

# **SOUTH EAST LINCOLNSHIRE JOINT STRATEGIC PLANNING COMMITTEE (THE JOINT COMMITTEE)**

## **Report of the Joint Policy Unit Manager**

**To:** Joint Committee - 9 September 2011

**Author:** Phil Norman, Planning Policy Officer, South Holland District Council

**Subject:** Community Infrastructure Levy (CIL)

**Purpose:** To provide an overview of the CIL and the provisions governing its operation

### **Recommendation:**

It is recommended that Members consider the contents of this report.

## **1. INTRODUCTION**

This report provides an overview of the Community Infrastructure Levy (CIL) and important issues that may relate to South East Lincolnshire. The CIL is a new planning charge that allows local authorities to raise funds from developers. The monies can be used to pay for infrastructure that is needed as a result of development.

Should an authority decide to adopt a CIL they must adhere to the provisions of the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (now amended by the Community Infrastructure Levy (Amendment) Regulations 2011). Communities and Local Government (CLG) has produced guidance to support authorities who wish to adopt a CIL:

- Community Infrastructure Levy: An overview (CLG, May 2011); and
- Community Infrastructure Levy Guidance: Charge setting and charging schedule procedures (CLG, March 2010).

Should Members wish to obtain more detail on specific issues relating to the CIL that are not covered fully in this report, for example the process of adoption or how CIL monies are collected, it is recommended that reference is made to the above two documents.

## **2.0 BACKGROUND**

2.1 The previous Government provided for the introduction of the CIL in the Planning Act 2008 and the current Government has committed itself to the CIL as a means of raising funds to pay for infrastructure. The CIL came into force on 6<sup>th</sup> April 2010 through the Community Infrastructure Levy Regulations 2010 (now amended by the Community Infrastructure Levy (Amendment) Regulations 2011). However, proposals from councils are only now being published. There are currently **no** adopted CILs nationally; however, the Examination into Newark and Sherwood District Council's CIL Charging Schedule (the first in the country) took place on 20<sup>th</sup> & 21<sup>st</sup> July 2011. The Inspector's Report is due in late August 2011.

2.2 Given that CIL is a relatively new concept governed by a complex set of regulations, it is important for South East Lincolnshire officers and Members to approach the subject with an element of caution. Whilst the purpose of this report is to introduce Members to the CIL, officers will continue to follow CIL developments nationally to develop further knowledge and expertise. This will aid the formulation of a recommendation on the most appropriate manner in which to take forward a CIL for South East Lincolnshire should Members decide to do so. Officers will provide an update on this to Members at a future meeting of the Joint Committee.

2.3 The Planning Act 2008 confers the power to charge CIL on certain bodies known as 'charging authorities'. **A local planning authority is the charging authority for its area.** There is no obligation to adopt a CIL, however, the charging authority's responsibilities, if it does decide to levy a CIL, are to:

- prepare and publish a document known as the "charging schedule", which sets out the rates of CIL that will apply in the authority's area. This must involve consultation and independent examination;
- apply the CIL revenue it receives to funding infrastructure to support the development of its area; and
- report on the amount of CIL revenue collected, spent and retained each year.

### 3.0 CHARGE SETTING

3.1 CIL allows a charging authority to raise funds for infrastructure to support an area's development by imposing a charge per square meter of development. However, before an authority can begin raising monies, it must publish a table of levy charges known as a charging schedule, so that a developer can calculate up front how much CIL it must pay for its development. The charging schedule will sit within the Local Plan and must be subject to independent examination.

3.2 The levy is charged on new builds permitted through some form of planning permission. The levy's charges become due from the date that a chargeable development is commenced in accordance with the terms of the relevant planning permission. A charging authority can set its own levy payment deadlines and/or offer the option of paying by instalments. The responsibility to pay the levy runs with the ownership of land on which the liable development is situated.

3.3 A charging authority must provide evidence of underlying infrastructure planning and economic viability in order for a charging schedule to be found sound by an independent examiner. **Charging authorities must propose a rate, which does not put at serious risk the overall development of their area.** Charging authorities are required to use evidence to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy upon the economic viability of development across their area. The Government expects charging authorities to implement CIL on the basis of an up-to-date development plan document, which should normally be a draft or adopted core strategy. **Therefore, in the case of South East Lincolnshire, it will not be possible to raise monies**

**through the levy until significant progress has been made on the Local Plan.**

- 3.4 Evidence related to infrastructure needs and costs is required to focus on showing an aggregate infrastructure funding gap that demonstrates the need to levy CIL and a total target amount that CIL should raise. To do this, the charging authority is encouraged to provide details of some indicative infrastructure projects or types. There is no requirement to provide upfront assurances as to how CIL will be spent, but only to illustrate that the CIL target is justifiable. In terms of South East Lincolnshire, an Infrastructure Delivery Plan (IDP) will be produced to determine the infrastructure required to deliver the Local Plan and how it will be funded. Until significant progress is made on this area of work, (which cannot occur until such time as broad locations for growth are considered) only limited progress can be made towards the adoption of a CIL. This provides officers with a window of opportunity to monitor CIL developments nationally and learn from both emerging good and bad practice.
- 3.5 The role of the infrastructure evidence is not to provide absolute upfront assurances as to how an authority intends to spend CIL monies, but to illustrate that the intended CIL target is justifiable given local infrastructure need and is based on appropriate evidence. An authority may spend their CIL revenues on different infrastructure projects and types from those identified as indicative for the purpose of charge setting. The Government recognises that these indicative infrastructure projects or types may differ from those placed on any list that a charging authority may decide to publish on its website in relation to Regulation 123 (see paragraph 5.2).
- 3.6 A charging authority is required prepare evidence about the effect of the levy on economic viability in its area to demonstrate to an independent examiner that the proposed rates strike an appropriate balance. It is for a charging authority to decide what CIL rate sets an appropriate balance between the need to fund infrastructure, and the potential implications for the economic viability of development across its area. A charging authority's proposed CIL rates must appear reasonable given the available evidence, but there is no requirement for a proposed rate to exactly mirror the evidence. **There is room for some pragmatism.**
- 3.7 **Charging authorities are encouraged to avoid setting a charge right up to the margin of economic viability** across the vast majority of sites in their area. Charging authorities must also seek to illustrate, using appropriate available evidence, that their proposed charging rates will be robust over time. In setting a CIL rate, charging authorities have to appreciate that the economic circumstances and land values could change significantly during the lifetime of the charging schedule. Therefore, **whilst it may seem beneficial to an authority to set high rates of CIL, this approach may have the unintended effect of reducing the viability of development within their area and in turn reduce overall potential returns from CIL.**
- 3.8 There is no requirement on a charging authority to set differential rates. However, a charging authority could consider doing so on the basis of geographical zones and/or different intended uses of development (for example, residential and commercial development). However, **differences in rates need to be justified by reference to evidence on the economic viability of development.**

- 3.9 A charging authority should not exempt or set a zero rate for a particular zone or category of development from CIL, unless it can be demonstrated that this is justifiable in economic viability terms (which would require evidence of very low, zero or negative viability across that zone or category of development). **A charging authority should not seek to exempt individual development sites from CIL through setting a differential rate.** Resulting charging schedules should not impact disproportionately on a particular sector or small group of developers and should not constitute state aid.
- 3.10 Given that issues of viability and infrastructure requirements are very locally specific, no two CIL charging schedules will be the same. **Therefore, in the case of South East Lincolnshire there is no scope for utilising evidence used by other authorities as a means of expediting the production of a CIL.** Each CIL charging schedule will be a bespoke, locally specific piece of work.

#### **4.0 EXEMPTIONS**

- 4.1 **Once CIL rates have been successfully examined and adopted they are fixed.** After this, should a charging authority wish to alter their rates a new charging schedule (accompanied by new evidence) would need to be produced and subject to the same rigours (e.g. examination). This reinforces the importance of not setting CIL rates at the margins of economic viability. Furthermore, given that CIL is fixed, it is likely that authorities will have to be flexible on the requirements of their affordable housing policies and section 106 packages for site-specific infrastructure, where issues of viability arise on a case-by-case basis.
- 4.2 **The regulations give relief from the levy in only two specific instances.** First, a charity landowner will benefit from full relief from their portion of the liability where the chargeable development will be used wholly, or mainly, for charitable purposes. Secondly, the regulations provide 100 per cent relief from the levy on those parts of a chargeable development, which are intended to be used as social housing.
- 4.3 Given the importance of ensuring that the levy does not prevent otherwise desirable development, the regulations provide that charging authorities have the option to offer a process for giving relief from the levy in **exceptional circumstances** where a specific scheme cannot afford to pay the levy. A charging authority wishing to offer exceptional circumstances relief in its area must first give notice publicly of its intention to do so. A charging authority can then consider claims for relief on chargeable developments from landowners on a case-by-case basis, provided the following conditions are met. Firstly, a section 106 agreement must exist on the planning permission permitting the chargeable development. Secondly, the charging authority must consider that the cost of complying with the section 106 agreement is greater than the levy's charge on the development and that paying the full charge would have an unacceptable impact on the development's economic viability. **Finally, relief must not constitute a notifiable state aid.**

## 5.0 RELATIONSHIP WITH PLANNING OBLIGATIONS (SECTION 106)

- 5.1 After April 2014, the CIL will replace the section 106 system as the only way to fund infrastructure, although as Government plans stand section 106 obligations will continue to be available to provide affordable housing and site-specific issues that cannot be dealt with through planning conditions. Whilst at present the regulations rule out the application of the levy for providing affordable housing, the Government has undertaken to reflect upon this through the emerging Localism Bill and as such it may be that the scope of section 106 is reduced further in the future. Upon the local adoption of the levy, the regulations restrict the local use of planning obligations to ensure that individual developments are not charged for the same items through both planning obligations and the levy. **Where a charging authority sets out that it intends to fund an item of infrastructure via the levy then that authority cannot seek a planning obligation contribution towards the same item of infrastructure.**
- 5.2 A charging authority may publish, on its website, a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by the levy (Regulation 123). If a charging authority does not publish a list, then this would be taken to mean that the authority was intending to use monies raised from the levy for all infrastructure capable of being funded by the levy, and consequently that authority could not seek a planning obligation contribution towards any such infrastructure.
- 5.3 A charging authority can at any time update its published list of infrastructure projects or types of infrastructure. The process of updating the list is separate to the formal process of reviewing its charging schedule. If it wishes to update the list, the charging authority simply needs to amend the published list on its website.
- 5.4 On the local adoption of the levy, or nationally after 6 April 2014, the regulations restrict the local use of planning obligations for pooled contributions towards items that may be funded via the levy. **Pooled contributions may be sought from up to five separate planning obligations for an item of infrastructure that is not locally intended to be funded by the levy.** The limit of five also applies to types of general infrastructure contributions, such as education and transport.
- 5.5 For provision that is not capable of being funded by the levy, such as affordable housing (at present), local planning authorities are not restricted in terms of the numbers of obligations that may be pooled.
- 5.6 Given the points raised above, officers and Members will need to give careful consideration as to what infrastructure should be provided by either the CIL or by section 106 agreements in South East Lincolnshire. Officers will seek to reflect on emerging best practice nationally to help address this issue and provide a recommendation to Members.

## 6.0 KEY POINTS AND POTENTIAL ISSUES

- CIL is an emerging area of work, surrounding which there is limited expertise. Currently, there are also **no** adopted CILs nationally. However, the Examination into Newark and Sherwood District Council's

CIL Charging Schedule took place on 20<sup>th</sup> & 21<sup>st</sup> July 2011. The Inspector's Report is due in late August 2011. This, and emerging best practice, will enable officers and Members to reflect on the most appropriate manner in which to proceed with any CIL for South East Lincolnshire.

- CIL must be based on the infrastructure requirements of an up-to-date development plan and appropriate available evidence of the viability of development within the area. In terms of South East Lincolnshire, until significant progress has been made on the Local Plan, only limited progress can be made toward the adoption of a CIL.
- **CIL rates must not threaten the economic viability of development, nor be influenced by policy.** For example, unless there is good viability evidence to support doing so, a charging authority must not set differential CIL rates to promote certain types of development in a certain area.
- Given that issues of viability and infrastructure requirements are very locally-specific, no two CIL charging schedules will be the same. There is, therefore, no scope for utilising evidence used by other authorities as a means of expediting the production of a CIL. Each CIL charging schedule will be a bespoke, locally-specific piece of work.
- Once adopted, CIL rates are fixed and can only **not be** charged under exceptional circumstances. This highlights the importance of setting rates, which are realistic and do not threaten the viability of development. Any changes to CIL rates can only come about via a complete review of the CIL charging schedule. Newark and Sherwood propose to do this as a matter of course every 3 years.
- As CIL is fixed, upon its adoption, it is likely that authorities will have to be flexible on the requirements of their affordable housing policies and section 106 packages for site-specific infrastructure, where issues of viability arise on a case-by-case basis.
- A charging authority can alter the list of infrastructure it intends to spend CIL monies on at any given time. However, if a piece of infrastructure is present within the list, section 106 contributions cannot also be sought towards its funding. Furthermore, if a list is not published, an authority would lose its right to charge section 106 for any type of infrastructure.
- The scope to pool planning obligations to deliver infrastructure will be significantly reduced upon the adoption of a CIL (or after April 2014).
- At present the regulations rule out the application of the levy for providing affordable housing. However, the Government has undertaken to reflect upon this through the emerging Localism Bill.
- Schemes with existing planning permissions prior to the adoption of a CIL cannot be charged CIL retrospectively (e.g. Holland Park, Spalding and the former Pilgrim Frozen Foods site in Boston).
- The key to a successful development contributions (CIL and section 106) regime will be determining infrastructure and development priorities and

phasing. Where priorities and phasing are considered early, this should allow the charging authority to make informed choices on infrastructure issues, such as what to include in any published infrastructure list (Regulation 123 list) and whether items are funded by CIL or section 106.

## **7.0 VIEWS OF THE HEAD OF PLANNING AND STRATEGY, BOSTON BOROUGH COUNCIL AND THE PLANNING MANAGER, BRECKLAND COUNCIL AND SOUTH HOLLAND DISTRICT COUNCIL**

- 7.1 The Head of Planning and Strategy for Boston Borough Council has indicated support for the report, conclusions and recommendation.
- 7.2 The Planning Manager and Monitoring Officer for Breckland Council and South Holland District Council have been consulted and have offered no views.
- 7.3 The Strategic Planning Manager, Monitoring Officer and s151 Officer for Lincolnshire County Council have been consulted and have offered no views.

## **8.0 REASONS FOR RECOMMENDATIONS**

- 8.1 The Government has decided that the tariff-based approach of a CIL provides the best framework to fund new infrastructure to unlock land for growth. It is therefore important to gain a sound understanding of the CIL process as early as possible in the preparation of the South East Lincolnshire Local Plan in order to ensure that maximum benefit can be obtained from any use of it.

## **9.0 IMPLICATIONS**

- 9.1 **Risk:** A lack of understanding of the potential benefits of a CIL could lead to missed funding opportunities. However, unrealistic expectations about funding opportunities could serve to discourage much-needed development.
- 9.2 **Financial:** A well-conceived CIL offers the potential to raise significant funds for a wide range of new infrastructure that will be needed as a result of development.
- 9.3 **Legal:** There are no direct legal implications arising from the recommendation to this report.
- 9.4 **Equality and Diversity:** There are no direct equality and diversity implications arising from the recommendation to this report.

## **10.0 WARDS/COMMUNITIES AFFECTED**

- 10.1 All wards/communities in South East Lincolnshire are potentially affected by the implementation of a Community Infrastructure Levy.

Background papers: None

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**Appendices attached to this report:** None