money. The purpose of the consultation is to consider whether allowing local authorities this flexibility would allow for more efficient provision of affordable housing and better support delivery of local policies, including for any off-site provision.

We also invite views on the appropriate balance, or combination, between the Community Infrastructure Levy and section 106 planning obligations to best support the delivery of affordable housing. For example, permitting a combination of the mechanisms to be used whereby local authorities set out where they would wish to collect affordable housing contributions from planning obligations, such as key sites where on-site delivery is viable

<sup>3</sup> Draft National Planning Policy Framework, 25 July 2011 – <http://www.communities.gov.uk/documents/planningandbuilding/pdf/1951811.pdf>

and essential. For the remainder of their area, affordable housing could be funded with levy contributions. Local authorities could then be clear on their intended approach and ensure this is reflected in their charge setting process.

If local authorities are to be extended the choice to use levy receipts to fund and deliver affordable housing, we need to also consider how best to ensure that communities and developers are absolutely clear about the choices being made, and have the opportunity to help inform those choices. We would welcome views on requiring local authorities, as a matter of national policy, to set out clearly in local plans the approach they will take to collecting contributions for affordable housing under the levy and/or planning obligations, and the anticipated level of contribution and delivery through each.

### Question 9

Do you consider that local authorities should be given the choice to be able if they wish to use levy receipts for affordable housing?

### Question 10

Do you consider that local authorities should be given the choice to be able if they wish to use both the levy and planning obligations to deliver local affordable housing priorities?

### Question 11

If local authorities are to be permitted to use both instruments, what should they be required to do to ensure that the choices being made are transparent and fair?

## Pooling of planning obligations

Planning obligations (made under Section 106 of the Town and Country Planning Act 1990, 'Section 106') are currently the main delivery mechanism for affordable housing. If affordable housing becomes capable of being funded by the Community Infrastructure Levy, then the existing regulations which place a limit on the pooling of Section 106 contributions will apply to Section 106 affordable housing contributions.

This would mean that on the local adoption of the levy, or in all local authorities after 6 April 2014, local authorities may only enter up to five separate planning obligations to contribute to a single affordable housing project or to a general affordable housing fund.

The limit on pooling Section 106 contributions was created because the levy offers a fairer, more transparent and certain arrangement for pooling. However, the Government is aware that the limit on pooling contributions was put in place when affordable housing was not within the scope of the levy.

The Government does not want the rules on limits of pooled contributions to have a detrimental effect on the provision of affordable housing, and would welcome views on whether affordable housing should be excluded from the regulation that limits pooling of obligations, or whether the same limits that apply to other parts of planning obligations should apply.

### **Question 12**

If the levy can be used for affordable housing, should affordable housing be excluded from the regulation that limits pooling of planning obligations, or should the same limits apply?

## Chapter 3

# Mayoral Development Corporations

The Localism Bill includes a general power for the designation of Mayoral development areas to drive regeneration. A Mayoral Development Corporation is able to take on full planning powers for its area. This includes the ability to impose a levy charge.

The ability to set a levy charge effectively requires changes to regulations to ensure that a Mayoral Development Corporation can operate effectively, and that London boroughs are not unfairly disadvantaged in areas where they are losing planning powers. The Government intends to make three key changes to regulations to:

- allow the Mayor, in advance of a Mayoral Development Corporation being set up, to carry out the necessary preparation work for a levy charge to enable the Mayoral Development Corporation to function properly as a charging authority as soon as practical after it takes those powers
- ensure that London boroughs who have granted planning permission for a development are still able to collect any levy liability due if the actual work starts after the Mayoral Development Corporation has taken on plan making powers in that area; and
- require a Mayoral Development Corporation, where it is winding down or giving up its plan making powers, to be clear about the arrangements for the collection of outstanding levy liabilities.

### Question 13

Do the proposed changes represent fair operation of the levy in Mayoral Development Corporation areas?

# Chapter 4

## Other regulatory matters

### Increasing transparency

The levy reporting requirements are set out within the existing levy regulations which require charging authorities to report annually on levy receipts and expenditure in relation to the previous financial year. However, we consider that the existing provisions do not ensure full transparency and accountability to communities.

We want charging authorities to be required to make information on levy receipts and expenditure available to communities in 'real time'. We are consulting on this proposal through the draft Local Planning regulations. Authorities will be required to publish up to date information they have collected on levy income and expenditure as soon as reasonably practical in their Authority Monitoring Reports<sup>4</sup>.

### Neighbourhood Development Orders and Community Right to Build Orders

The Localism Bill introduces new provisions to allow for planning permission to be granted through Neighbourhood Development Orders – including Community Right to Build Orders. These types of planning permissions will be possible under powers to be inserted into the Town & Country Planning Act 1990 after Section 61D and only currently apply to England and not Wales.

Draft regulation 4 will allow the levy to be charged on development commenced under the new Neighbourhood Development Orders, including the Community Right to Build Order. This will ensure fairness, as these types of development will have an impact on infrastructure and removes potential distortions. As with other general consents, we propose that these orders will not be liable until 2013.

<sup>4</sup> Draft Local planning regulations – <http://www.communities.gov.uk/publications/planningandbuilding/localregulationsconsultation>

## Chapter 5

### Giving your views

This chapter draws together all the questions raised from each preceding chapter in this consultation document.

The Government welcomes your views on all aspects of the proposals set out in this consultation.

A range of questions are set out in the attached questionnaire. We would value your opinion on as many or as few questions as you can answer. Your response should follow the format of the questionnaire below.

Please email the completed response to:  
CIL@communities.gsi.gov.uk

or send your response by post to:  
Franciane Genouille  
Community Infrastructure Levy Team  
Communities and Local Government  
1/E2  
Eland House  
Bressenden Place  
London  
SW1E 5DU

This consultation will run from the 10 October to the 30 December 2011.

**The deadline for submissions is 30 December 2011**

#### Data protection

This is to inform you that we may, with your consent, quote from your response in our published summary of the response to this consultation.

If you are content for your views to be made public in this way, please tick the box.

Otherwise your views may be set out in the response, but without attribution to you as an individual or to your organisation.

We shall treat the contact details you provide us with carefully and in accordance with the data protection principles in the Data Protection Act 1998. We shall not make them available to other organisations, apart from any contractor ("data processor") who may be appointed on our behalf to analyse the results of this questionnaire, or for any other purpose than the present survey without your prior consent. We shall inform you in advance if we need to alter this position for any reason.

# Questionnaire

## About you

### i) Your details:

Name:	
Position:	
Name of organisation (if applicable):	
Address:	
Email:	
Telephone number:	

### ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

- Organisational response
- Personal views

### iii) Please tick the box which best describes you or your organisation:

- District Council
- Metropolitan district council
- London borough council
- Unitary authority/county council/county borough council
- National Park Authority
- The Broads Authority
- The Mayor of London
- Parish council
- Community council
- Welsh Authority
- Non-Departmental Public Body (NDPB)

- Planner
- Professional trade association
- Land owner
- Housing association/RSL
- Private developer/house builder
- Developer association
- Voluntary sector/charity
- Community Land Trust
- Rural housing enabler
- Other

(please comment):	
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**iv) What is your main area of expertise or interest in this work (please tick one box)?**

- Chief Executive
- Planner
- Developer
- Surveyor
- Member of professional or trade association
- Councillor
- Housing provision
- Planning policy/implementation
- Environmental protection
- Other

(please comment):	
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**v) Do your views/experiences mainly relate to one or more specific regions within England and Wales, to one or both countries?**

- South West
- South East
- East
- East Midlands
- West Midlands
- North West
- Yorkshire & Humberside
- North East
- London
- All of England
- Wales
- Other

(please comment):	
Specific local area (please comment):	

Would you be happy for us to contact you again in relation to this questionnaire?

Yes  No

Please refer to the relevant parts of the consultation document for narrative relating to each question.

## Chapter 1: Neighbourhood funds

### Question 1:

Should the duty to pass on a meaningful proportion of levy receipts only apply where there is a parish or community council for the area where those receipts were raised?

Yes  No

Comments

### Question 2:

Do you agree that, for areas not covered by a parish or community council, statutory guidance should set out that charging authorities should engage with their residents and businesses in determining how to spend a meaningful proportion of the funds?

Yes  No

Comments

### Question 3:

What proportion of receipts should be passed to parish or community councils?

Comments

**Question 4:**

At what level should the cap be set, per council tax dwelling?

Comments

**Question 5:**

Do you agree that the proposed reporting requirements on parish or community councils strike the right balance between transparency and administrative burden?

Yes  No

Comments

**Question 6:**

Draft regulation 19 (new regulation 62A(3)(a)) requires that the report is to be published on the councils website, however we recognise that not all parish or community councils will have a website and we would welcome views on appropriate alternatives.

Comments

**Question 7:**

Do you agree with our proposals to exclude parish or community councils' expenditure from limiting the matters that may be funded through planning obligations?

Yes  No

Comments

**Question 8:**

Do you agree with our proposals to remove the cap on the amount of levy funding that charging authorities may apply to administrative expenses?

Yes  No

Comments

## Chapter 2: Affordable housing

**Question 9:**

Do you consider that local authorities should be given the choice to be able if they wish to use levy receipts for affordable housing?

Yes  No

Comments

**Question 10:**

Do you consider that local authorities should be given the choice to be able if they wish to use both the levy and planning obligations to deliver local affordable housing priorities?

Yes  No

Comments

**Question 11:**

If local authorities are to be permitted to use both instruments, what should they be required to do to ensure that the choices being made are transparent and fair?

Comments

**Question 12:**

If the levy can be used for affordable housing, should affordable housing be excluded from the regulation that limits pooling of planning obligations, or should the same limits apply?

Yes  No

Comments

## Chapter 3: Mayoral Development Corporations

### Question 13:

Do the proposed changes represent fair operation of the levy in Mayoral Development Corporation areas?

Yes  No

Comments

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# Questionnaire

## About you

### i) Your details:

Name:	Karen Britton
Position:	Planning Policy and Conservation Manager
Name of organisation (if applicable):	East Northamptonshire Council
Address:	Cedar Drive Thrapston Northamptonshire NN14 4LZ
Email:	kbritton@east-northamptonshire.gov.uk
Telephone number:	01832 742142

### ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

Organisational response

Personal views

### iii) Please tick the box which best describes you or your organisation:

District Council

Metropolitan district council

London borough council

Unitary authority/county council/county borough council

National Park Authority

The Broads Authority

The Mayor of London

Parish council

Community council

Welsh Authority

- Non-Departmental Public Body (NDPB)
- Planner
- Professional trade association
- Land owner
- Housing association/RSL
- Private developer/house builder
- Developer association
- Voluntary sector/charity
- Community Land Trust
- Rural housing enabler
- Other

(please comment):	
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**iv) What is your main area of expertise or interest in this work  
(please tick one box)?**

- Chief Executive
- Planner
- Developer
- Surveyor
- Member of professional or trade association
- Councillor
- Housing provision
- Planning policy/implementation
- Environmental protection
- Other

(please comment):	
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**v) Do your views/experiences mainly relate to one or more specific regions within England and Wales, to one or both countries?**

- South West
- South East
- East
- East Midlands
- West Midlands
- North West
- Yorkshire & Humberside
- North East
- London
- All of England
- Wales
- Other

(please comment):	
Specific local area (please comment):	

Would you be happy for us to contact you again in relation to this questionnaire?

Yes  No

Please refer to the relevant parts of the consultation document for narrative relating to each question.

## Chapter 1: Neighbourhood funds

### Question 1:

Should the duty to pass on a meaningful proportion of levy receipts only apply where there is a parish or community council for the area where those receipts were raised?

Yes  No

#### Comments

This raises issues of:

What happens if the development is bordering or impacting upon e.g. a neighbouring parish or more than the parish in which the development sits? The collecting authority should have discretion as to who it actually allocates the CIL to;

How do you deal with any unparished areas? (Although this would not apply in East Northamptonshire);

What is the role of future Neighbourhood Forums (although unelected membership) i.e should they be given CIL funding to help implement a Neighbourhood Plan? (Again, these are more likely to be formed in unparished, urban areas - all of East Northamptonshire is parished).

How would this deal with the establishment of a new community, e.g. a new settlement where a new parish boundary may be established with a new Parish Council? The new Parish Council may not be established until a certain amount of the development has taken place and so CIL funds may be collected in by the collecting authority (ENC), but there may be no Parish Council or a limited community to pass it on to/ determine how to spend it - in this circumstance one would anticipate ENC either retaining control of the CIL and then handing this on as soon as the Parish Council/ Community Council is established or spending the CIL before this time, if ENC had identified needs, which could not await the former being established.

### Question 2:

Do you agree that, for areas not covered by a parish or community council, statutory guidance should set out that charging authorities should engage with their residents and businesses in determining how to spend a meaningful proportion of the funds?

Yes  No

#### Comments

There is also a general need to provide guidance on "engagement" and to what extent and how consultation is expected to take place to ensure consistency in approach, as "Engagement" is subjective.

This concern applies both to parished/ community council areas, as well as unparished areas.

### Question 3:

What proportion of receipts should be passed to parish or community councils?

Comments

Flexibility is required to consider this on a case by case basis, as different developments will have different impacts and communities will have different infrastructure needs. There is also a potential administrative issue that many of the items that Parish/ Community Councils may wish to spend this CIL money on may actually be a function of the "collecting authority", i.e. in this case ENC; therefore in theory this could involve passing money over to the Parish/ Community Council and then immediately recovering it.

A question is also raised, as to whether this draft provision in the Regulations is intended to provide a clear incentive to Parish/ Community Councils to prepare Community/Parish/Neighbourhood Plans in order to prioritise needs.

### Question 4:

At what level should the cap be set, per council tax dwelling?

Comments

Again this should be kept flexible, as per comments in Q.3 above, as needs etc will differ on a case by case basis.

### Question 5:

Do you agree that the proposed reporting requirements on parish or community councils strike the right balance between transparency and administrative burden?

Yes  No

Comments

It is suggested that relevant information should be provided to the Local Authority to be reported as part of the Annual Monitoring Report or similar Local Authority mechanisms, or as part of the Parish Councils' own annual financial reporting systems.

### Question 6:

Draft regulation 19 (new regulation 62A(3)(a)) requires that the report is to be published on the councils website, however we recognise that not all parish or community councils will have a website and we would welcome views on appropriate alternatives.

#### Comments

Information could be supplied to the Local Authority, who could provide dedicated webpages for all of the information to be made available. Reporting could also be made an integral part of existing reporting mechanisms; i.e. Annual Monitoring Report or Performance Indicators.

### Question 7:

Do you agree with our proposals to exclude parish or community councils' expenditure from limiting the matters that may be funded through planning obligations?

Yes  No

#### Comments

Up to a point, the Q7 proposals are agreed with. However, in order to ensure transparency, it is suggested that Parishes etc be required to set a list of key local infrastructure items etc that they, as a community, need.

This list should be maintained and updated as new issues arise (this might feed from a Parish Plan, Neighbourhood Plan etc if these have been prepared). Publication on a website is desirable for transparency.

This approach would enable:

- a) the developer to have an initial idea of likely local concerns/ priorities; and
- b) the community themselves to have a clear idea of what they want and scope to review/ question the list, i.e. local accountability.

Changing circumstances and new developments will change the contents of this list over time, so it should not be seen as set-in-stone or exhaustive, but would be there just to provide an indication/ aide memoir for how the CIL should or could possibly be spent.

### Question 8:

Do you agree with our proposals to remove the cap on the amount of levy funding

that charging authorities may apply to administrative expenses?

Yes  No

Comments

This proposal appears, on the face of things to be an attractive proposition. However, until the CIL has been fully implemented and used for some time in practice, it is difficult to assess the full administrative costs and implications.

## Chapter 2: Affordable housing

### Question 9:

Do you consider that local authorities should be given the choice to be able if they wish to use levy receipts for affordable housing?

Yes  No

Comments

Again the revised CIL regulations need to allow flexibility in potentially adopting this approach, if the local authority finds that this is beneficial.

### Question 10:

Do you consider that local authorities should be given the choice to be able if they wish to use both the levy and planning obligations to deliver local affordable housing priorities?

Yes  No

Comments

Again the revised CIL regulations need to allow flexibility in potentially adopting this approach, if the local authority finds that this is beneficial.

### Question 11:

If local authorities are to be permitted to use both instruments, what should they be required to do to ensure that the choices being made are transparent and fair?

Comments

In all cases, information should be clearly documented and the availability of a CIL Charging Schedule will assist with this, as will SPD Developer Contributions or similar planning documents.

### Question 12:

If the levy can be used for affordable housing, should affordable housing be excluded from the regulation that limits pooling of planning obligations, or should the same limits apply?

Yes  No

Comments

In order for a meaningful level of CIL funding to be available, it is anticipated that money from a substantial number of development schemes (i.e. significantly more than five) would be required to implement affordable housing provision.

## Chapter 3: Mayoral Development Corporations

### Question 13:

Do the proposed changes represent fair operation of the levy in Mayoral Development Corporation areas?

Yes  No

Comments

Not applicable so no response to this one as East Northamptonshire Council does not have a Mayoral Development Corporation.