

Report for Discussion

Report to Sustainable Development Panel

2 December 2011.

Report of Head of city development services

Subject Community Infrastructure Levy – detailed proposals and draft regulations for reform- response to consultation

Item

4

Purpose

To consider the draft response to the government consultation on proposed changes to the Community Infrastructure Levy (CIL) regulations

Recommendation

Cabinet is asked to:

- Agree that a response be made to the Communities and Local Government consultation on the Community Infrastructure Levy detailed proposals and draft regulations for reform in line with Appendix 1 with the exception of answers to questions 9 and 11. The response to these questions should be based on paragraphs 7-10 of this report.

Financial Consequences

There are no direct financial consequences for the Council. CIL will generate income to fund infrastructure needed to deliver growth. The consultation raises issues about how the income may be spent and reporting requirements.

Risk Assessment

Strategic Priority and Outcome/Service Priorities

The report helps to meet the strategic priority “Strong and prosperous city – working to improve quality of life for residents, visitors and those who work in the city now and in the future.”

Cabinet Member: Councillor Bremner

Ward: All

Contact Officers

Gwyn Jones

01603 212364

Background Documents

None

Report

Background

1. The Community Infrastructure Levy (CIL) allows local authorities to choose to charge a levy on new development in their area in order to raise funds to meet the costs of infrastructure to enable growth. The money raised must be used to provide infrastructure to support the development of the area, for example by providing transportation, open spaces, community centres etc. Charging authorities must produce a document called a charging schedule that sets out the rate or rates they will charge. The Council, working with Greater Norwich Development Partnership (GNDP) has recently carried out consultation on a preliminary draft CIL Charging Schedule for Greater Norwich.
2. The CIL regulations were introduced by the government in April 2010 and amended in April 2011. The government has recently published a consultation document on further proposals and draft regulations for reform.
3. This consultation seeks views on proposals to:
 - implement neighbourhood funds
 - allow receipts to be used to provide affordable housing
 - provide transitional provisions to allow fair operation of the levy in Mayoral Development Corporation areas
 - require charging authorities to report more openly and regularly on receipts and expenditure to improve transparency and understanding of the contribution that developers are making and how those funds are used
 - add new Neighbourhood Development Orders to the list of developments that may be liable to a charge.

Proposed draft response to the consultation

4. GNDP has produced a draft response to the consultation. The proposed response to the individual questions is set out in Appendix 1. It is recommended that this is endorsed with the exception of the responses to questions 9 and 11 on CIL and affordable housing. Further details of the issues raised by the consultation in relation to affordable housing are set out below.

CIL and affordable housing.

5. The consultation seeks views on whether the regulations should be amended to permit CIL receipts to be used to provide affordable housing (the regulations currently provide that receipts may **not** be spent on affordable housing). The consultation document invites views on:
 - an option to use CIL to deliver affordable housing where there is robust evidence that doing so would demonstrably better support its provision and offer better value for money.
 - the appropriate balance or combination between the CIL and s.106 to best support the delivery of affordable housing.
 - a potential requirement for local authorities to set out clearly in local plans the approach they will take to collecting contributions for affordable housing under the levy and/or planning obligations.

6. The current CIL regulations limit the pooling of s.106 contributions so that contributions from only up to 5 sites can be pooled. The consultation seeks views on whether affordable housing should be excluded from the regulation that limits pooling of contributions.
7. The flexibility proposed in the regulations is welcomed. As CIL is non negotiable, on sites which are not viable, the only element to negotiate will be the percentage of affordable housing. Allowing CIL revenue to be used to fund affordable housing will help to enable 33% percent affordable housing to be achieved on sites which would otherwise be unviable. It is anticipated that if the regulations were amended in line with the government proposals, the way s.106 and CIL would apply to affordable housing is as follows :
 - Majority of sites- will be viable and will pay CIL (on market housing) plus provide 33% affordable housing on site
 - Some small sites or sites with exceptional factors - where on- site affordable housing is not required (as set out in the report on the Interim Statement on the off-site provision of Affordable Housing elsewhere on this agenda) will pay CIL plus make s.106 commuted payments for affordable housing provision off- site. Additional CIL will be paid as CIL is payable on market housing and not affordable housing.
 - Sites which demonstrate they are not viable if CIL and 33% affordable housing provided- It will be possible to use s.106 commuted sums and CIL revenue (collected from other sites) to contribute to the cost of providing affordable housing on site. Clearly the relaxation of rules about pooling will be beneficial to allow greater flexibility on how s.106 contributions for affordable housing are used.
8. It is considered that the above approach could be set out in the Council's development management policies and/or the Regulation 123 list (which sets out which items of infrastructure CIL will pay for) to provide clarity for developers.
9. Members do also need to be aware of the consequences of allowing affordable housing to be funded through CIL. This will put additional pressure on funding and make it even more difficult to pay for all the infrastructure required to deliver growth. The total cost of infrastructure for Greater Norwich is £485M to 2025. The CIL revenue likely to be raised over this period is £246M. Even taking account of funding from other sources, there is already a funding gap of £81M. Some work has been done looking at the additional cost of funding affordable housing through CIL to meet policy requirements on all sites. This is very much a worst case scenario but demonstrates that a further £37M funding could be required to pay for affordable housing. (see Appendix 2).
10. It may be necessary to restrict the amount of CIL funding used for affordable housing to ensure that other essential infrastructure is delivered. One approach may be to cap the CIL used for affordable housing to the additional CIL secured from sites where no/ a reduced proportion of affordable housing is provided.

Response to Consultation on Community Infrastructure Levy

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Detailed Proposals and Draft Regulations for Reform

GNDP

November 2011

Appendix 1

Response to Questions

Neighbourhood Funds

1. **Question 1 - Should the duty to pass on a meaningful proportion of levy receipts only apply where there is a parish or community council for the area where those receipts were raised?**

1.1. Yes – the duty to pass a meaningful proportion of the levy should apply to parish and community councils as these are elected bodies with discretionary powers and rights to represent the community. Many provide services and amenities and have the experience of delivering and maintaining services. There are a number of related issues which arise from neighbourhood funding and these are discussed below.

1.2. **Impact on neighbouring parishes.** It is too simplistic to assume that the impact of development is only or even predominantly in the parish in which it takes place. There are several examples in the GNDP area where growth in one parish has a significant impact on a neighbouring parish. This will be the case for example where large scale growth is taking place on the edges of the Norwich urban area. In more rural parts of the area growth of a settlement can be located in a neighbouring parish and relatively unrelated to the main settlement in that parish. (for example significant recent growth in the settlement of Long Stratton has actually been located in the parish of Tharston).

Proposal : The regulations should allow for the local proportion to be passed to the parishes most directly affected by development. While the default would be the parish within which the development takes place, the charging authority should have discretion to divert some or all of the local proportion to neighbouring parishes.

1.3. **Parish Council skills** There is also a concern that not all Parish Councils will be sufficiently resourced with the skills required to deal with what will potentially be very significant CIL income. Parishes will need to efficiently hold and account for these large sums and procure capital projects, some of which could be quite large, such as a new village hall. Most parish councils only employ a part-time clerk and do not have any professional staff to assist in planning and financial matters.

Proposal : A potential solution would be for the respective Charging Authority (District Council) to act as banker for the CIL parish funds and offer the

professional support needed for procurement.

- 1.4. **Ability for Parishes to Spend** - Parish Councils would need the powers to be enable them to spend any CIL receipt lawfully. Parishes have a number of designated responsibilities under various Acts of Parliament dating from the 19th century onwards (e.g. Public Health Act 1936; Parish Council Act 1957; Local Government Act 1972; and Highways Act 1980 etc). The CIL Regulations and any accompanying good practice guidance would need to make it absolutely clear what parish councils can spend their CIL receipt on in order to ensure compliance with other legislation. It is understood that the emerging Localism Bill will provide clarity on this matter.
2. **Question 2 - Do you agree that for areas not covered by a parish or community council, statutory guidance should set out that charging authorities should engage with residents and businesses in determining how to spend a meaningful proportion of the funds.**
 - 2.1. Yes - It would seem sensible for the CIL Regulations to set out clear requirements for the charging authority to engage with residents and businesses in un-parished areas. Charging authorities should be encouraged to allocate a meaningful proportion to be spent according to the priorities of appropriate neighbourhood groups.
 - 2.2. In some areas there may also be opportunities to pass on a proportion of the levy to properly constituted neighbourhood groups. However, there would need to be clear criteria to ensure accountability, transparency and probity.
3. **Question 3 – What proportion of receipts should be passed to parish or community council?**
 - 3.1. The GNDP authorities support the proposal for a meaningful proportion of CIL income to be controlled locally. However, even taking account of expected government support, we have a funding gap of around £100million between the potential cost of the infrastructure demonstrated as needed through the core strategy examination and projected CIL income. Setting the local proportion at too high a level would divert funds away from the infrastructure needed to support individual developments and the strategic infrastructure required for the wider area. It could seriously undermine the delivery of sustainable development .
 - 3.2. The amount of CIL funding needed at a local level will vary significantly from place to place depending on:
 - existing infrastructure provision in the parish/neighbourhood;
 - the proposed level and type of growth in the area, and the infrastructure funded in the local area by the proportion of CIL retained by the charging authority. For example, a large mixed use development is likely to provide a wide range of infrastructure benefiting the local community both directly and indirectly through CIL; and
 - the range of infrastructure the charging authority intends to fund through CIL (rather than S106). In the GNDP we intend to minimise the use of S106 for infrastructure and deliver most infrastructure supported by developer

funding through CIL. Therefore our CIL rates will be much higher than areas intending to continue with the significant use of S106. For example if our rates are four times higher than in another part of the country, a nationally set percentage would give our parishes four times the income (per m2) and this would be completely unrelated to need or impact.

- 3.3. **Proposal** : the Regulations should not attempt to set any prescriptive targets. A target of 5% would be appropriately included in guidance, recognising that this rate will vary between locations depending on the local approach to CIL.

- 3.4. The CIL Regulations and any accompanying good practice guidance would need to make it absolutely clear what parish councils can spend their CIL receipt on in order to ensure compliance with other legislation. It is understood that the emerging Localism Bill will provide clarity on this matter.

4. **Question 4 - At what level should the cap be set, per council tax property?**

- 4.1. There are examples in the GNDP area where the level of growth in a parish is likely to be significantly greater than the scale of the existing development. Consequently a cap is supported. While a financial cap based on £ per existing household has the benefit of simplicity it is difficult to see how an appropriate and proportionate cap can be derived.

It should be noted that our concerns expressed under Question 1, and the solution to allow the local CIL to be directed to the parishes that are most impacted rather than necessarily the parish within which the development takes place would largely remove the need for caps.

5. **Question 5 - Do you agree that the proposed reporting requirements on parish or community councils strike the right balance between transparency and administrative burden?**

- 5.1. Yes - The proposed regulations on the reporting and monitoring of CIL funding for parish councils (i.e. must report on at least a yearly basis) would seem sensible and not overly onerous. Clearly where significant sums of CIL are involved there would need to be more regular reporting of what CIL income has been received and where it has been spent.

6. **Question 6 – Draft regulation 19 (new regulation 62A(3)(a)) requires that the report is to be published on the councils website, however we recognise that not all parish or community councils will have a website and we would welcome views on appropriate alternatives.**

- 6.1. Many of the larger parish councils will have their own web-site and the monitoring and reporting referred to above can be published online. An alternative where there is no parish web-site might be:

(a) for the parishes to provide the district councils (Charging Authority) with the

information and for the district council to publish the reporting and monitoring required under draft reg 19 on their web-site;

- (b) for the parish to make the information available on a yearly basis and publish a hard copy of the report making it available at a public place e.g. in a community building. The Parish should publicise the report through for example taking out an advert/public notice in a local newspaper. In addition a summary of the report could be attached to a Parish Newsletter and placed on the Parish Notice board.

7. Question 7 – Do you agree with our proposals to exclude parish or community councils’ expenditure from limiting the matters that may be funded through planning obligations?

7.1. Yes – In principle agree to allowing parish councils the maximum flexibility on how they can spend their CIL. However, this does raise a number of issues:

- the infrastructure plan that justifies the CIL specifically identifies the infrastructure required to support proposed growth and deliver sustainable development. This will have been tested at examination. Where parish councils depart from this plan, the ability to provide essential infrastructure and services will be reduced. The greater the amount passed to the parish council, the greater the potential impact on more strategic delivery. This potential impact should be specifically recognised.
- There is a risk that parish councils might use the CIL funds to pay for infrastructure which the charging authority is collecting under S106, which would effectively result in double charging.

7.2. In practice the infrastructure items likely to be identified by a parish council might be quite wide ranging from the purchase of allotments to cater for expanded population; to a Community Transport Scheme. These items could in theory be identified in broad terms in a Charging Authority’s Reg 123 list after discussion and consultation with Parish Councils and neighbourhood groups. A parish council may, however, want to use their levy receipt on other strategic items identified in the reg 123 list such as funding on local schools, libraries or transport projects.

7.3. While the principle of giving parish councils the maximum amount of flexibility on how they spend their CIL seems sensible, it is felt that there is a need in the revised CIL Regulations and/or guidance for very clear parameters setting out where parishes can spend CIL.

8. Question 8 – Do you agree with our proposals to remove the cap on the amount of levy funding that charging authorities may apply to administrative expenses?

8.1. No - a cap should be maintained in order to maximise the CIL investment used for delivering infrastructure to support growth. Providing charging authorities with increased flexibility on the amount of levy funding that may apply to administrative expenses could divert funds away from delivering vital infrastructure.

Affordable Housing

9. Question 9 – Do you consider that local authorities should be given the choice to be able if they wish to use levy receipts for affordable housing?

9.1. The GNDP authorities have divergent views on this issue.

10. Question 10 – Do you consider that local authorities should be given the choice to be able if they wish to use both the levy and planning obligations to deliver local affordable housing priorities?

10.1. If CIL is to be allowed to be used to deliver affordable housing then it should be in addition to the existing S106 route and be capable of being pooled with S106.

11. Question 11 – If local authorities are to be permitted to use both instruments, what should they be required to do to ensure that the choices being made are transparent and fair?

11.1. If local authorities are to be extended the choice to use CIL receipts to fund and deliver affordable housing, then communities and developers will need to be absolutely clear about the choices being made, and have the opportunity to help inform those choices. Where the approach is not set out clearly in existing local plans, the approach to be taken to collecting contributions for affordable housing under the levy and/or planning obligations will need to be set out in a separate DPD, supported by appropriate evidence and tested alongside the CIL charging schedule. However, there would need to be a clear differentiation between the proportion of CIL levy intended to support affordable housing and that to be used to support infrastructure, in order to maintain the principle of flexible Regulation 123 lists for infrastructure. This flexibility is an essential element of allowing CIL regime to respond to changing circumstances for infrastructure.

12. Question 12 – If the levy can be used for affordable housing, should affordable housing be excluded from the regulation that limits pooling of planning obligations, or should the same limits apply?

12.1. Yes – It is essential for the delivery of affordable housing that it is not subject to restrictions on pooling S106 contributions.

13. Question 13 – Mayoral Development Corporations

13.1. Not applicable outside London

Appendix 2 - CIL project modelling: housing projects

Assumptions:

- based on the expectation that developers will only be able to provide 10% affordable housing on these sites, with the remaining 23% required in order to meet policy, being funded via CIL.
- a funding requirement of £60,000 per affordable dwelling.
- projects only included that will be delivered after CIL comes in to force..

Project	Total Cost £m	Secured funding £m	CIL funding required £m
Harford Place, Hall Road	23	19.82	3.18
The Talk nightclub, Oak Street	5.8	5.02	.78
Anglia Square	19.8	17.1	2.7
Hi- Tech House, St Saviours Lane	6.2	5.36	.84
Former Civil Service Sports Ground, Wentworth Green	7.8	6.72	1.08
Aylsham Road	8.8	7.6	1.2
Barrack Street (site off)	20	17.6	2.4
Ber Street, Lind BMW site 84-104	15.1	13	2.1
Bowthorpe Road, Norwich Community Hospital Site,	12	10.32	1.68
Carrow Road, Norwich City Football Club phase 1 car park site	9.6	8.28	1.32
Carrow Road, Norwich City Football Club phase 2	15	12.9	2.1
Dowding Road, Taylors Lane and Douglas Close	5.1	4.38	.72
Elizabeth Fry / Bacon Road	8	6.92	1.08
Kerrison Road/Hardy Road, ATB Laurence Scott	6	5.16	.84
Kerrison Road/Hardy Road, land at 1.3123834 52.620393 TG 24311 07666	28	24.16	3.84
Kerrison Road/Hardy Road, land at 1.3130379 52.620891 TG 24353 07723	5.2	4.48	.72
Kerrison Road, Norwich City Football Club, 1.3123860, 52.621886 TG 24304 07832	9	7.74	1.26
King Street, St. Annes Wharf,	34.7	29.9	4.8
Mountergate	8	6.92	1.08
Muspole Street, land at Seymour House	5.7	4.92	.78
Oak Street, 123-161	5.5	4.78	.72
Pottergate/Fishers Lane	2.7	2.34	.36
Rosary Road, former Bertram Books site, the Nest	5.8	5.02	.78
Whitefriars, Smurfit Kappa	9	7.8	1.2
TOTAL CIL required			£36.96m