

**COMMUNITY INFRASTRUCTURE LEVY: CONSULTATION ON DRAFT REGULATIONS**

*To:* **Cabinet**

*Date:* **8<sup>th</sup> September 2009**

*From:* **Executive Director, Environment Services**

*Electoral division(s):* **All**

*Forward Plan ref:* **Not applicable**                      *Key decision:* **No**

*Purpose:* **To advise members of the detailed proposals for introduction of a Community Infrastructure Levy.**

*Recommendation:* **Cabinet is asked to comment on and agree the proposed response to the consultation (with any amendments considered appropriate) on the introduction of a Community Infrastructure Levy.**

<b><i>Officer contact:</i></b>		<b><i>Member contact</i></b>	
Name:	Kathy Baldwin	Name:	Councillor Roy Pegram
Post:	Project Lead, New Communities	Portfolio:	Growth, Infrastructure and Strategic Planning
Email:	<a href="mailto:kathy.baldwin@cambridgeshire.gov.uk">kathy.baldwin@cambridgeshire.gov.uk</a>	Email:	roy.peggram@cambridgeshire.gov.uk
Tel:	01223 699868	Tel:	01223 699173

## **1. BACKGROUND**

- 1.1 The Government is seeking views on proposals to introduce a Community Infrastructure Levy (CIL) which will be a charge on development which local planning authorities can choose to set. It will largely replace the current system of securing contributions from development through Section 106 Agreements. It is designed to help fund infrastructure identified in local development plans. The consultation period ends on 23<sup>rd</sup> October 2009.
- 1.2 The Government has been concerned for some time about the operation of the system of planning obligations through legal agreements (known as Section 106 Agreements). Circular 5/05 sets out policy on planning obligations which local authorities must adhere to; however, the Government remains concerned that contributions are:
  - not secured from or made by smaller developments,
  - not always having sufficient connection to the development,
  - inconsistently applied between local authorities and take too long to negotiate.
- 1.3 Since 2003 various proposals have been consulted on, including a standardised tariff based approach, Optional Planning Charge (OPC) and more recently, Planning Gain Supplement (PGS). In parallel with these proposals, there has been a move to reduce the potential scope of planning obligations which is carried forward into the current proposals.
- 1.4 The County Council Cabinet considered proposals for a Planning Gain Supplement in February 2007 and responded to the consultation expressing great concern at the potential adverse impact on the well-established system within Cambridgeshire of negotiating funding from developments to provide necessary infrastructure. Of particular concern at that stage was the intention to collect the contributions centrally, with only a part being returned to the local area.
- 1.5 The County Council together with the district councils have been operating the current arrangements in Cambridgeshire for a number of years. Considerable s106 funds are received from developers annually to meet local infrastructure needs. However it is accepted that the system could be improved, and Cambridgeshire Horizons has been leading on developing a Variable Tariff scheme to be applied across the whole of Cambridgeshire.
- 1.6 In the Pre-Budget Report in October 2007 the Chancellor announced that PGS would be deferred and that instead the Government would legislate for a new statutory planning charge to be known as the Community Infrastructure Levy to operate alongside planning obligations.

## **2. THE PROPOSALS**

- 2.1 The Community Infrastructure Levy will be a charge which local authorities will be empowered, but not required, to levy on most types of new development in their area. The amount payable will be based on a simple formula, related to the floorspace of the development or in the case of housing, will be per unit.
- 2.2 The proceeds of the levy will be spent on local and sub regional infrastructure. Local discretion will be allowed to determine what is meant by infrastructure in this context. The guidance indicates that infrastructure should be defined quite widely and includes schools, transport, flood defences, sporting and recreational facilities and open space, health and social care facilities and anything else necessary for the delivery of sustainable development.
- 2.3 Authorities which prepare development plans are proposed to be charging authorities for CIL, thus in Cambridgeshire the charging authorities will be the district councils. Despite its responsibility for minerals and waste planning the County Council will not be the charging authority and will need to work with the districts to identify any relevant infrastructure needs.
- 2.4 There should be an up-to-date development plan for an area before CIL may be charged for that area. The recently updated Planning Policy Statement 12 (PPS12) requires that development plans should be supported by an infrastructure planning process which identifies the likely cost of infrastructure required. This will provide the basis for assessing the amount to be raised through CIL.
- 2.5 Charging authorities will prepare a charging schedule allocating the amount to be raised to each main class of development envisaged by the development plan. The charges will be indexed to inflation. The charging schedule will be tested in a similar way to other development plan documents and be subject to public consultation followed by independent examination.
- 2.6 It will be possible to have different rates in different geographical areas of a district council, but they must be defined by reference to the economic viability of development within them. Alternatively, different rates could be set for different types of development, but again must be justified with reference to economic viability.
- 2.7 The payment due would be calculated at the time a permission is granted which allows development to start; this would exclude outline permission which establishes the principle of development. Developers would not be liable for payment until development commenced and the draft regulations set out how payment would be enforced.
- 2.8 The ability to enter into a negotiated planning obligation using S106 of the 1990 Town & Country Planning Act will remain when CIL is introduced. The Government intends that S106 agreements will continue - for example to be used to secure affordable housing. The consultation proposes that the existing policy tests for planning obligations (relevance to planning, necessity, direct relationship to the proposed development, relationship in scale and

kind, and reasonableness in all other respects) should be made statutory once CIL is introduced.

- 2.9 The consultation is also seeking views on a new test that a planning obligation can only be required to the extent that it solely mitigates the impact of the development in question. This would have the effect of preventing tariff schemes from being based on S106 in the future, as the Government view is that CIL is a better vehicle to achieve the objectives of pooled contributions and tariffs. If confirmed, this could come into effect at the same time as the CIL regulations, although views are sought on whether this should be delayed to allow for a transitional period.
- 2.10 The regulations implementing CIL are proposed to come into force on 6<sup>th</sup> April 2010. After that date a charging authority will be able to bring a charging schedule into effect provided they have completed the consultation and examination stages outlined above.
- 2.11 The consultation document contains a great deal of detail regarding the collection and enforcement arrangements which are not directly applicable to the County Council as it will not be a charging authority. Officers therefore recommend that the Council's response to the consultation does not attempt to answer all of the 54 questions contained in the document but focuses on the implications for the County Council. Proposed responses to those questions seen as relevant to the County Council are contained in Appendix 1.

### **3. HOW THIS WILL AFFECT CAMBRIDGESHIRE**

- 3.1 The view previously expressed by the County Council is that the Community Infrastructure Levy may not provide benefit in this area given our previous good performance with S106 agreements. It is proposed that this should be highlighted in the County Council consultation response. Other issues in terms of the impact on Cambridgeshire are set down below.
- 3.2 The Community Infrastructure Levy cannot be implemented solely on the basis of an up to date development plan. Local authorities must also undertake more detailed infrastructure planning where this has not been incorporated into the Local Development Framework (LDF) preparation process. Within Cambridgeshire, Huntingdonshire District Council has already assessed the infrastructure requirements for its LDF in line with PPS12 (Planning Policy Statement 12 : Local Spatial Planning), East Cambridgeshire District Council has begun information gathering, South Cambridgeshire District Council and Cambridge City propose to commission a joint assessment of future needs. Cambridgeshire Horizons is leading on preparing a schedule of sub-regional infrastructure requirements. A report on the draft Cambridgeshire Integrated Development Plan will be prepared for consideration by County Council Cabinet in October.
- 3.3 In order to contribute to this process, County service providers must look ahead to the end date of the Local Development Framework time period and anticipate what infrastructure will be needed to meet the needs of the planned

population growth. The consultation document recognises the difficulty of planning over such a long time frame, and the regulations will not require a detailed list of infrastructure to be prepared; however, it will be necessary to have sufficient information to enable an overall cost to be established.

- 3.4 The CIL charging schedule will be examined in public before an independent Inspector in a similar manner to other Development Plan Documents. The County Council will be required to provide evidence to support identified infrastructure needs. The Council may be invited to participate in the public hearings either in support of the schedule or in the event that the schedule does not adequately address the Council's requirements to put its case to the Inspector.
- 3.5 Arrangements will need to be put in place to collect CIL from chargeable minerals and waste developments for which the County Council is the determining authority. The proposals make no mention of other development for which the County is the planning authority (e.g. Schools) and for which it is not clear whether contributions will be required. Any charges collected by the County Council must then be passed to the charging authority (i.e. relevant district council) on a quarterly basis.
- 3.6 Conversely, arrangements will also be needed to receive funds derived from CIL payments from district councils for the purpose of paying for necessary infrastructure. It is not clear from the consultation proposals how this would be achieved.
- 3.7 If the proposal to limit the scope of planning obligations to mitigation of the immediate impacts of a development is brought into effect in April 2010 ahead of the adoption locally of a charging schedule, then the negotiation of developer contributions and provision of the services which they fund would be severely hampered. The same will apply in the event that any district decides not to implement CIL.
- 3.8 The County Council, together with the districts and Cambridgeshire Horizons is engaged in or about to start, negotiation with developers on planning obligations, for a number of major developments in Cambridgeshire including, the Southern Fringe and North West Cambridge (NIAB and University) and Northstowe. Adding an additional degree of uncertainty in relation to the provision of necessary services and infrastructure at this stage will be extremely unhelpful in meeting Government targets for growth.
- 3.9 The proposals do not make clear how sites for community facilities serving more than one development would be made available. The County Council currently negotiates free serviced land which may then be used to build a facility e.g. a secondary school or library serving a wider area than the specific development.
- 3.10 On the positive side, the Council may benefit from the establishment of CIL through greater predictability and consistency of funding streams. The overall level of funding may be greater as it will be able to be derived from small and medium sized developments, not just the largest as at present. The

increased certainty may also enable councils to borrow funds from other sources in anticipation of later receipts via CIL.

- 3.11 Once a charging schedule has been adopted, the payment of CIL will be mandatory. The necessity to negotiate payment in relation to a substantial element of developer contributions will thus be removed. There will still be a need to negotiate specific mitigation measures for individual sites (including where appropriate sites for buildings such as schools), however the resources required for this aspect of development should be significantly reduced.
- 3.12 Planning for sub-regional infrastructure needs (where at present contributions would be required to be pooled from a number of separate developments) may also be easier, since the direct relationship required by Circular 5/05, of the infrastructure to the development will no longer apply.

## **4.0 SIGNIFICANT IMPLICATIONS**

### **4.1 Resources and Performance**

- 4.1.1 S106 is a major funding source for the Council and consequently any change will need to be considered carefully. The County Council will wish to be involved in preparing the infrastructure list for district council areas and will be a consultee on the charging schedule. This will require officer resources to contribute to initial assessment evidence base and if necessary support the position at public inquiry.
- 4.1.2 If the scope of planning obligations is restricted with no charging schedule having been adopted, the proposals could reduce the funding available for provision of services.
- 4.1.3 Potentially the introduction of CIL could provide the Council with an increased and more secure flow of funds for services, with more flexibility as to how they are spent.

### **4.2 Statutory Requirements and Partnership Working**

- 4.2.1 The County Council has a statutory duty to provide services to new developments. These would be expected to be funded in whole or in part through S106 Agreements. The proposals if implemented will make significant changes to the level of contributions and the process through which they are secured.
- 4.2.2 County officers will need to work closely with districts to ensure that appropriate infrastructure is included in their plans and reflected in charging schedules.

### **4.3 Climate Change**

- 4.3.1 More certainty of funding may help support the development of sustainable communities with inhabitants able to walk, cycle or use public transport to facilities within or close to new developments.

#### 4.4 Access and Inclusion

4.4.1 The introduction of CIL could make it easier to fund sub-regional transport infrastructure provided that it had been identified at an early stage in the process of district infrastructure planning.

#### 4.5 Engagement and Consultation

4.5.1 The introduction of CIL may make the process for securing developer contributions more transparent. There is a requirement to consult the public on the charging schedule and for the charging authority to publish detail of how the funds have been used on an annual basis.

Source Documents	Location
Community Infrastructure Levy Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy. Consultation July 2009	<a href="http://www.communities.gov.uk/publications/planningandbuilding/communitylevyconsultation">http://www.communities.gov.uk/publications/planningandbuilding/communitylevyconsultation</a>

## OFFICERS PROPOSED RESPONSE TO QUESTIONS POSED IN THE CONSULTATION

### Preface

Cambridgeshire County Council is not supportive of the CIL. The proposals, as set out potentially reduces the direct involvement of the County Council in the securing of the developer funding required to ensure essential public services are provided to support new development.

Cambridgeshire County Council has been successful in recent years using the existing S106 regime and has developed innovative policies in partnership with others to achieve this success and is concerned that the replacement with CIL will reduce the level of developer contributions secured.

However if such a system is to be introduced then the County Council has the following comments.

**Question 1:** Do you agree with the proposal that the draft CIL regulations do not define “infrastructure” further.

*Proposed Response; Yes. It is important to retain flexibility to enable the provision of infrastructure needed within an area and allow local discretion.*

**Question 2:** Is any further reporting required for CIL?

*Proposed Response; No. The charging authority will report when it has passed money to the provider of infrastructure. In the case of the County Council there would thus be no need to make any separate report.*

**Question 4:** Do you have any comments on any other matters raised in chapter 2 which are not covered by the questions above?

*Proposed Response; The County Council welcomes the reference to waste facilities as sub-regional infrastructure for which CIL may be used and looks forward to working with district councils to ensure that these facilities are provided in appropriate locations.*

**Question 7:** Do you agree that differential rates should be based only upon the economic viability of development?

*Proposed Response; Yes. Where there are distinct differences in economic viability within a district, and where the operation of differential rates of CIL could benefit a location by making it relatively more attractive to develop.*

**Question 12:** Should authorities be required to index CIL charges?

*Proposed Response; Yes. If charging schedules are to remain valid for a number of*

years, it is vital that indexing is applied.

- Question 13:** a) Should indexation be based on a national index to provide simplicity, consistency and a readily understood index?  
b) Alternatively, should charging authorities be allowed to choose different indices in different places?

Proposed Response: *On balance, a) is seen as the most straightforward approach. It would not reflect local variations in costs; however this could be catered for with differential rates of CIL.*

- Question 14:** Do you agree with the Government's choice of an index of construction costs?

Proposed Response: *Yes. This national index is currently used by the County Council to vary planning obligation payments.*

- Question 15:** Are you content with indexation taking place to the point of the grant of planning permission or would you prefer charges to be indexed to the point when development commences?

Proposed Response: *The proposals are for CIL liability to be granted at the point when a permission is granted which will allow development to take place (e.g. a reserved matters permission). Whilst accepting that this will give certainty to the developer from the point of grant of permission onwards, it will mean that if the developer then delays implementation at a time of inflation of building costs no further increase in CIL receipts from that development will be possible. The latter option posed in the question would discourage developers from delaying the start of development so could therefore be the better alternative.*

- Question 16:** Do you think it is right to apply the index on an annual basis or do you see advantages in applying it monthly?

Proposed Response: *Use of the index on a monthly basis would be fairer to developers, however it would entail a greater administrative cost to the charging authority.*

- Question 20:** Should the CIL examiner be able to modify a draft charging schedule to increase the proposed CIL rate.

Proposed Response: *If the initial charge proposed by the charging authority is not sufficient, the County Council would wish to see the CIL rate increased to avoid being left in the position of being unable to provide essential infrastructure.*

- Question 22:** a) Do you agree with the chosen definitions of building, planning permission and "first permits"?  
b) If not, what changes would you wish to see that strike the right balance between simplicity, fairness and minimising distortions?

*Proposed Response: Mineral and waste developments (apart from associated buildings) are not proposed to contribute to CIL. These developments can have a significant impact on local roads through increased HCV movements. The County Council would like to propose the inclusion of a contribution from these developments beyond contributions to road improvements in the immediate vicinity.*

**Question 24:** What are your views on the principle of providing a reduced rate of CIL for all affordable housing development? What do you think the likely consequences of providing such a discount might be?

*Proposed Response: There is an acknowledged need in local development plans for an increase in the provision of affordable housing within Cambridgeshire. To the extent that a reduced rate of CIL would make the provision more attractive to developers this would be supported. However, the consultation document correctly points out that affordable housing occupiers also require local services and infrastructure and thus a reduced level of contribution would be supported. The County Council would also wish to see a clawback of any discount in the event that affordable housing was lost to the open market.*

**Question 32:** Are these timescales for the transfer of CIL revenue from the collecting authority to the charging authority the right ones?

*Proposed Response: As the collecting authority for minerals and waste development in Cambridgeshire the County Council will be responsible for collecting CIL from chargeable development for which they grant consent. The draft regulations propose that these funds are transferred on a quarterly basis, which is acceptable to the County Council.*

**Question 35:** Should payment by instalments be provided for in the final CIL regulations in addition to the ability to pay CIL by phases of development? How should the instalments be structured?

*Proposed Response: The consultation document does not give any indication of how funds would be made available to bodies such as the County Council which need access to substantial funding for infrastructure such as schools and transport. The County Council would wish to be reassured that funding will either be made available at the time it is needed or that there is sufficient certainty on timing that alternative arrangements can be made with confidence.*

**Question 42:** Do you have any comments on any other matters raised in Chapter 4 which are not covered by the questions above?

*Proposed Response: Paragraph 4.158 refers to the requirement for County Councils in two tier areas to collect CIL from chargeable development arising from minerals and waste applications which they determine. No reference is made to other types of development for example schools, social service offices for which County Councils are the determining body. It is not therefore clear whether the County Council is expected to collect CIL from these developments.*

**Question 43:** What do you think about the Government's proposal as set out in the draft regulation 94 to scale back the use of planning obligations?

*Proposed Response: Provided that CIL arrangements are in place enabling at least the level of infrastructure provision as has been secured by Cambridgeshire in recent years then the Council would not object to planning obligations being scaled back.*

**Question 45:** Do you think that a transitional period, beyond the commencement of CIL regulations in April 2010, would be required to restrict use of planning obligations to the Circular 5/05 tests, and if so what should it be and why is such a period required?

*Proposed Response: It would be extremely unhelpful to institute a scaling back in planning obligations before charging authorities had time to prepare and adopt charging schedules. There would be a transitional period in which the ability to fund infrastructure from development would be extremely limited. In an area such as Cambridgeshire with a number of very large developments where planning obligations are currently under negotiation this would potentially be very damaging.*

**Question 46:** Do you agree that a scale back of planning obligations as set out in draft regulation 94 should apply universally across England and Wales regardless of whether a local authority has a CIL or not?

*Proposed Response: No. If an authority chooses not to implement CIL it should be able to retain the ability to negotiate planning obligations as at present.*

**Question 47:** Should a scale back of the use of planning obligations go further and prevent the future use of planning obligations for pooled contributions and tariffs?

*Proposed Response: No. This would prevent the provision of sites for facilities serving more than one development. See Question 48 below.*

**Question 48:** Do you think the Government's proposal to provide an additional legal criterion to restrict the use of planning obligations to address planning impacts 'solely' caused by a CIL chargeable development is workable in practice?

*Proposed Response: The County Council depends on developers to provide sites within an individual site for provision of buildings such as schools or libraries serving more than one development. If this ability were to be lost it would make the provision of such facilities more expensive as land elsewhere would have to be bought and prevent their being provided within developments and thus more easily accessible.*

**Question 49:** What transitional period, beyond the commencement of CIL regulations in April 2010, would be required to restrict the use of planning obligations to mitigate impacts 'solely' caused by CIL chargeable developments?

*Proposed Response: If the restriction is applied it should not take place until a charging schedule for the area had been adopted.*

**Question 50:** Do you agree that a restriction of planning obligations to prevent their use for pooled contributions or tariffs should apply universally across England and Wales regardless of whether a local authority has CIL or not?

*Proposed Response: See above in relation to Question 46. The ability to pool contributions or tariffs should also remain unless an area has an adopted charging schedule.*