

# Community Infrastructure Levy and Future of Planning Obligations

Author: John Hoad (CDC)

Tel: 0129 5227980

Email: [john.hoad@cherwell-dc.gov.uk](mailto:john.hoad@cherwell-dc.gov.uk)

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## **SPIP Administration Contact:**

Vicki Bowen

PA to Strategic Director, Cherwell District Council

Bodicote House, Bodicote, Banbury OX15 4AA

Email: [Victoria.bowen@cherwell-dc.gov.uk](mailto:Victoria.bowen@cherwell-dc.gov.uk)

Tel: 01295 221581

## **1. Purpose of Report:**

To update the Partnership on the introduction of the Community Infrastructure Levy (CIL) and the effect of this on planning obligations practice.

To draw out implications for the work of the Partnership.

## **1. Background**

At its February meeting the Partnership asked for an information report on this topic to serve as context for continuing work on the HCA Single Conversation and Infrastructure Planning.

This is a complex area of law and practice commonly referred to as "planning gain" – the system that can require a developer to mitigate the impact of development on local communities by accepting obligations that require specific actions or financial payments.

A new modernised system for achieving planning gain is currently being introduced. It centres on the Community Infrastructure Levy, but this is also linked to changes in how the current planning obligations system works. The central purpose of the new system is to introduce a simple tariff approach to collection of infrastructure contributions. This is promoted as a way of removing the current uncertainties and delays that arise from negotiation of detailed planning obligations on each case. The tariff approach is also seen as advantageous as it can extend collection of contributions to small developments that have a cumulative demand on infrastructure, but often do not contribute financially through planning obligations.

The framework legislation for the Community Infrastructure Levy is in place through the Planning Act 2008. However the system is not yet operational as implementation was always dependent of introduction of detailed administrative law in the form of Regulations.

The latest Government position and draft guidance on the future system is set out in “Community Infrastructure Levy - Detailed Proposals and Draft Regulations for the Introduction of the Community Infrastructure Levy – Consultation” published in July 2009.

An extract from this document that explains the main elements of the new system is appended to this report.

As this document was published for consultation, there is still some uncertainty as to if, and when, the new system will start. However the Government has indicated its clear intention to proceed in April 2010. The assumption must now be that final Regulations will be put in place soon.

The main implications for the Partnership are:

- The whole system for achieving “planning gain” will change significantly from April 2010.
- A CIL system of statutory fixed charges / tariffs (per dwelling or unit of floor space) for infrastructure contributions will be available. The charge will be payable on implementation of development and there will be a rigid system for collection. Unlike the planning obligations system there will be no scope, or need, to negotiate financial contributions.
- Significant local level work on infrastructure planning and creation of a charging schedule is required for to allow CIL to be applied locally.
- CIL will run in parallel to planning agreements (but it is likely that over time the scope of planning agreements will be limited by law and policy).
- CIL will be focussed on general service and off site contributions such as education, strategic highways and health whilst planning obligations will be limited to on site matters strictly required to make the development happen.
- An exception to this general contributions “rule” is affordable housing. The Government is indicating that this will continue to be achieved through planning obligations that require on site affordable housing provision. Effectively this means that affordable housing is given high priority and could come to be seen as a “first call” on a planning obligation. This will raise interesting issues for viability negotiations and for the level at which a general tariff could realistically be set.
- The CIL system frees up use of developer contributions, so that use of funding does not have to be directly related to the development making the contribution (a requirement for traditional planning obligations).
- There will be scope for pooling of CIL contributions between local authorities and in work with Government agency or other partners to deliver strategic infrastructure.

- There is a suggestion of public sector forward funding and payback through the tariff.
- Local Planning Authorities (LPAs) (District Councils in Oxfordshire) will have a choice as to whether or not to implement the CIL.
- The LPA will be the Charging Authority and will decide on the charge, collect it and distribute it.
- In order to implement CIL the LPA must introduce and obtain approval of a charging schedule.
- The charging schedule must be based on an infrastructure plan embodied in the Local Development Framework.
- The charging schedule must be tested through public examination and approved by a PINs inspector. A key part of this testing will be a consideration of overall costs and how reasonable account can be taken of development viability. This will necessitate some sort of prioritisation and viability analysis.

## **2. Recommendations**

2.1 To note the report, and in particular recognise the central role of the Local Development Framework process in creating a statutory Infrastructure Plan that would form the basis of any CIL Charging Schedule.

2.2 That the Partnership agrees to use the completed work on the Single Conversation Local Investment Plan (LIP) and Local Investment Agreement (LIA) as a basis for provision of advice (including quantitative need and indicative costing) to the Oxfordshire Local Planning Authorities on:

- development related infrastructure needs for local government functions, particularly County Council services
- development related Infrastructure needs for other providers

in order to inform LPA decisions on Infrastructure Planning in LDFs and for possible introduction of CIL.

2.3 That in view of the likely introduction of the new system in a context of continuing serious issues of development viability, the Partnership should consider whether it can introduce an inter authority / agency procedural protocol for consideration of viability issues affecting planning obligation and CIL issues. This would be advisory only, but could establish good practice in balancing the cost of planning gain against encouraging development. It central principles would be to seek open book analysis of viability with developers and to follow this up with joint commissioning of specialist analysis of that work by the Local Planning Authority and the service providing bodies (with appropriate cost share).

**NOTE:**

**Since this report was written, CLG have published the final CIL regulations. There has not been time to fully assess these, but a summary of implications is attached following the CLG Summary referred to above.**