

EAST HERTS COUNCIL

DISTRICT PLANNING EXECUTIVE PANEL – 17 DECEMBER 2015

REPORT BY THE LEADER OF THE COUNCIL

COMMUNITY INFRASTRUCTURE LEVY (CIL)

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- This purpose of this report is to introduce Members to the Community Infrastructure Levy (CIL) and its relationship to Section 106.

RECOMMENDATION FOR DISTRICT PLANNING EXECUTIVE

PANEL: That Council, via the Executive, be advised that:

(A)	The information contained in this report on the Community Infrastructure Levy be noted.
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1.0 Background

1.1 At a meeting of the District Plan Executive Panel on 22nd October, Members requested further information regarding the Community Infrastructure Levy (CIL). This report therefore provides an introduction to CIL, including how it would relate to the existing Section 106 charging regime.

1.2 In addition to this report, a representative from the Planning Advisory Service (PAS) will be attending the Panel meeting to give a presentation and answer any questions which Members may have.

2.0 Report

Section 106 agreements

2.1 At present, developer contributions are primarily sought through Section 106 (S106) agreements. In addition, Hertfordshire

County Council, as Highways Authority, collects highways contributions through Section 38 and 278 agreements.

2.2 The National Planning Policy Framework (NPPF) identifies the criteria through which S106 contributions should be sought. In particular, Paragraph 204 indicates that contributions must be:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in kind and scale to the development.

2.3 S106 agreements are therefore generally entered into to reduce the harm caused by a development to an acceptable level. Acceptable development should not be refused because an applicant is unwilling or unable to offer benefits. Similarly, unacceptable development should not be approved because of unnecessary or unrelated benefits being offered.

2.4 Contributions can either be financial, where monies are paid directly to fund specific works or a project, either in full or in part; or the details of the S106 agreement may be non-financial. The latter can require the developer to carry out particular works or provide certain facilities on site, or require the provision of an element of affordable housing within a residential development.

2.5 Crucially, S106 agreements are negotiable depending on the nature of the proposed development. This flexibility allows local authorities to tailor agreements in order to provide for infrastructure requirements on a site specific basis. However, it can lead to uncertainty for local authorities, developers and service providers and cause delays to the planning application process.

Community Infrastructure Levy

2.6 The Community Infrastructure Levy (CIL) was introduced by the Government in 2010. It is essentially a 'development tax' that allows local planning authorities to seek non-negotiable payments for infrastructure based on a charge per square metre of floorspace. Planning Practice Guidance (PPG), which supplements the NPPF, states that:

‘the levy is intended to provide infrastructure to support the development of an area, rather than making individual planning applications acceptable in planning terms’.

- 2.7 Therefore, CIL payments do not need to be spent on site specific infrastructure, and instead, can contribute towards the cost of providing larger, strategic infrastructure projects.
- 2.8 CIL is not mandatory, and it is therefore the responsibility of individual local planning authorities to decide whether or not to implement it in their area. At present, many authorities in England and Wales have not yet adopted CIL.

Setting the CIL rate

- 2.9 It is the responsibility of the local authority to set a CIL charge for its area, taking into account issues of financial viability. The local authority can adopt multiple charging rates across its area and can also set different rates for residential and commercial development.
- 2.10 The process by which a CIL charging schedule is introduced is similar, in some ways, to that of local plan preparation. Firstly, a preliminary draft charging schedule is produced, based on appropriate available evidence. In the context of East Herts, Members will recall that the Delivery Study, which was presented to this Panel in October, identified the level of CIL that could be charged for different development schemes. These recommendations are presented in Table 1 below.

Table 1: Potential CIL Charging Schedule (Delivery Study, September 2015).

Type of Development	Potential CIL Charge
Less than 5 dwellings	Up to £200 per square metre based on 0% affordable housing provision
Between 5 and 14 dwellings	Up to £150 per square metre based on 35% affordable housing provision
15 dwellings and above	Up to £100 per square metre based on 40% affordable housing provision
Flatted schemes in the southern zone (comprising Hertford, Ware	Up to £50 per square metre based on 20% affordable

and Sawbridgeworth)	housing provision
Flatted schemes in the northern zone (comprising Bishop's Stortford and Buntingford)	Up to £40 per square metre <u>or</u> 10% affordable housing provision.
Convenience retail	Up to £80 per square metre
All other non-residential development	No CIL charge

- 2.11 The preliminary draft charging schedule is then subject to a period of public consultation. Following this, a draft charging schedule is prepared in light of the comments received on the preliminary draft, and is also subject to a further period of public consultation.
- 2.12 Finally, an Examination in Public takes place whereby an independent Inspector ensures that the charging schedule is robust and fit for purpose. Introducing CIL is therefore a resource intensive process which can take considerable time and money to complete.
- 2.13 Once adopted, the local planning authority cannot amend the charging schedule without repeating the extensive process identified above. However, CIL charges are 'Index linked' which means that they should be adjusted over time to reflect changes to the market and the economy.

Collecting and Spending CIL

- 2.14 Authorities can spend CIL on providing infrastructure to support development in their area. This can include flood defences, open space, recreation and sport, transport, education and health facilities.
- 2.15 If CIL was introduced in East Herts, the District Council would be the charging authority and would therefore collect payments from developers. However, the Council does not usually directly deliver infrastructure. The money therefore would need to be passed on to the relevant body, for example Hertfordshire County Council. A process of governance would therefore need to be set up in order to identify how and when the money would be spent.
- 2.16 It is not expected that CIL contributions would pay for all required infrastructure. PPG guidance states that:

‘Some site specific impact mitigation may still be necessary in order for a development to be granted planning permission. Some of these needs may be provided for through the levy but others may not, particularly if they are very local in their impact. Therefore, the Government considers there is still a legitimate role for development specific planning obligations to enable a local planning authority to be confident that the specific consequences of a particular development can be mitigated’.

- 2.17 Therefore, CIL should complement, rather than replace, S106 contributions. In particular, the level of affordable housing to be provided would still be negotiated and secured through the S106 process.
- 2.18 One concern with CIL is that it may lead to developers effectively paying for the same infrastructure twice; once through a S106 payment, and once through a CIL charge. This is known as ‘double dipping’. In order to avoid this, local planning authorities prepare a list of strategic infrastructure needs which CIL payments may contribute towards; this is known as the ‘Regulation 123 list’. S106 payments cannot be secured to pay for items on the Regulation 123 list and therefore must be limited to site specific requirements.
- 2.19 Of the money collected under CIL, the Council would be obliged to pass 15% to Parish Councils (subject to a cap of £100 per existing dwelling). In any area where a neighbourhood plan has been adopted, the proportion increases to 25% (not subject to any cap). It is up to the Parish Council to decide how the money is spent in their local area.
- 2.20 Under the current CIL Regulations, S106 payments from a maximum of five developments can be pooled to contribute to any single infrastructure project. This is enforced irrespective of whether or not a local authority has a CIL in place. This can result in a significant funding gap for expensive infrastructure schemes and lead to a reliance on securing additional funding from other sources.
- 2.21 It should be noted that there are a number of exceptions where CIL cannot be sought:
- Development under 100sqm gross internal floorspace;
 - Self- build housing, Starter Homes, residential annexes and extensions; and

- Affordable housing.

Possible Advantages and Disadvantages of CIL

2.22 This report has already alluded to some of the potential advantages and disadvantages of introducing CIL. However, a more comprehensive list is presented in Table 2 below.

Table 2: Advantages/Disadvantages of CIL

Advantages	Disadvantages
Speeds up planning application process due to reduced negotiation on contributions	The process of adopting a CIL is resource intensive.
Provides more certainty to developers, local authorities and service providers	Reduces the ability to maximise contributions from developments as standard CIL charges should leave a significant buffer to ensure continued viability of development schemes.
More transparent than S106.	Lack of flexibility as the charge cannot be reduced to allow for greater on-site infrastructure or affordable housing to be provided.
Supports Localism by providing funding to Parish Councils	
Can be charged on minor schemes, including single dwellings, unlike S106	
Payments can be pooled to contribute towards funding of strategic infrastructure.	

Next Steps

2.23 Over the coming months the Council will need to decide whether or not to implement CIL in East Herts. It is recognised that, before making that decision, Members will want to see further evidence in order to understand whether CIL would provide a greater level of financial contributions when compared to the current system. The Planning Policy team will therefore continue to work with PAS in order to come to a better understanding of this issue.

2.24 The Department for Communities and Local Government (DCLG) has recently announced that it will shortly be consulting on potential changes to the current CIL Regulations. It is therefore considered advisable to wait until the conclusion of this process before coming to a formal view on CIL.

3.0 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

- National Planning Policy Framework (NPPF)
(<https://www.gov.uk/government/publications/national-planning-policy-framework--2>)
- Planning Practice Guidance (PPG)
(<http://planningguidance.planningportal.gov.uk/>)
- Delivery Study, September 2015
(www.eastherts.gov.uk/deliverystudy)

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