MELTON
PARISH COUNCIL

QUALITY
PARISH
COUNCIL

PLA(13)P81

Planning and Transport Committee

Community Infrastructure Levy.

1. The Government has issues new guidance on the Community Infrastructure Levy (CIL), which is intended to provide a coherent system for ensuring that 'public realm benefits' are funded, in an appropriate and proportionate manner, by developers. Suffolk Association of Local Councils (SALC) has provided a useful information sheet on the subject, which forms Appendix 1 to this report.

2. A key feature of the new guidance is that those town and parish councils which have adopted Neighbourhood Plans will receive 25% of the funding stream, whereas those who do not will receive only 15%. All this is, however, dependant on the local planning authority, *i.e.* Suffolk Coastal District Council, adopting a procedure for levying the CIL. It is understood that SCDC has yet to do this.

3. It is **recommended that**
   a. The content of this report be noted; and
   b. The Clerk writes to Suffolk Coastal District Council asking for information on how and when they intend to start levying the CIL.

Cllr. Geof Butterwick,
Chairman of Planning & Transport Committee
24th June 2013

The Lindos Centre · Saddlemakers Lane · Melton · Woodbridge · IP12 1PP
Tel: 01394 382224 · Fax 01394 382224 · Website: www.melton-suffolk-pc.gov.uk

Community Infrastructure Levy Guidance

What is in this for local councils?

Local councils will be interested in the latest guidance on the Community Infrastructure Levy (CIL). The CIL is of particular interest owing to the fact that local councils and communities are being incentivised to embrace development through a financial reward. This reward takes the form of 15% of the CIL receipts being passed to local councils (capped at £100 per existing council tax dwelling per year), rising to 25% (uncapped) where those councils have encouraged development through a neighbourhood plan.

Local councils will be aware of the need to engage with the local planning authority at an early stage in order to influence the decisions on the infrastructure requirements affecting their area. However, they will also be mindful that the local planning authorities might well be envisaging business as usual by retaining the local council's element of the CIL where they can persuade the local council that they are in agreement with the local planning authority's priorities. The Guidance is clear that councils have a major advantage in that they are entitled to spend their part of the CIL on a greater range of things than the other part of the CIL as it can be spent on infrastructure or 'anything else that is concerned with addressing the demands that development places on an area', such as affordable housing.

With Government recently indicating that over 500 areas are commencing neighbourhood plan processes, the potential apparent in this financial reward system is notable.

The CIL will apply in relation to most buildings that people normally use e.g. not pylons and wind turbines. Any new build (includes extensions) is liable for the levy if it has 100 square metres or more gross internal floor space, or involves the creation of one dwelling, even when that is below 100 square metres.

Deadline: n/a
References to local councils: 34
Pages: 29

Detail

Local councils will be interested to note that Government has issued new Guidance on the Community Infrastructure Levy (CIL) setting out the main procedures that the charging authorities (usually the local planning authorities) need to follow when introducing and operating the CIL. Government remains committed to ensuring that the CIL is adopted by local planning authorities as swiftly as possible, as it remains its preferred vehicle for collecting contributions to mitigate the impact of developments. The power for charging authorities to charge the CIL was conferred by section 206 of the Planning Act 2008 with secondary detail being provided by the Community Infrastructure Levy Regulations 2010.

The Guidance explains that charging authorities must set out the CIL rates expressed as pounds per square metre as the CIL will be levied on the gross internal floorspace of the net additional liable development. In considering whether the CIL is set at the correct level the charging authorities must consider the fact that the CIL 'is expected to have a positive economic effect on development across an area' and should contribute towards the implementation of their up-to-date Local Plan and support the development of their area (para 8).

One of the biggest challenges is that the total cost of the infrastructure that is identified in the Plan for the charging authority's area needs to be established and this amount must take into account grants which might be

payable. Government recognises that this is not an exact science, particularly as funding sources might not be certain, but charging authorities need to be able to evidence the aggregate funding gap for infrastructure which necessitates the need for the CIL. (para 14)

Another problem recognised within the Guidance is that of finding 'appropriate available evidence' to inform the CIL charges. The Guidance suggests that they reach reasonable conclusions drawing on existing data and supplement this with sampling, across the area, of a range of sites included in the Local Plan. It is notable that Government warns charging authorities, when setting the CIL, to take into account the potential impact of exemptions or reductions relating to social housing which would reduce the amount of CIL that can be collected (paras 25 to 30). Local councils will be well aware of the impact that a reduction in the council tax has already had on some of their precepts, particularly where a compensatory grant has not been paid or, in future, will not be paid. However, a reduction in the CIL that can be collected might not have been anticipated and would further reduce the funds available for community needs.

There is provision for charging authorities to apply discretionary relief to a site which would become unviable if the CIL were applied because of specific and exceptional cost burdens that attach to that site. (para 31). Equally there is provision for differential rates to be applied where different geographical zones or categories of development have different economic viability. This can even be a low or zero rate levy if needed in relation to a particular geographical zone or type of development. (paras 34 to 41)

Charging authorities can take into account within the CIL charge a maximum of 5% of total receipts in order to finance its administrative costs connected to the CIL. (para 43)

Given the importance of the front-loaded work in assessing the cost of infrastructure and the importance of the Local Plan in identifying infrastructure needs, local councils will appreciate that being engaged with the development of the Local Plan and being able to influence the assessment of the infrastructure needs of their areas are important pieces of work. The consultation process for the Local Plan is not dealt with in this Guidance but the consultation on the setting of CIL charges is. The Guidance states that charging authorities must consult on their proposed CIL rates in a preliminary draft charging schedule. This should go beyond broad proposals and should be evidence-based detail in order to reduce the need for subsequent modifications and ensure a fast process of introducing the levy. Among the required consultees are local councils and the County Council. There is encouragement to take account of the County Council's views and priorities when setting and spending the CIL. Communicating with developers over the CIL charges is encouraged but with recognition that developers might not tend to wish to be engaged with that stage of the process.

Importantly, charging authorities can decide how to consult on the preliminary draft charging schedule although they are encouraged to do so for at least 6 weeks. When the authority believes the schedule is ready for examination, it must publish it along with the related evidence and consult, it is recommended, for at least 6 weeks. As there has already been consultation on the preliminary schedule, it is envisaged that this latter consultation will not result in substantive changes. Any modifications are subject to a specified process which informs those making representations. Councils will wish to note that any person may make representations about the schedule and, if they properly request, that person must be heard before the examiner at the CIL examination. (paras 46 to 55)

An independent and qualified person, such as a Planning Inspector, would be appointed as the examiner and the costs of the examination would be met by the charging authority. With usually at least 4 weeks' notice the hearing can take place. The examination might involve a pre-hearing meeting to ensure the process and

information are sufficient. The hearing format is likely to be informal and the examiner can set the time limits and how the hearing will be conducted. (paras 56 to 64)

It is expected that the schedule will only be rejected where there is a failure to follow the correct procedure for drafting the CIL schedule and when it cannot be modified to make it acceptable.(paras 69 to 72).

Local councils confused about the interaction between s.106 and the CIL will welcome the inclusion of some Guidance in this respect. The idea of the CIL is that it will make a significant contribution to infrastructure costs and that there will be clarity and transparency on the purpose and amount of the contribution from developers. The infrastructure that the CIL charges are intended to cover will be contained in a 'regulation 123 list' (the regulation that requires a list to be made). When the CIL is introduced, the charging authority will have to scale back its s106 requirements so that they only cover those matters that are directly related to a specific site and which are not set out in the regulation 123 list. Even if the subject on the regulation 123 list is vague e.g. 'education', the effect will be that s106 contributions should not normally be sought on any specific projects within that category. (paras 84 to 91)

It is likely that planning conditions will be applied with greater caution as the planning authorities are expected to take account of the combined impact of the CIL and the planning conditions on the developer. (para 92)

The Community Infrastructure Levy 2012 Amendment Regulations are explained in the Guidance. These cover how the CIL will operate where certain changes are made to the original development scheme and apply the CIL to development permitted by a Neighbourhood Development Order. (paras 92 to 104)

The Community Infrastructure Levy 2013 Amendment Regulations are also explained in the Guidance. These are significant to local councils as they require that 15% of the CIL received by the charging authorities has to be passed to the local councils in the area where the development has taken place. The Guidance states that this 15% payment (capped at £100 per existing council tax dwelling per year) will incentivise support for development as the money can be spent on local priorities, help mitigate the impact of the development and will build financial autonomy of local areas. Importantly, this 15% can be spent on a greater range of things than the other part of the CIL as it can be spent on infrastructure or 'anything else that is concerned with addressing the demands that development places on an area', such as affordable housing. In areas where they have put in place a neighbourhood plan before the planning permission is first granted which permits development or where the development is itself the result of a neighbourhood development order or community right to build order, the neighbourhood funding element of the CIL is increased to 25% without a capped limit per year.

There were some concerns about the ability of the charging authority to take a CIL payment in the form of land but local councils will be reassured that they must still pay over the relevant percentage of the cash value of the Levy receipts for the neighbourhood funding element. Also, there is clarification that where a development crosses parish boundaries, each council will receive the appropriate proportion of the neighbourhood funding receipts.

Interestingly, the Guidance places an expectation on local councils to work with the charging authority to agree neighbourhood priorities. It is of concern that charging authorities will try and maximise the times when they can retain the funds by pressuring local councils to accept the following situation, especially where they have managed to obtain local council agreement to their priorities at an early stage (para 115):

'*If the Parish or Community Council agrees with the charging authority's infrastructure priorities, they can agree that the charging authority should retain the neighbourhood funding to spend on that infrastructure. This prevents money passing between bodies when it is not necessary because priorities are aligned and helps to ensure that all available funding for infrastructure can be used to the greatest effect and to deliver sustainable*

development. It may be that this infrastructure is not in the Parish or Community Council's area, but will support the development of their area, such as a bypass or school somewhere else in the local area. Parish and Community Councils, and charging authorities, will want to work together to discuss priorities during the process of setting the Levy rate(s), which is covered in earlier sections of the guidance.'

Where money is not used to support development of the area within five years of receipt, or where it is used for other purposes, the regulations give charging authorities the power to recover those funds.

Areas without local councils are disadvantaged as the charging authority retains the CIL receipts. However, they should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding.

Charging authorities and local councils are free to decide the timing of neighbourhood funding payments themselves. However, as part of clearly establishing the statutory requirement to pass over funds, the default position (to apply in the absence of such an agreement) is that the charging authority will be required to pass on payments within 28 days of the end of each six month period in the financial year.

Local councils in receipt of the CIL must publish each year their total CIL receipts; total CIL expenditure; a summary of CIL expenditure including those things to which the CIL has been applied and the CIL expenditure on each; and the total amount of CIL receipts retained at the end of the reported year. There is no prescribed format and local councils may choose to combine reporting on the CIL with other reports they already produce. They should publish this information on their website or the charging authority's website.

The Guidance notes that regulation 123(2) of the Community Infrastructure Regulations prevents section 106 obligations being used in relation to those things that are intended to be funded through the Levy. This does not apply in relation to the neighbourhood funding element. The Guidance notes that while Parish and Community Councils are not required to spend their neighbourhood funding in accordance with the charging authority's priorities, Government does expect Parish and Community Councils 'to work closely with the charging authority to agree priorities for spending the neighbourhood funding element.' So, councils should be in a position to evidence the validity of their CIL expenditure. Additionally, the Guidance suggests that local councils should consider publishing their priorities, and highlighting those that align with the charging authority's priorities in order that the community is more readily able to see the potential benefits of development.

Government has also recently consulted on further reforms to the CIL. The National Association of Local Council has advised (PC62-13) and responded on the consultation (PR65-13), details available through your local Association. This consultation could result in a strengthening of the regulatory framework which would then put more weight behind some elements of the Guidance. For example, the consultation suggests that the consultation period for the draft charging schedule is extended from at least 4 weeks to at least 6 weeks, that the regulation 123 list should form part of the relevant evidence available at the rate setting and examination period and that a new infrastructure list should only be brought forward after proportionate consultation with interested parties.

References

The document *Consultation on Community Infrastructure Levy further reforms* can be found at https://www.gov.uk/government/publications/community-infrastructure-levy-guidance
The consultation on further regulatory reforms to the community infrastructure levy can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/190882/Consultation_on_Community_Infrastructure_Levy_further_reforms.pdf
NALC documents PC62-13 and PR65-13 are available through local Associations