

CABINET

17 JANUARY 2012

COMMUNITY INFRASTRUCTURE LEVY

Portfolio Holder: Councillor Jane Chitty, Strategic Development and Economic Growth

Report from: Robin Cooper, Director, Regeneration, Community and Culture

Authors: Stephen Gaimster, Assistant Director, Development, Economy and Transport
Jill King, Section 106 Officer

Summary

The Community Infrastructure Levy (CIL) allows local authorities in England and Wales to raise funds from developers undertaking new building projects. The money can be used to fund infrastructure required within the Council's area.

This report provides an update on CIL, which came into force in April 2010, and recommends that work starts on a Medway CIL Charging Schedule, the final version of which would be considered for formal adoption by Council in 2013.

1. Budget and Policy Framework

- 1.1 In accordance with the Planning Act 2008 the adoption of a CIL Charging Schedule will be a matter for Council. It is probable that should a CIL be introduced, it will raise more income from new development than the current mechanism of Section 106 obligations.
- 1.2 It is also related to the Local Development Framework (LDF, part of the Policy Framework) and the LDF must be progressed to a certain stage before a CIL can be considered.

2. Background

- 2.1 CIL is a levy that local authorities (known as Charging Authorities after adoption of CIL) can choose to apply to new developments in their area. The levy can apply to every new dwelling and commercial development, and can only be spent on providing infrastructure to support the development within that authority's area.
- 2.2 A Charging Authority must have an up to date development plan, evidence of infrastructure gaps (aggregate gaps) and appropriate available evidence on viability, before a CIL can be set.

2.3 After 6 April 2014 the use of pooled contributions collected through Section 106 obligations will be limited for all authorities. For those authorities adopting the CIL the restrictions will come into place on its adoption. This is consistent with the principle that the vehicle for future collection of pooled contributions for infrastructure should be CIL.

2.4 The Department of Communities and Local Government (CLG) has published the following relating to CIL:

- Part 11 of the Planning Act 2008 - the statutory basis for CIL
- CIL Regulations April 2010 - set out how CIL will work
- CIL Guidance March 2010 – complement the Regulations
- Updated Regulations – revisions made by the Coalition Government in April 2011
- CIL overview update May 2011 – a general guide
- CIL Relief - a guide for cases where development is exempt from CIL, May 2011
- Consultation on changes that might be introduced through the Localism Bill, summer 2011

All material can be accessed via the following link:

<http://www.communities.gov.uk/planningandbuilding/planningsystem/communityinfrastructurelevy/>

2.5 Currently the Guide to Developer Contributions Supplementary Planning Document (SPD), which was adopted in April 2008, sets out what a developer can expect to fund for various services in order to meet the impact of a development of 10 dwellings or more, or for commercial development through a Section 106 Agreement. These contributions can only be requested if they meet the following criteria:

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

2.6 The Council currently collects contributions from developers by way of Section 106 contributions. Section 106 contributions received since April 2008:

April 2008 – March 2009	£2,031,561
April 2009 – March 2010	£2,036,583
April 2010 – March 2011	£7,611,147
April 2011 – Sept 2011	£ 760,023

2.7 Section 106 obligations are to be scaled back in 2014 but:

- Will continue to be the primary mechanism for securing affordable housing through the planning system (subject to a possible change through amendments to the Localism Act).
- Will be restricted to the regulation of development and in particular site specific mitigation.

What is CIL?

2.8 CIL is for 'top up' funding for infrastructure to support the development of the area and does not replace mainstream funding sources. It also supports development that does not require planning permission. It can be used to fund a wide range of infrastructure that is needed as a result of development including new/safer road schemes, flood defences, schools, hospitals and

other health and social care facilities, park improvements, green spaces and leisure centres, but not (currently) for the provision of affordable housing.

- 2.9 Charging authorities must spend income from the levy on infrastructure to support the development of the area but they can decide what infrastructure to spend it on and that can be different to that for which it was originally set.
- 2.10 CIL may be passed to bodies outside the Charging Authority's area to deliver infrastructure that will benefit the development of their area, such as the Environment Agency for flood defence.
- 2.11 Charging authorities are required to prepare and publish a statement of those items or types of infrastructure it intends to fund through CIL (known as a R123 statement). To avoid any double charging to developers, the planning authority cannot then seek contributions towards those items included on the list through Section 106 obligations, even where they could be justified as site specific remediation.
- 2.12 Levy rates are set in consultation with local communities and developers.
- 2.13 CIL becomes due on commencement of the development.
- 2.14 CIL can support the timely provision of infrastructure, for example by using the levy to backfill early funding provided by another funding body.
- 2.15 The Secretary of State can direct that authorities may 'prudentially' borrow against future income from CIL should the government conclude that, subject to the overall fiscal position, there is scope for local authorities to use monies from the levy to repay loans used to support infrastructure.
- 2.16 5% of CIL received can be used for administrative purposes. 5% of CIL income received in the first 3 years can be used to cover preparation costs.
- 2.17 There are exemptions (e.g. charity exemptions), reliefs (e.g. 100% social housing) and policies (e.g. payment by instalments).
- 2.18 Regulations provide for a range of proportionate enforcement measures, such as surcharges on late payments and CIL Stop Notices.
- 2.19 Using new powers introduced in the Localism Act, the Government will require charging authorities to allocate a meaningful proportion of levy revenues raised in each neighbourhood back to that neighbourhood. This is to ensure that where a neighbourhood bears the brunt of a new development, it receives sufficient money to help it manage those impacts. It is intended to complement the introduction of other new incentives for local authorities that "will ensure that local areas benefit from development they welcome. "
- 2.20 Local authorities will have to work closely with neighbourhoods to decide what infrastructure they require, and balance neighbourhood funding with wider infrastructure funding that supports growth. They will retain the ability to use the levy income to address the cumulative impact on infrastructure that may occur further away from the development.

Setting a CIL

- 2.21 The levy is applied as £x per square metre on net additional floorspace (calculated internally) payable by the owner of the land, and is index linked. Any new build (whether a new building or an extension) is only liable for the levy if it has 100 square metres, or more, of gross internal floor space, or involves the creation of additional dwellings, even when that is below 100 square metres.
- 2.22 Charging authorities must consult local communities and stakeholders on their proposed rates for the levy in a preliminary draft of the charging schedule. Before examination a draft charging schedule must be formally published for representations for a period of at least four weeks. During this period any person may request to be heard by the examiner.
- 2.23 A Charging Authority must submit a declaration that they have complied with the requirements of Part 11 of the Planning Act and the CIL Regulations, and they have used appropriate available evidence to inform the draft charging schedule.
- 2.24 Charging Authorities should broadly identify and cost infrastructure needed to support the development of their area – indicative infrastructure types or projects - and identify the aggregate funding gap. Infrastructure needs and cost evidence should be drawn directly from the infrastructure planning supporting the up to date development plan. (PPS12 principles guide how to do this but there is no requirement in CIL guidance to be PPS12 compliant)
- 2.25 The charge should strike an appropriate balance between the desirability of funding the infrastructure gap and the potential effects (taken as a whole) of the imposition of CIL upon the economic viability of development across the area.
- 2.26 There is no requirement to use any particular charging models. The charging schedule can be complex and refer to different uses, geographic areas etc. or be a simple model overarching all development, but all schedules must be based on viability evidence (not policy objectives).
- 2.27 The draft charging schedule must go through a public examination and the Charging Authority must appoint and pay the costs of an 'independent person' who has the 'appropriate qualifications and experience', not necessarily the Planning Inspectorate.
- 2.28 The key considerations at the examination are :
- Has the Charging Authority complied with the Act and CIL regulations?
 - Is the CIL rate informed by appropriate available evidence?
 - Has the Charging Authority struck an appropriate balance?
- 2.29 The Examiner can recommend approval, approval with modifications (e.g. to ensure that CIL rate does not put development at serious risk), or reject it, if for example the Charging Authority has not complied with the Act or Regulations or has not used appropriate available evidence.
- 2.30 The collection and expenditure/use must be reported annually.

- 2.31 CIL can only apply to developments acquiring planning permission after CIL has been adopted.

Other considerations in adopting a CIL

- 2.32 Governance of CIL: Consideration needs to be given to how/who will develop governance arrangements, including working with partner organisations, to develop procedures for prioritising/approving expenditure on business plans, etc.
- 2.33 CIL must be charged per square metre of internal floor space. Currently the planning service works on external floor space and therefore internal floor space measurements are not available. This will need to be addressed.
- 2.34 Although 5% of CIL received in the first 3 years of adoption can be set against the preparation of CIL, it is likely that the majority of developments commenced in that timescale will relate solely to those with Section 106 agreements. These developments will not provide funding for CIL preparation. Due account will need to be taken of this in establishing budgets.
- 2.35 Any work relating to the preparation of CIL should be documented and costed to provide evidence if it is possible to claim back preparation costs from receipts over the first three years. Administrative costs will also need to be documented in this way for transparency reasons.
- 2.36 It would be necessary to add a new section to the Director of Regeneration, Community and Culture's delegated powers to cover the collection of CIL receipts.
- 2.37 The planning software, ACOLAID, will need to be adapted or alternative systems put in place to monitor CIL and publish information in a transparent, customer friendly format.
- 2.38 Identification of responsibilities, and procedures for the monitoring, collection and enforcement of CIL will need to be drawn up and documented.
- 2.39 A Diversity Impact Assessment (DIA) will need to be carried out.

What other Kent authorities are doing

- 2.40 The Kent District Councils are hoping to introduce a CIL regime, by April 2014 at the latest, and a preliminary report has been made to the Kent Forum.
- 2.41 To take matters forward several members of the Kent Planning Officers Group (KPOG), with support from KCC officers, has been tasked with developing a comprehensive picture of county wide infrastructure planning needs, a robust approach to viability testing and a common methodology for drawing up CIL schemes across Kent.
- 2.42 It is envisaged that one or two authorities will pilot the resulting methodology, further develop the process and so enable good practice to be established. However each council will be responsible for its own CIL scheme.

- 2.43 At the time of writing these 'test' authorities have still to come forward so a timetable for developing a pan Kent wide approach is still uncertain.
- 2.44 The Thames Gateway Kent Partnership Officers Group (TGKP) is keen to secure a coordinated approach to the development of CIL charging schemes across North Kent. Areas proposed for any collaboration include:
- Common evidence base, particularly for KCC and other strategic infrastructure needs
 - Common assumptions about public sector funding
 - Common approach to viability appraisal
 - Broadly comparable, but not identical, charging schemes.
- This group had requested a nominated person from Medway Council to join a CIL North Kent coordination group to identify areas where a coordinated approach is feasible. The first meeting took place late November 2011.
- 2.45 At present it is not known how this might fit with the Kent wide initiative being championed by the Kent Forum. Earlier informal approaches to planning officers in North Kent also suggested that they were some way behind Medway in developing their thinking. Consequently there is no defined programme for any collaborative work.
- 2.46 The two tier structure in Kent is a significant complication in relation to this matter and the degree to which an effective collaboration can be developed is still very uncertain. However Medway officers have already made it clear that they wish to work as closely as possible with KPOG/Kent Forum and TGKP and are monitoring developments through KPOG.

3. Options

- 3.1 Based on the above it is considered that there are three options available in relation to the CIL.

Option 1: Prepare a Medway CIL

- 3.2 From 2014 funding available via Section 106 agreements will be scaled back and CIL can anyway provide significantly more funding than Section 106 obligations. In addition funding from many sources has been scaled back or ceased altogether. It is therefore considered to be in the best interests of the community and the council to adopt CIL as soon as practicable to enable a finance pool to provide infrastructure on which new development can depend.
- 3.3 The core strategy is programmed for adoption in September/October 2012, supported by an up to date infrastructure plan. If work begins now on producing the most appropriate charging schedule for this authority, and addressing issues of governance and other matters as listed in paragraphs 2.32 to 2.39 the following general timetable should be possible:
- Scoping work, preliminary investigations, analysis of emerging best practice, governance and administrative arrangements: January – June 2012
 - Commencement of formal preparation: July 2012 – December 2012
 - Public consultation of draft charging Schedule: January 2013
 - Examination hearings: June 2013

- Adoption: September 2013.

It is anticipated that Cabinet approval to consult on a draft CIL charging schedule would be sought by late 2012.

- 3.4 The core strategy and infrastructure plan are already being progressed by the Planning Policy and Design service.
- 3.5 This option is recommended.

Option 2: Prepare a CIL Jointly with Kent Authorities

- 3.6 Medway Council works with the Thames Gateway Kent Partnership Officers Group or Kent Planning Officers Group to prepare for CIL jointly with other Kent authorities, and that this forms the basis for a Medway CIL.
- 3.7 Because of the two tier dimension and uncertainty over a Kent programme, this option is not recommended.

Option 3: Work on CIL is not taken forward at this time

- 3.8 Not progressing with CIL could mean that when Section 106 obligations are scaled back in 2014, there will be less/inadequate funds available for the provision of essential services. Accordingly this option is not recommended.

4. Resource required

- 4.1 It is anticipated that CIL will be taken forward mainly based on the use of existing staff but specialist consultants may also be required to assist in assessing the viability of the resulting charging schedule, and providing the infrastructure plan. To ensure effective communication among officers, CIL will form an increasingly important agenda item on the existing Developer Contributions Officer Group. It is suggested that the Local Development Framework Cabinet Advisory Group be utilised to ensure effective Member involvement.

5. Advice and analysis

- 5.1 It is intended that the current Guide to Developer Contributions SPD will be updated and go through the appropriate consultation/adoption process in 2012. If this revised document is adopted it will only be valid until April 2014 or until a CIL is in place. After this time Section 106 obligations will be scaled back and if no CIL is in place, the Council will receive less funding from developers for infrastructure in the area.
- 5.2 Although there are resource pressures in all services, this is unlikely to change over the next few years, and therefore there is no 'preferable' time to carry out work required to deliver a CIL. However the clear aim should be to have a CIL in place by April 2014.
- 5.3 The sooner CIL is adopted, the more likely it is there will be a continuous level of contribution being received from development in the area.

5.4 A project team led by Stephen Gaimster, Assistant Director Development, Economy and Transport, has been established to address the issues identified in this report.

6. Risk management

Risk	Description	Action to avoid or mitigate risk
<u>Option 1:</u> <i>Take CIL forward</i>		
1. Lack of focus	CIL new initiative – no experience within authority. No clear responsibilities or tasks	Project team identified to research and deal with issues
2. Not engaging appropriate stakeholders	Voluntary/community sectors and strategic partners must be part of CIL setting and governance process	Produce mechanism/ programme for communicating with and involving all groups
3. Less development in the area	CIL could make some developments unviable	Although a small minority of developments may become unviable, the CIL should be appropriate to the area and overall infrastructure funding would increase. This will be the key test through the examination process
4. Budget pressure	The 5% administration fund to cover preparation costs may not cover actual costs e.g. for examination	Work on CIL needs to be recorded, costed and monitored in order to manage budgets accordingly
<u>Option 2:</u> <i>Take forward as member of Thames Gateway Partnership team or Kent Planning Officer Group</i>		
5. Divergence of views on approach	Differences of view either delay the introduction of a common approach or different economic prospects across Kent lead to alternative approaches	Not easy to address and likelihood difficult to assess at this stage
<u>Option 3:</u> <i>Do not take CIL forward</i>		
6. Reduced income	Less funding received from developments approved after 2014	No other course of action/funding if CIL not adopted

Risk	Description	Action to avoid or mitigate risk
7. Increase in complaints re lack of infrastructure to meet needs of new developments	Residents will become increasingly frustrated with lack of facilities which can lead to social problems	No other course of action/funding if CIL not adopted

7. Financial and legal implications

- 7.1 It is probable that should a CIL be introduced, it will raise more income from new development than the current mechanism of Section 106 obligations. However planning obligations may still have a role to play in terms of site specific infrastructure that mitigates the specific impacts of a development.
- 7.2 Governance, administrative and monitoring structures need to be in place to charge, collect and monitor CIL.
- 7.3 The constitution and issues with audit, finance and land charges need to be reviewed if a CIL is introduced.
- 7.4 Before a CIL can be introduced a draft charging schedule must be produced taking into account stakeholders input, infrastructure requirements and viability issues. The schedule must go through public examination before adoption as set out in CLG guidance. External advice will be essential in terms of viability.
- 7.5 Currently anticipated developments, such as Lodge Hill, are likely to be tied to Section 106 agreements if they are approved prior to the adoption of CIL.
- 7.6 For information: the Government has introduced a New Homes Bonus which is a financial incentive scheme separate from the planning process. Its aim is to create a simple, transparent and permanent incentive that rewards local authorities that deliver sustainable housing development.

8. Recommendations

- 8.1 It is recommended that work should commence in January 2012 on preparing a CIL to enable this council to become a CIL Charging Authority well before 6 April 2014, in accordance with option 1, and in consultation with other Kent authorities.

9. Reasons for decision

- 9.1 To enable a mechanism to be in place by April 2014 to collect contributions from developers to support development.

Lead officer contact

Jill King, Section 106 Officer, Gun Wharf
01634 331594
jill.king@medway.gov.uk

Background papers

Guide to Developer Contributions SPD, April 2008

C LG Community Infrastructure Levy: an overview, May 2011

CLG Community Infrastructure Levy Relief Information Document, May 2011

CLG Detailed proposals and draft regulations for reform: consultation, October 2011

CLG Community Infrastructure Levy – collection and enforcement, October 2011