

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

COMMUNITY INFRASTRUCTURE LEVY

1. OBJECT AND KEY POINTS IN THIS REPORT

1.1 To inform members of the most recent Government consultation for the introduction of a Community infrastructure Levy (CIL), and to seek agreement to the proposed council response.

1.2 The major considerations are: -

- Creation of a new tax to raise revenue for infrastructure.
- How CIL will be implemented.
- The possible benefits and constraints of CIL.
- The relationship of CIL to other means of funding infrastructure.

2. BACKGROUND INFORMATION

2.1 The Government has released detailed proposals and draft regulations for a Community Infrastructure Levy (CIL) which would be a new charge that local authorities are empowered, but not required to charge on most types of new development. CIL is only to be spent on general infrastructure requirements and important sub-regional infrastructure contemplated by the development plan and not to remedy existing deficiencies. The Regulations implementing CIL will come into force on 6th April 2010 and will not be retrospective, followed with a proposed scale back in the use of Section 106 Planning Obligations.

2.2 Members will recall the provisions of the Planning Act 2008 were reported to the Planning Committee on 4th February 2009, concentrating on the implications of the proposed Infrastructure Planning Commission (IPC) and National Policy Statements (NPS). Part 11 provided for the introduction of CIL, but since that date further detailed proposals and draft regulations have been outlined.

2.3 The Government's aim for CIL is to take advantage of the financial benefits arising from planning consent (other than for householder development). Almost all new development has some impact on the need for infrastructure, services and amenities, or benefits from it, and it is therefore fair that such development pays a share of the cost. It is proposed that CIL will be a standard charge per square metre of gross internal floor space of chargeable development, to be set using a 'charging schedule' produced by the council. If set at the right level, the Government wants CIL to be used to unlock

development, but recognises if it is set too high it might cause some development to become unviable. CIL would be a mandatory charge, which a developer would not, in principle, be entitled to dispute.

- 2.4 The CIL will be levied on developers when development commences, and is intended to fund considerable infrastructure at both local and sub-regional level. The subject can embrace transport; construction of public utilities, such as water supply and disposal or energy supply; schools; recreation and flood defences. Initially, affordable housing will not be included and will continue to be secured using S106 Planning Obligations, but it could possibly be added after the final Regulations are published.
- 2.5 Currently developers of major projects do make a contribution via a Planning Agreement under Section 106 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991. This covers only 14% of house building, and 7% of office development.
- 2.6 The Government considers that whilst CIL will make a significant contribution to infrastructure provision, core public funding will continue to be the main contributor. CIL will need to be used alongside other funding to deliver infrastructure locally.

3. OPTIONS FOR CONSIDERATION

3.1 The Government have been considering alternative approaches to securing developer contributions (S106), with CIL being the current preferred approach. The draft regulations were published on 30th July for a 12 week consultation period. The main proposals of the consultation for members to consider are:

- Charging Authorities and Collecting Authorities will be the local planning authorities. Charging Authorities must prepare a draft Charging Schedule. It will not be formally part of the Development Plan, but its production nonetheless will be similar to a DPD. This includes public consultation by the authority, and soundness testing by a Planning Inspector, whose decision will be binding, as with the LDF system.
- There should be an up to date development plan (i.e. Core Strategy DPD) before CIL maybe charged. The Government updated Planning Policy Statement 12: Local Spatial Planning, which indicates that the development plan should be supported by an infrastructure planning process to identify what infrastructure will be needed to deliver the plan. The process of setting CIL should also start with the development vision for the area set out in the development plan, and infrastructure planning should identify the likely cost of infrastructure coming forward.
- The Charging Schedule will classify development according to its purpose, such as residential, employment or retail. Local geographical variation in rates will be allowed, such as lower rates for areas needing economic regeneration. Charities will be exempt, and so may some other developers on hardship grounds, though this is likely to be exceptional. Discounts will be given for Affordable Housing.
- CIL will not be imposed on developments smaller than 100m², thus making exempt nearly all house extensions, and most minor development

automatically permitted by the Government under the General Permitted Development Order.

- Most charges will be rated on buildings per m² of gross internal floorspace, indexed annually to building industry costs. “Gross internal floorspace” corresponds to the information requested on planning application forms for non-residential development, and any consequent planning permissions. Temporary structures are exempt. Material changes of use of buildings will be liable for CIL, but likely at a lower rate than new construction.
- CIL can fund sub-regional infrastructure, as council’s will have the freedom to work together to pool contributions from the CIL within the context of delivering their local development plans. They can also pass CIL to other public sector organisations to spend, such as the Environment Agency.
- The developer must inform the local planning authority of an intention to start the development. Payment within 28 days will be typically expected, but for complex developments with phasing of building, paying installments appears appropriate. The experience of Section 106 Agreements shows that payments in kind produce inequalities, higher collection costs, and enforcement difficulty, so CIL will not be characterised by such barter.
- It is expected enforcement of CIL will be sparingly used, and that deterrent will be more effective, as with council tax and business rates. Even so, surcharges and interest on arrears can be imposed. An appeal by a developer can be overridden by a Stop Notice, preceded by a Warning Notice. Local planning authorities will also have powers of entry and registration of local land charges. However, development unauthorised by a planning permission will not be liable for CIL. Authorities may be able to clawback CIL within seven years after the start of a development in appropriate cases – for instance, a discount retraction if shared ownership housing reverts to full owner-occupation.
- The Charging Authority should identify a total target sum for infrastructure requirements, and analyse a sample of local land values. Obviously the CIL must not be so high to render proposed development unviable and thus undeliverable, so monitoring is required. This is relevant to renaissance in Scunthorpe, and the urban extension of Lincolnshire Lakes.
- The Government suggests an informal hearing is the best way to consider public representations, unless all interested parties agree to a written representations procedure. Any joint DPD for both infrastructure provision and CIL can be considered at a joint Examination. Members will be aware that currently North Lincolnshire Council does not intend to produce either a DPD or SPD exclusively on infrastructure.
- The Inspector must be satisfied the local planning authority has carefully considered likely infrastructure costs, funding sources, and CIL impact. Local economic viability should be protected, and for this the Inspector can alter CIL rates, including sub-area differential rates, or change classes of development. However, the Inspector has no specific duty to ensure CIL revenue is maximized, nor instruct rate increases purely for that purpose.

- If the Inspector disagrees with a Charging Schedule, the local planning authority can submit a revised Schedule for a fresh Examination. Once adopted, a Charging Schedule can be reviewed, though this is not specified by the Government. Changes in land values or development priorities, with or without fresh DPD production, can trigger local demand for a review. Formal consultation and Examination must accompany a review, in a similar manner to the consideration of a freshly proposed Charging Schedule. Since the Charging Schedule will not be a statutory DPD, any Core Strategy or other DPD adopted before the introduction of CIL will not require re-Examination.

4. ANALYSIS OF OPTIONS

- 4.1 The latest proposals for CIL do not vary significantly from those set out within previous documents. CIL still remains optional, with local planning authorities being empowered, but not required to charge on new developments in their area. This is seen as being a key issue as it is important that councils have the choice as to whether to adopt the approach or not.
- 4.2 The consultation sets out that there must be an up to date development plan in place before CIL maybe charged. In a North Lincolnshire context that means that CIL cannot be required until the Core Strategy is adopted, which is provisionally early 2011.
- 4.3 The flexibility provided in terms of the local definition of infrastructure is welcomed as it ensures that decisions are made at the local level.
- 4.4 One of the key issues relating to CIL is council's ability to deliver its requirements through their existing resources. CIL provides new challenges for council's that they have never had to deal with. Therefore resources will have to found to address the deficiencies that may exist if this new regime is adopted.
- 4.5 CIL does have the potential to provide a clearer basis for securing contributions from a wide range of development, as currently many make no contribution to the increased pressure they place cumulatively on infrastructure facilities and amenities. Currently smaller housing, employment, commercial, retail and institutional developments in North Lincolnshire make no financial contribution to the area's infrastructure.
- 4.6 There is concern that in certain circumstances the market conditions in parts of North Lincolnshire are such that it would not be viable to require developments to contribute to CIL in addition to contributions for affordable housing. CIL may have an impact on development and viability and developers have already expressed concern. A viability assessment of affordable housing proposals in the LDF has identified that market conditions in North Lincolnshire are different from those in other parts of the country.
- 4.7 There is also concern of CIL's potential effects on the council's ability to secure 'foot-loose' development. If it is not consistent with those of adjacent or other competing authority areas, then it could have a detrimental effect on North Lincolnshire's attractiveness. It is doubtful whether the council would be able to have procedures in place to preclude such developments arguing an exemption/reduction on CIL as a reward for locating in North Lincolnshire.

4.8 The sub regional approach to CIL also needs to be more clearer as the re-direction of monies from local to sub-regional projects would not be acceptable from the council's perspective.

4.9 In general the proposals of the CIL should be welcomed. However there are number of issues as outlined above that need to be addressed before CIL is introduced in April 2010. Appendix One sets out a proposed response to the detailed proposals and draft regulations outlined in the consultation document.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

5.1 Financial – the introduction of CIL will result in funding for new infrastructure associated with future development being brought forward.

5.2 Staffing – the need for new specialist skills preparing a draft Charging Schedule and evidence base will need to be considered.

5.3 Property - there are no property implications.

5.4 IT - there are no IT implications.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

6.1 Statutory - major changes to funding local and sub-regional infrastructure.

6.2 Environmental - CIL can be adjusted for local needs and economic conditions.

6.3 Diversity – there are no diversity implications.

6.4 Section 17 - Crime & Disorder - there are no crime and disorder implications.

6.5 Risk - there are no risk implications.

6.6 Other - there are no other implications.

7. OUTCOMES OF CONSULTATION

7.1 As stated above, the public consultations on CIL finishes 23rd October 2009, and will be published at the start of next year.

8. RECOMMENDATIONS

8.1 That the response as set out in Appendix One of this report be agreed for submission to Communities and Local Government.

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Background Papers used in the preparation of this report

Planning Act 2008 (The Stationary Office, December 2008)
Community Infrastructure Levy - Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy - Consultation (DCLG, July 2008)