



East Northamptonshire Council

Planning Policy Committee - 24 September 2009

Community Infrastructure Levy - Consultation on Detailed Proposals and Draft Regulations for the Introduction of CIL- July 2009

Summary

This report sets out the details of the most recent Government consultation document on the proposed Community Infrastructure Levy (CIL) - Draft Regulations July 2009 and seeks Members agreement to the proposed response.

Attachment(s)

None

1.0 Introduction

1.1 The Government have been considering alternative approaches to securing developer contributions. There were previous proposals for a tariff and the current proposals will introduce a Community Infrastructure Levy (CIL). The draft regulations were published on 30 July 2009 for a 12 week consultation period. This report sets out the main points of the consultation paper and then provides comments for Members to consider as the Councils response.

2.0 Main Points in the Consultation Paper

2.1 Part 11 of the Planning Act 2008 provided for the introduction of a Community Infrastructure Levy (CIL). The Regulations implementing the CIL will come into force on 6 April 2010 and will not be retrospective.

2.2 This is a new charge which local authorities are empowered but not required to charge on most types of new development. The CIL is only to be spent on infrastructure needs related to development contemplated by the development plan for the area and not to remedy existing deficiencies. It can however be used on renovation or extensions of existing infrastructure.

2.3 The Government considers that whilst the CIL will make a significant contribution to infrastructure provision, core public funding will continue to be the main contributor. The CIL will need to be used alongside other funding to deliver infrastructure plans locally.

2.4 Those local authorities who prepare development plans will be the charging authorities, although they can choose whether to implement the CIL or not. For a CIL to be introduced there has to be an up to date development plan for the area (e.g. the adopted Core Spatial Strategy). Planning Policy Statement 12 (PPS 12) indicates that development plans need to be supported by an infrastructure planning process to identify what infrastructure is needed to deliver the Plan. The likely costs of infrastructure required for development to come forward needs to be identified and then, taking account of other funding sources, the local authority would identify the gaps in funding to arrive at the proposed amount to be raised by the CIL, subject to an assessment of local development viability at the plan level.

2.5 The paper recognises the role that Joint Committees could play in this process and seeks views on the appropriateness of this arrangement. What it sets out clearly

though is for such an approach to be adopted, all of the constituent Districts would have to be in full agreement. There is no suggestion that Districts could be required to adopt such an arrangement.

- 2.6 There will need to be a draft charging schedule drawn up which will be a new type of document within the LDF and will be tested through public consultation and an examination by an independent Inspector like all other development plan documents. The Inspector's report will be binding on the local authority. However, the local authority would not be under an obligation to adopt the final schedule but could submit revised proposals to a fresh examination if it was unhappy at the changes made by the original Inspector.
- 2.7 The Government proposes that the definition of infrastructure for CIL purposes should be wide enough to enable local authorities to decide what infrastructure is appropriate for their local area. However, affordable housing will continue to be provided through the existing system of negotiated planning obligations, not through the CIL. The charging schedule would allocate the proposed amount to be raised from the CIL to each main class of development envisaged by the development plan. Charges will be expressed as a cost per square metre of floor space and be indexed to an index of inflation.
- 2.8 The Government considers that a key benefit of the CIL is that it can fund sub regional infrastructure because local authorities will have the freedom to work together to pool contributions from the CIL within the context of delivering their Local Development Plans. They can also pass the CIL to other public sector organisations to spend, such as the Environment Agency.
- 2.9 It is also suggested that public sector organisations can "forward fund" infrastructure and then be reimbursed through the CIL. However, authorities must be careful not to set the CIL at such a level that it risks the delivery of the development plan.
- 2.10 To ensure consistency and simplicity the consultation proposes that the Government:
- set the descriptions of the units of development
 - determine the exemptions
 - set de minimus threshold of development of 100 square metres below which the CIL would not be charged
 - exempt householder applications
 - confirm the Inflation indices to be used
 - establish that no payment in kind can be made under the CIL
 - Not allow differential rates set by impact or over time.
- 2.11 However, the Government is considering flexibility to allow:
- setting differing rates geographically or by type of development but this will need to be referenced by evidence
 - processes to allow developers to pay lower amounts in exceptional cases;
 - whether Charities should be exempt
 - affordable housing developments to be exempt.
- 2.12 Payment would be calculated from the planning application (at full application/reserved matters stage not outline stage) which would give the chargeable "units" and the charging schedule will determine the rate per square metre. Payment will be on commencement of development and payment made by the designated person on the planning application, or by default the land owner. The Government is suggesting a 28 day payment period but is also exploring the issue of payment by instalment. Authorities will have to report annually on the amount of CIL received, spent and still held.
- 2.13 In terms of enforcement, the Government is looking at the possibility of a CIL liability being registered as a local land charge. Late payment and surcharges are being

considered to ensure prompt payment.

2.14 Section 106 Agreements will remain as a planning “tool” when the CIL is introduced and will be used to deliver affordable housing. However, the Government is considering restrictions on the use of planning obligations once the CIL is introduced by:

- making the existing policy tests set out in the Circular statutory
- only allowing planning obligations where it solely mitigates the impact of the development
- allowing a 2 year transition “window”.

The Government is also asking for comments on the way to improve the planning obligations regime in its own right.

3.0 Comments

3.1 There are a number of areas of the consultation that Members may wish to comment on including:

- the introduction of the CIL not being mandatory as it is for local authorities to consider if it is appropriate for their area. *Comment* - this is seen as being a key issue as it is important that local authorities have the choice as to whether to adopt the approach or not
- the ability of the CIL to be used across boundaries on a sub regional level and the need to ensure agreed priorities at the sub regional level that reflects local concerns. *Comment* - this is a key issue which would need careful consideration in terms of the scale of project where such an approach was to be taken. As clearly the re-direction of monies from local to sub regional projects would not be acceptable from the authorities’ perspective
- the flexibility provided in terms of local definition of infrastructure. *Comment* - this approach is welcomed as it ensures that decisions are made at the local level
- whether there is a need to make the tests for Section 106 Agreements statutory. *Comment* - this seems unnecessary as the current tests are clear and interpretation is enforceable by the Courts in any event
- the proposed exceptions for charities (including affordable housing) and buildings for charitable purposes. *Comment* - this seems a sensible approach.

4.0 Recommendation

4.1 That Members:

(a) endorse the comments set out in paragraph 3.1 of the report as the Council’s response to the Government consultation on the Community Infrastructure Levy; and

(b) add any further comments to the response as appropriate.

Implications:		
Corporate Outcomes or Other Policy/Priority/Strategy		
Good Quality of Life	<input checked="" type="checkbox"/>	Good Reputation <input checked="" type="checkbox"/>
Good Value for Money	<input type="checkbox"/>	High Quality Service Delivery <input type="checkbox"/>
Effective Partnership Working	<input type="checkbox"/>	Strong Community Leadership <input checked="" type="checkbox"/>
Effective Management	<input type="checkbox"/>	Knowledge of our Customers and Communities <input type="checkbox"/>
Employees and Members with the Right Knowledge, Skills and Behaviours		<input type="checkbox"/>
Other:		<input type="checkbox"/>
Decision(s) would be outside the budget or policy framework and require full Council approval		<input type="checkbox"/>
Financial	There are no financial implications at this stage	<input checked="" type="checkbox"/>

	There will be financial implications – see paragraph	<input type="checkbox"/>
	There is provision within existing budget	<input type="checkbox"/>
	Decisions may give rise to additional expenditure at a later date	<input type="checkbox"/>
	Decisions may have potential for income generation	<input checked="" type="checkbox"/>
Risk Management	An assessment has been carried out and there are no material risks	<input checked="" type="checkbox"/>
	Material risks exist and these are recorded at Risk Register Reference - inherent risk score - residual risk score -	<input type="checkbox"/>
Staff	There are no additional staffing implications	<input checked="" type="checkbox"/>
	Additional staff will be required – see paragraph	<input type="checkbox"/>
Equalities and Human Rights	There will be no impact on equality (race, age, gender, disability, religion/belief, sexual orientation) or human rights implications	<input checked="" type="checkbox"/>
	There will be an impact on equality (see categories above) or human rights implications – see paragraph	<input type="checkbox"/>
Legal	Power: Planning Act 2008, Planning and Compulsory Purchase Act 2004. The Town and Country Planning (Local Development) (England) Regulations 2004	
	Other considerations:	
Background Papers: Communities and Local Government "Detailed Proposals and Draft Regulations for the Introduction of the Community Infrastructure Levy-Consutation July 2009		
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