

REPORT TO THE EXECUTIVE MEETING OF 23RD MAY, 2011

Status: For decision
Title: Community Infrastructure Levy
Originator: Stephen Pointer, Policy Manager

1 Purpose of Report

1.1 To inform members of the Community Infrastructure Levy, the flexibilities now available through amended Regulations and the issues concerned with setting and implementing a Levy.

2 Recommendations:

2.1 That a Community Infrastructure Levy on new development be created as a means of funding specified community infrastructure in a fair and transparent manner.

2.2 That a task and finish Member Panel be arranged to oversee this work.

2.3 That the project be developed to incorporate other matters such as member and parish council liaison, be subject to corporate project management tools and a project plan be submitted to the first meeting of the Panel.

3 Summary of reasons for recommendation

3.1 A new approach to securing funding towards community infrastructure made necessary by new development is available to the Council. The Community Infrastructure Levy (CIL) was brought into being via Regulations in April 2010 but in light of the election of a Coalition Government in May 2010 many authorities waited to see what approach the Government would take to this initiative.

3.2 In November 2010, the Coalition Government indicated its support for a CIL approach to fund infrastructure from multiple developments and announced that Regulations would be amended further to create more flexibility for Councils

3.3 A paper on CIL was discussed at Scrutiny Places Panel on 17 March and the issue has been considered by the Local Development Framework Task Panel on 30 January and 9 March. Scrutiny Resources Panel considered this issue

at its meeting on 14 April. All Panels have endorsed its introduction in a District where the vast majority of development is of a scale where traditional S106 agreements have not been appropriate and thus the majority of development does not at present make any form of contribution to the demands it makes on local infrastructure.

4. Background

CIL regulations and relationship with Section 106 agreements

4.1 The new Government considers it is reasonable for developers to make a contribution towards additional infrastructure that is needed as a result of their development. The Government also believes a tariff-based approach provides the most satisfactory framework to fund new infrastructure. Therefore, after careful consideration, the Government has decided to retain the Community Infrastructure Levy. However, in retaining the Levy it is being reformed to ensure it:

- hands more power to councils and communities to decide what they want the levy to fund;
- is simple and transparent for local communities and provides clarity to the development industry.

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The new Government has therefore amended previous Regulations to give more flexibility for councils over:

- the detail of what type of levy rate is charged;
- what rates are set for specific areas and types of development;
- flexible payment deadlines;
- the option to pay by installments;
- payment in kind for any level of contribution.

The Government is also including provisions in the Localism Bill to limit the binding nature of examiners' reports, and has already amended the Community Infrastructure Levy Regulations 2010 to introduce the above flexibilities. These amendments came into force in April 2011. A short summary paper written by Communities and Local Government is attached at Appendix 1 to explain CIL in more detail.

4.2 Planning obligations, also known as Section 106 agreements, will continue to fund affordable housing, and will remain scaled back so they directly relate to the proposed development. In recent years the use of planning obligations to secure cash contributions to general infrastructure needs had grown in scope and complexity,. The levy ensures proper transparency and fairness over such contributions.

4.3 Councils will monitor the use of the levy and provide regular reports to ensure that local people understand how new development brings benefits to their

area. Affordable and social housing projects as well as charity developments will be exempt from the levy.

- 4.4 The Government will expect charging authorities to allocate a meaningful proportion of their levy revenues raised in each neighbourhood back to that neighbourhood to spend on the infrastructure that local people consider is most needed.
- 4.5 Councils will retain the ability to use the levy where it is needed in their area to address the cumulative impact on infrastructure that may occur further away from the development. They will need to balance neighbourhood funding with wider infrastructure funding needed to support growth.
- 4.6 A report, *Valuing Planning Obligations in England: Update Study for 2005-06*, published by Sheffield University in 2008 showed that only six per cent of planning permissions made any contribution to the cost of new infrastructure via planning obligations. CIL however is an automatic levy on development based on every new property or a minimum floorspace increase (100 sq m), is paid at commencement and is enforceable with unlimited fines.
- 4.7 It should be noted the Levy will not apply to the vast majority of household extensions as they will be less than the threshold of 100 sq m (the average house size in the UK is 76sq m), nor to social or charitable housing developments.

Process of developing a CIL in Harborough District

- 4.8 The Council has now submitted its Core Strategy DPD for Examination – this is a major step to defining and justifying the need for a Levy. This contains a Infrastructure Schedule which defines what is needed to enable the development proposals it contains to be implemented. The Strategy and Schedule are due to be adopted during 2011/12. The Schedule can be the basis for calculating the overall costs of infrastructure and what level of Levy is appropriate to help fund it.
- 4.9 The Council also has a supplementary policy framework capable of introducing a CIL. A supplementary planning document on Developer Contributions is due to be adopted in 2011/12 and this can provide the overview planning document, describe the relationship between ongoing S106 contributions and a CIL. The Council does not have an up to date formal policy document on planning obligations and this is urgently needed to replace the existing but informal Developer Guidance Note.
- 4.10 Other Councils across Leicestershire are currently considering introduction of a CIL and it is likely that some degree of joint working will take place – eg creation of a joint methodology to calculate a Charge, joint commissioning of specialist advice and joint approaches to collection of the Levy. It should be noted that the costs of creating a Levy can be borne from the Levy charge itself and thus introducing the Levy should ultimately be cost neutral.

Conclusion

- 4.11 The Executive is asked to consider the principle of introduction of a Community Infrastructure Levy during 2011/12 and begin a project to establish a local Levy.
- 4.12 The timescale to introduce the Levy is dictated by Regulation and the degree to which steps in the process have to be referred for formal decision by Executive and Council.
- 4.13 Detailed project planning remains to be completed, pending approval of this Report but it is understood that at least two steps – the publication of a Charging Schedule for consultation and the adoption of the Levy following examination will be Council decisions.
- 4.14 Scrutiny Resources Panel at its meeting on April 14th considered the issue of CIL in the context of a report on outstanding S106 payments caused by development companies ceasing trading during development. CIL regulations provide a far more robust approach to deal with payment defaults. The Panel resolved:
- the Council implement the CIL function as soon as possible.
 - a Task Panel be created to deal with the implementation of the CIL. This Task Panel should provide updates, through Scrutiny, at appropriate stages.
 - a scheme of CIL charges be created and reviewed as appropriate. This scheme should include a list of desired infrastructure. Room for inflationary increases should be allowed for in this scheme of charges.
 - all Members, including Parish Members, should have some input into the implementation of the CIL scheme.
- 4.15 Executive is asked to consider these resolutions further, but officers would support the creation of a Member Task Panel to enable Executive and Scrutiny members to have oversight of the development of a CIL whilst formal reporting is limited to key milestones.

5. Impact on Communities

- 5.1 Creation of a CIL will seek to give confidence to communities that all new development is helping to fund core infrastructure and new development is seen as benefiting an area, rather than currently being seen as a burden.

6 Legal Issues

- 6.1 The procedures for introducing a Levy are set out in the Community Infrastructure Levy Regulations 2010 as amended.

7 Resource Issues

- 7.1 It is proposed that work on CIL be largely undertaken in house, but the process of introducing a Levy will generate some additional costs such as further specialist advice, public notices, fees for holding an independent examination of the Charging Schedule and costs of collecting the Levy. However any associated costs of introducing a Levy can be built into the calculation of the eventual charge and administration costs recovered from the Levy itself. The potential for sharing costs with other Councils will also be investigated. It is proposed that the funding obtained from previous years Housing and Planning Delivery Grant, currently retained in a holding account and used for local planning work will fund start up costs.

8 Equality Impact Assessment Implications/Outcomes

- 8.1 An Equality Impact Assessment will be undertaken on the proposed Community Infrastructure Levy

9 Impact on the Organisation

- 9.1 Introduction of a CIL will help to streamline the process of obtaining funding for community infrastructure from developers and ensure that the Council is seen to be seeking optimum resources to invest in local communities in a time of austerity.

10 Community Safety Implications

- 10.1 None directly associated with this report.

11 Consultation

- 11.1 There will be several periods of consultation in implementing a Levy. Initially infrastructure agencies will be consulted to help refine costings and take their view into account regarding disbursement of the Levy. Once sufficient work is completed, a public consultation on a Draft Charging Schedule and Draft SPD will take place. Formal consultation on a Final Charging Schedule and SPD will occur towards the end of the process and prior to independent Examination

12 Options Considered

- 12.1 The Council could decide not to introduce a Community Infrastructure Levy and continue to rely on negotiated S106 agreements. This will not allow for pooled contributions from more than a small number of agreements and would mean that most development does not contribute towards the overall infrastructure needed. This option is not being recommended since a new CIL approach is considered more fair and transparent way of obtaining funding from development going forward.

13 Background Papers

None

Previous report(s): None

Information Issued Under Sensitive Issue Procedure: No

Ward Members Notified: NA

Appendix 1

The Community Infrastructure Levy - summary

As contained in a paper produced by CLG

What is the Community Infrastructure Levy?

The Community Infrastructure Levy is a new levy that local authorities in England and Wales can choose to charge on new developments in their area.

The money can be used to support development by funding infrastructure that the council, local community and neighbourhoods want – for example, new or safer road schemes, park improvements or a new health centre.

The system is very simple. It applies to most new buildings and charges are based on the size and type of the new development.

What are the benefits of the Community Infrastructure Levy?

Local authorities should introduce the levy because it:

- delivers additional funding for them to carry out a wide range of infrastructure projects that support growth and benefit the local community
- gives them the flexibility and freedom to set their own priorities for what the money should be spent on – as well as a predictable funding stream that allows them to plan ahead more effectively
- provides developers with much more certainty ‘up front’ about how much money they will be expected to contribute, which in turn encourages greater confidence and higher levels of inward investment
- ensures greater transparency for local people, because they will be able to understand how new development is contributing to their community
- enables local authorities to allocate a share of the levy raised in a neighbourhood to deliver infrastructure the neighbourhood wants.

Who can charge and collect the levy?

Most councils in England and Wales can charge and spend the levy: district and metropolitan councils; London borough councils; unitary authorities; national park authorities; the Broads Authority; the Council of the Isles of Scilly; and the Mayor of London. In Wales, county and county borough councils can charge, along with national park authorities. These bodies are known as charging authorities.

The levy is normally collected for the charging authority by the authority that grants planning permission.

In most cases this will be the charging authority itself. However, in cases where county councils grant planning permission, they collect the levy on behalf of the charging authority.

If the Mayor of London has a levy in place, London boroughs collect the levy on the Mayor's behalf.

Other bodies that grant planning permission can collect the levy if they and the charging authority agree on such an arrangement.

How will a charging authority set a rate for their levy?

Charging authorities must produce a document called a charging schedule which sets out the rate for their levy. The levy is intended to encourage development by creating a balance between collecting revenue to fund infrastructure and ensuring that the rates are not so high that they put development across the area at serious risk. These rates should be supported by evidence, such as the economic viability of new development and the area's infrastructure needs. The charging authority can set one standard rate or it can set specific rates for different areas and types of development. Any differential rate must be justified by the economic viability of new development. Charging authorities must consult their local communities – including local businesses and neighbouring authorities – regarding their proposed rates for their levy. Anyone has the right to give their views on the formally published draft charging schedule. It must also undergo a public examination by an independent person (for example, a qualified planning professional, such as a planning inspector, or a chartered surveyor) before the charging authority can formally approve it.

When will the levy be charged – and when won't it?

The levy is charged on most new developments that involve an increase in floor space. New buildings – or extensions to existing buildings – are liable for the charge if a charging schedule was in place when planning permission was granted. The levy will not be charged if there is no extension of floor space as a result of the development. Nor will it be charged on structures or buildings that people only enter for the purpose of inspecting or maintaining fixed plant or machinery. Most developments under 100 square metres in area will not pay the levy, for example, a small extension to a house. But development that involves the creation of a new residential unit (such as a house or a flat) will pay the charge, even if the unit is below 100 square metres in area.

Who is liable to pay the levy – and when?

An individual or organisation (for example, the developer) may assume liability for payment of the levy. If no one assumes liability, the land owner is automatically liable for the charge. If someone assumes liability, then they will be allowed to pay the levy within a specified extended period of time. However, if no one assumes liability the

charge is immediately payable by the land owner as soon as development work starts.

How is the levy paid?

The charge must be levied in pounds sterling (£) per square metre. It will be collected, in most cases, as a cash contribution. But in some cases it may be more appropriate to transfer land to the charging authority as payment of the charge. In such cases, a number of conditions must be met. In particular, the land must be used to provide – or facilitate the provision of – infrastructure to support development in the area.

What exemptions are there from paying the levy?

There are three main types of relief from the levy:

- charitable relief – a mandatory exemption for a charity if it owns part of the land, and the development will be used wholly or mainly for charitable purposes
- social housing relief – a mandatory exemption for social housing
- exceptional circumstances – charging authorities have the option to offer relief in cases where the levy would have an unacceptable impact upon the economic viability of a development.

How will the levy affect planning obligations?

Planning obligations (private agreements between the local planning authority and the developer) will continue to play an important role in helping to make individual developments acceptable to local planning authorities and communities.

For example, new affordable housing will continue to be delivered through planning obligations rather than the levy. However, reforms have been introduced to restrict the use of planning obligations. Some of these have already come into effect and others will take effect from April 2014 – or as soon as a charging authority starts to charge the levy.

Most importantly, after April 2014, planning obligations can no longer be used as the basis for a tariff to fund infrastructure.

The levy will be used as the mechanism for pooling contributions from a variety of new developments to fund infrastructure.