

REPORT TO: Executive Board

DATE: 17 October 2019

REPORTING OFFICER: Strategic Director – Enterprise, Community and Resources

PORTFOLIO: Physical Environment

SUBJECT: Practicalities of the implementation of the Community Infrastructure Levy (CIL).

WARDS: All

1. PURPOSE OF THE REPORT

- 1.1. The report responds to a request made by Executive Board at its meeting on 22nd March 2019 (minute EXB 112 refers) and explains the practicalities of implementing the Community Infrastructure Levy (CIL).

2. RECOMMENDATION: That given the information provided a Community Infrastructure Levy be not introduced at this time but that the matter be reviewed if changes in Section 106 arrangements or other economic circumstances change.

3. INTRODUCTION

- 3.1. The Community Infrastructure Levy (CIL) was introduced by the Government in 2010. It was intended to generate additional funds to pay for the infrastructure required to support new development and to show communities tangible community benefits from accepting new development.
- 3.2. Government intended that CIL would largely replace the system of individually negotiated planning obligations under Section 106 (S.106) of the Town and Country Planning Act 1990. To bolster the move to the new CIL system, Government introduced a restriction on the ‘pooling’ of S.106 monies in April 2015, restricting local authorities from using more than five separate planning obligations for a specific project or item of infrastructure, this restriction was lifted in the updated CIL Regulations which came into force on 1st September 2019.
- 3.3. CIL permits planning authorities to impose a charge (effectively a tax) on new development in their area to raise funds for the local infrastructure required to support the level of development proposed for their area. The items of infrastructure to be funded are set out in a pre-determined list originally known as the Schedule 123 list, and from September 2019 as an “infrastructure funding statement”.

- 3.4. A local authority which wishes to introduce CIL must set out in a Charging Schedule the types of development to which the levy will apply (and any exceptions) and the rates of charge to be applied. CIL, once introduced, is then mandatory on all qualifying developments. Unlike Section 106 Agreements (including affordable housing) which were considered on a site by site basis, CIL is non-negotiable.
- 3.5. CIL must be set at a level that does not prejudice the viability of most sites. Both the Charging Schedule and Schedule 123 lists are subject to independent examination.
- 3.6. While it remains discretionary whether planning authorities implement CIL, it is the Government's preferred mechanism to secure funding from new development for infrastructure provision. Many authorities that have implemented CIL have appointed dedicated CIL officers to administer the system. The costs of this can be recovered, however this 'eats into' the monies generated for infrastructure and can be significant where viability is marginal and the levy is set at a low rate.

4. OPERATION OF THE COMMUNITY INFRASTRUCTURE LEVY

- 4.1. The Government's intention was that S.106 agreements would continue to be used for affordable housing and any significant site specific requirements. CIL was intended to be a generally straight forward 'tariff' style approach (based on the development of additional floor space) to collecting contributions towards the provision of infrastructure needed to support growth, which would largely replace existing S.106 agreements. Since the introduction of CIL in 2010, there have been a number of regulation changes (including on the 1st September 2019), these need to be adhered to in the initial scoping of CIL as this follows a statutory process.
- 4.2. Alongside the publication of the Housing White Paper in 2017, the Government Published, '*A New Approach to Developer Contributions*' by the CIL Review Group. This group was set up by the Government in 2015, to assess the extent CIL is providing an effective mechanism for funding infrastructure, and to recommend changes to improve its operation in support of wider housing and growth objectives.
- 4.3. Many issues with CIL were identified by the Review Group. These included the fact that the potential amount of CIL which can be raised has been adversely impacted by a number of exceptions introduced by the Government through amendments to the CIL regulations; where CIL has been adopted, it has raised only a fraction of the receipts anticipated at inception of the regime and has affected the level of affordable housing that can be delivered. Furthermore the report concluded that CIL has not resulted in infrastructure being provided when needed to support development (or affordable housing) and is particularly unsuited to larger developments.

- 4.4. The Review Group found that S.106 contributions were still being used to a greater extent than had been anticipated – particularly where they are required to ensure infrastructure is delivered on-site. As a result CIL is not appropriate for many strategic developments which need to deliver significant onsite infrastructure.
- 4.5. CIL monies can be used to support development by funding a wide range of infrastructure improvements, education provision, greenspace enhancements and habitat mitigation measures. Differential charging rates can be set for geographical areas; particular types of development, and at different scales of development.
- 4.6. Should CIL be implemented a CIL charge would become due from the date that a chargeable development is commenced. As a Charging Authority, the Authority can decide how much of the Levy it wishes to retain for its own projects and what proportion of CIL monies can be passed onto other bodies (such as the education authority) to deliver infrastructure to support development of the area. Planning authorities have flexibility to choose what infrastructure they prioritise based on consultation with the infrastructure providers.
- 4.7. Unlike funding that is secured through Section 106 legal agreements, CIL is payments from individual sites are not ring fenced for specific forms of infrastructure or tied to the locality of the particular development. Local authorities are also required to allocate between 15% and 25% (where a Neighbourhood Plan is in place) of the CIL funding raised directly to the parish council where the development takes place. This ensures the local communities that accommodate new development receive funding to support local infrastructure.
- 4.8. The introduction of a levy is expected to have a positive economic effect on development across a whole local plan area. When deciding the levy rates, an appropriate balance must be struck between additional investment to support development and the potential effect on the viability of developments. This balance is at the centre of the charge-setting process. In meeting the regulatory requirements (Regulation 14(1) as amended by the 2014 and 2019 Regulations), charging authorities should be able to show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant plan and support development across their area. In doing so, charging authorities should use evidence in accordance with planning practice guidance and take account of national planning policy on development contributions.

5. REVIEW OF THE POTENTIAL INTRODUCTION OF CIL FOR HALTON

- 5.1. In March 2019 Halton Council commissioned HDH Planning to undertake a Whole Plan Viability Study and in addition to this a review to establish if there was any additional capacity for Community Infrastructure Levy (CIL) and identify potential ways to make capacity for CIL.

- 5.2. The Study, with appendices runs to over 400 pages in total so is not being attached as an appendix to this report but is available online at;

<https://www3.halton.gov.uk/Pages/planning/policyguidance/pdf/evidencebase/viabilitystudy.pdf>

Chapter 12 acts as the Executive Summary.

- 5.3. The study highlights that an important principle of CIL is that the Levy is set on the assumption that all other policy requirements (such as affordable housing, and environmental standards) are “paid” first. That is to say that any CIL should be set on the assumption that the affordable housing requirement is achieved.

- 5.4. CIL Regulation 14 (as amended) sets out the core principle for setting CIL:

“In setting rates(including differential rates) in a charging schedule, a charging authority must strike an appropriate balance between (a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and (b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area...”

- 5.5. On preparing the evidence base on economic viability, the Guidance says:

... A charging authority must use ‘appropriate available evidence’ (as defined in the section 211(7A) of the Planning Act 2008) to inform their draft charging schedule. The government recognises that the available data is unlikely to be fully comprehensive. Charging authorities need to demonstrate that their proposed levy rate or rates are informed by ‘appropriate available’ evidence and consistent with that evidence across their area as a whole.

A charging authority should draw on existing data wherever it is available. Sources of data can include (but are not limited to): land registry records of transactions; real estate licensed software packages; real estate market reports; real estate research; estate agent websites; property auction results; valuation office agency data; public sector estate/property teams’ locally held evidence. They may also want to build on work undertaken to inform their assessments of land availability.

In addition, a charging authority should directly sample an appropriate range of types of sites across its area, in line with planning practice guidance on viability. This will require support from local developers. ...

... A charging authority’s proposed rate or rates should be reasonable, given the available evidence, but there is no

requirement for a proposed rate to exactly mirror the evidence. For example, this might not be appropriate if the evidence pointed to setting a charge right at the margins of viability. There is room for some pragmatism. It would be appropriate to ensure that a 'buffer' or margin is included, so that the levy rate is able to support development when economic circumstances adjust. In all cases, the charging authority should be able to explain its approach clearly.

(PPG 25-019-20190315)

5.6. The HDH Whole Plan Viability Study draws on the available existing evidence, including but not limited to the following which are all referenced in the Whole Local Plan Viability Study, (*HDH Planning 2019*):

- Review of CIL Potential Final Draft Report (*DTZ, November 2014*)
- Development Appraisals held by Halton Borough Council
- S.106 Historic evidence
- Price Maps
- Land Registry PPD and EPC Data
- Residential New build Asking Prices (March 2019)
- CoStar (Commercial Property Database) Non-Residential Data
- CoStar (Commercial Property Database) Industrial Land Data
- Older Peoples Data
- Stakeholder comments

5.7. Since April 2015, councils were restricted in relation to pooling S.106 contributions from more than five developments¹ (where the obligation in the S.106 agreement / undertaking is a reason for granting consent), this restriction has now been lifted through the amendment to the CIL Regulations which came into force on 1st September 2019. Additional S.106 funds for infrastructure can still be sought, provided this infrastructure can be directly linked to the site-specific needs associated with the scheme in question, and that it is not for infrastructure specifically identified to be funded by CIL, through the Regulation 123 List² Payments requested under the S.106 regime must be (as set out in CIL Regulation 122):

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

5.8. A local authority which wishes to introduce CIL must set out in a Charging Schedule the types of development to be charged (and any exceptions) and the rates of charge to be applied. CIL, once introduced, is then

¹ CIL Regulations 123(3)

² This is the list of the items on which the Council will spend CIL

mandatory on all developments within the categories and areas where the levy applies, unlike other policy requirements to provide affordable housing or to build to a particular environmental standard over which there can be negotiations. This means that CIL must not prejudice the viability of most sites. This is unlike Section 106 Agreements (including affordable housing) which are negotiated with developers on a site by site basis.

5.9. Since the Councils' previous study (DTZ 2014) which proposed charging tariffs for the Borough there have been a number of changes at national level.

5.10. In November 2014, the Government introduced a national threshold for affordable housing and developer contributions of 10 units or fewer, and which have a maximum combined gross floor space of 1,000m².

5.11. In August 2015, the changes were reversed (due to a legal challenge) and the PPG was amended. The Government appealed³ and the threshold of 10 units was reintroduced in May 2016. Para 63 of the 2019 NPPF provides further clarity saying:

“Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount.”

5.12. In the Whole Local Plan Viability Study the threshold of 10 dwellings was applied.

5.13. The Summer 2015 Budget announced a number of changes which impacted directly on the viability of development.

5.14. Prior to the Budget, Affordable Rents were set at up to 80% of open market rent and generally went up, annually, by inflation (CPI) plus 1%, and Social Rents were set through a formula, again with an annual CPI plus 1% increase. Under arrangements announced in 2013, these provisions were to prevail until 2023, and have formed the basis of many housing associations' and other providers' business plans. Housing associations knew their rents would go up and those people and organisations who invest in such properties (directly or indirectly) knew that the rents were going up year on year. This made them attractive as each year the rent would always be a little larger relative to inflation.

5.15. In the Budget, it was announced that Social Rents and Affordable Rents would be reduced by 1% per year for 4 years. This change reduced the value of affordable housing. In October 2017 the Government announced

³ Secretary of State for Communities and Local Government v (1) West Berkshire District Council & (2) Reading Borough Council. Court of Appeal 11th May 2016 [2016] EWCA Civ 441. Case No: C1/2015/2559.

that Rents will rise by CPI +1% for five years from 2020. There was no uplift to Part L of the Building Regulations during 2016 and both the 2016 zero carbon homes target and the 2019 target for non-domestic zero carbon buildings were to be dropped, including the Allowable Solutions programme.

5.16. The Government published the Housing White Paper⁴ (February 2017) setting out the Government's plans, for consultation, to deal with some aspects of the housing market and planning system. At the same time as the publication of the Housing White Paper, A New Approach to Developer Contributions - a report by the CIL Review Team (Submitted October 2016)⁵ was released suggesting some changes to the existing CIL process. It is likely that these two documents will lead to further changes in the planning system (beyond the 2018 NPPF), however what those changes may be is not yet certain.

5.17. In December 2018 the Government launched a further consultation Reforming Developer Contributions – Technical consultation on draft regulations (MHCLG, December 2018). The changes that are relevant to this study are:

Indexation of CIL

5.18. Following the consultation, the Government has amended the proposal on indexing the Levy. For residential development, the Government proposes indexing to a three-year smoothed average of the annual local House Price Index. For non-residential indexation the Government proposes indexing to the Consumer Price Index.

Regulation 123 Restrictions and S.106 Pooling

5.19. As mentioned above, the restrictions on S.106 planning obligations in Regulation 123 lists, preventing local authorities using more than five section 106 obligations to fund a single infrastructure project ('the pooling restriction') was removed through update CIL Regulations which came into force on 1st September 2019.

Starter Homes

5.20. The amended CIL Regulations include provisions which exempt Starter Homes from CIL where the dwelling is sold to individuals whose total household annual income is no more than £80,000 (£90,000 in Greater London).

5.21. The 2019 NPPF (paragraph 64) sets out a policy for a minimum of 10% affordable home ownership units on larger sites.

⁴ <https://www.gov.uk/government/collections/housing-white-paper>

⁵ <https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government>

Intermediate Housing

5.22. In this context it is important to note that the 2019 NPPF sets out a requirement for low-cost home ownership as part of the affordable housing mix:

Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership⁶, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups. Exemptions to this 10% requirement should also be made where the site or proposed development:

- a) provides solely for Build to Rent homes;*
- b) provides specialist accommodation for a group of people with specific needs (such as purpose-built accommodation for the elderly or students);*
- c) is proposed to be developed by people who wish to build or commission their own homes; or*
- d) is exclusively for affordable housing, an entry-level exception site or a rural exception site.*

Paragraph 64, 2019 NPPF

Viability Guidance

5.23. There is no specific technical guidance on how to test the viability in the 2019 NPPF or the updated PPG, although the updated PPG includes guidance in a number of specific areas.

6. WHOLE LOCAL PLAN VIABILITY STUDY RECOMMENDATIONS FOR THE POTENTIAL OF CIL

6.1. It is timely to note that an important principle of CIL is that the Levy is set on the assumption that all other policy requirements (such as affordable housing, and environmental standards) are 'paid' first. That is to say CIL should be set on the assumption that the full affordable housing requirement is achieved.

6.2. Viability testing in the context of CIL concerns the 'effects' on development viability of the imposition of CIL. The Viability Study recommends Halton sets the affordable housing level as;

- 25% for greenfield sites,
- 20% for strategic residential sites and

⁶ Footnote 29 of the 2018 NPPF clarifies as 'As part of the overall affordable housing contribution from the site'

- 0% for brownfield sites.

This is in line with the guidance referred to earlier where it is difficult to deliver affordable housing and CIL on strategic allocations.

- 6.3. In conclusion, CIL is not currently viable in Halton given assessed development values for policy compliant development, i.e. development meeting the policy requirements set out in the draft Local Plan concerning affordable housing, self-build housing, older peoples housing and environmental standards etc.

7. FINANCIAL IMPLICATIONS

- 7.1. It should be noted that relevant S.106 monies will be still collected with the absence of a Community Infrastructure Levy.
- 7.2. Should the scope for CIL be reviewed again in the future there would be a financial expense of paying for another evidence based study.

8. POLICY IMPLICATIONS

- 8.1. The scope for CIL has been reviewed and not found to be viable when all other policy requirements/asks have been met (which is a priority under Government guidance). The requirement for S.106 obligations will still be implemented and the Government are discussing removing the pooling restriction of S.106 as and when this happens this will assist in the delivery of future infrastructure.

9. IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

9.1. Healthy Halton

No specific implications identified

9.2. Halton's Urban Renewal

Whilst CIL would assist in bringing forward development onsite in the urban area by securing funding for necessary infrastructure, there are still S.106 agreements that can be used and the policies contained within the Delivery and Allocations Local Plan also contain policy asks such as affordable housing and environmental contributions to sites.

9.3. Children and Young People in Halton

No specific implications identified.

9.4. Employment, Learning and Skills in Halton

No specific implications identified.

10. RISK ANALYSIS

10.1. Risks include changes to Government policy, regulations and legislation and subsequently the need to update the evidence base.

11. EQUALITY AND DIVERSITY ISSUES

11.1. There are no specific equality and diversity issues relating to this report.

12. LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Contact Officer
The Town and Country Planning (Local Planning) (England) Regulations 2012	Municipal Building, Widnes	Alasdair Cross
The Community Infrastructure Levy Regulations 2010 (as amended)	Municipal Building, Widnes	Alasdair Cross
National Planning Policy Framework (2019)	Municipal Building, Widnes	Alasdair Cross
Proposed Submission DALP (2019)	Municipal Building, Widnes	Alasdair Cross
Whole Plan Viability Study (HDH Planning, 2019)	Municipal Building, Widnes	Alasdair Cross