

The Community Infrastructure Levy and future use of S106 Planning Obligations

Recommendations:

- (1) That they note the ways in which CIL and s106 will operate in the future and that districts will confer in the production of their CIL arrangements so there is commonality where feasible
- (2) That they note further work is to be done by officers to consider the possibilities for CIL to contribute to strategic infrastructure within the context of a county-wide strategic infrastructure framework
- (3) That they will receive a further paper with options on how such a system could operate after the Strategic Infrastructure Framework paper is produced and considered by the SPIP partnership board

Purpose of paper

1. The purpose of this paper is to explain what the Community Infrastructure Levy (CIL) is; how the s106 obligation regimen has changed as a result of the CIL regulations; and to bring attention to an extended role which SPIP could play following the introduction of CIL in Oxfordshire.

Introduction

The Community Infrastructure Levy

2. The Community Infrastructure Levy (CIL) is a new method of collecting standardised financial contributions towards the infrastructure provision needed to support development. It came into force in April 2010 through the CIL Regulations 2010.¹
3. CIL was introduced by the last government but is now accepted as an important component of the government's localism agenda. This is because local government has been given a clear choice about whether it introduces

¹These have now been amended by the CIL (Amendment) Regulations 2011, and will be amended by further regulations when the Localism Bill passes into law

CIL and can also decide how to direct the proceeds of the levy to support local communities affected by development proposals. Where a council decides it wishes to collect general financial contributions from development (and to “pool” those contributions to pay for infrastructure) CIL will be the only means available.

4. Research commissioned from the University of Sheffield by the DCLG showed that only approximately 6% of planning permissions nationally were accompanied by s106 planning obligations. The total value of planning obligations in 2005-06 was estimated at £4bn². The government thinks that nationally CIL can raise an additional estimated £1bn a year of funding for local infrastructure, and that it will therefore make a significant contribution to infrastructure provision.
5. CIL can be charged on most new developments³ that involve a net increase in floor space above 100 square metres or which involve the creation of a new residential unit. There are some exemptions, such if the development is for charitable purposes, or for affordable housing. Affordable housing is considered in more detail below.
6. As CIL is chargeable on practically all development over 100 square metres or comprising a single dwelling house the range of development upon which the levy may be charged is potentially much broader than that which, in practice, is caught by s106 obligations at present.⁴ CIL will widen the net and catch smaller and a wider range of development. It will address the fact that while these might individually make a marginal infrastructure demand they do not at present contribute towards meeting the infrastructure need they generate cumulatively.
7. Another advantage of CIL is that payment is compulsory, thus avoiding the need to negotiate individual planning obligations.

²Valuing Planning Obligations in England Update Study for 2005-06: DCLG August 2008.

³Buildings into which people do not, or seldom, go are not liable to CIL

⁴Approaches to funding infrastructure by s106 obligations vary between councils but typically s106 obligations are only sought on residential developments of over 10 dwelling houses. In contrast the charging authorities will be able to levy CIL on the full range of use classes, as well as *sui generis* uses.

8. In Oxfordshire the district and city councils are the CIL “charging” and “collecting authorities.”⁵
9. As charging authorities the districts and Oxford City will set the CIL for their areas. In so doing they will take into account infrastructure needs arising in their areas as a result of proposed new development. Infrastructure is created and managed by a number of providers via different funding mechanisms. This position is already complex, and is likely to become more so as the government’s policies for a mixed economy of providers evolves to include a greater role for the private and voluntary sectors. A good example is in education, where traditionally county councils have effectively been the only providers, but where local management of schools, and now the free school system, allows developers to promote alternative forms of provision.
10. The local planning authorities / charging authorities and statutory infrastructure providing bodies will be subject to a general duty to co-operate with each other in relation to planning of sustainable development.⁶ This duty however, is not clearly defined and is a matter for reasonable local interpretation and negotiation. Also it does not cover the private and voluntary sectors.
11. The statutory basis for establishing the infrastructure needs arising from the growth planned is the local development framework (LDF). Every LDF includes an infrastructure delivery plan (IDP) which identifies the infrastructure required by the planned growth. The LDF and IDP have to account of the formal infrastructure plans of providing bodies (e.g. the Local Transport Plan prepared by county councils and the investment plans of the Environment Agency).
12. Previous work by SPIP with HCA on the Oxfordshire Local Investment Plan (LIP) will assist in some of this work. In particular the LIP identifies priority schemes that are not under local control or require cross boundary co-operation in respect of delivery.
13. When setting their CIL rates the charging authorities must, in-line with the government’s pro-growth stance, encourage development by creating the right balance between collecting revenue to fund infrastructure and ensuring

⁵Except in the case that the county council will be the collecting authority for the levy charged by the charging authorities for development which the county council gives consent for, i.e. minerals and waste.

⁶The Localism Bill, amongst other things, proposes in s95 that a new s33A is inserted into the PCPA 2004 making this duty a statutory requirement.

that the rates are not so high that they put the economic incentive for development across their areas at serious risk.

14. It is important that it is clearly understood that the charging authorities' CIL rates will be very heavily influenced by the effect they have upon the economic viability of development in their areas. The level of CIL which the charging authorities are able to collect will be determined on the basis of their viability evidence, rather than be a product of the total cost of the development related infrastructure needs of their areas identified in their LDF and IDP.

15. The CIL regulations allow the CIL rates to vary according to geographic area and/or type of development. The approach taken will vary according to local circumstances. Variables affecting the formula an individual council chooses include the level of growth proposed; the amount of infrastructure required; the level of alternative funding available; the size of the funding gap; and, above all, the viability of development in the area concerned, and the effect of the levy on its local economy. For these reasons the CIL rates charged by the charging authorities, and the way in which the rates are charged, will undoubtedly vary in Oxfordshire. This is borne out by the experience elsewhere in the country thus far. This is intentional. CIL will be decided locally and there will not be a standard approach.

16. It is also important to understand that the intent of CIL legislation is not that the charging rates are used as a planning or economic development policy instrument. In practice however, it has to be recognised that there will be some issues and impacts in this respect. It is already evident that this is a cause of contention in some local areas where nil rates for employment development are being proposed, partly on the basis of viability, but also to ensure the incentive for local economic development remains strong.

CIL and s106 obligations

17. Although CIL is voluntary many councils will feel they have no choice but to implement the new levy. This is because of reforms which have been introduced scaling-back the way s106 agreements can be used to fund the provision of infrastructure. CIL will become the only legally acceptable vehicle for the collection of general financial contributions that will be pooled. The CIL regulations stipulate that after April 2014 pooled contributions may only be sought from up to five separate planning obligations for a specific item of infrastructure or type of infrastructure which is capable of being funded by CIL. Any obligations entered into since April

2010 count against this limit. In short, councils will no longer be able to use s106 obligations to pool financial contributions.⁷

18. Any council which chooses not to implement CIL will lose out because the scaling-back of s106 agreements as a means of funding infrastructure will occur irrespective of the fact it has not implemented CIL. Councils not adopting CIL will therefore turn aside the opportunity of achieving private funding for much needed infrastructure. They may also run the risk that some of the development planned in their areas will either not be properly supported by, or may be delayed due to, a lack of appropriate infrastructure. Despite this it may be that some councils will feel that they should not apply CIL because it will become an economic disincentive to much needed development, or for other reasons.
19. As CIL is intended to provide infrastructure for an area rather than to make individual planning applications acceptable in planning terms s106 obligations will still have a part to play in the future. This is particularly the case in respect of major or strategic housing site developments where many of the infrastructure needs have to be met on site and are provided in kind by the developer (e.g. land for open space or community facilities, and the construction and maintenance of those new facilities). They will also still be used to deal with the specific on site impacts of a development in circumstances where, without the necessary measures, the planning permission could not be granted.
20. s106 obligations will also be used to provide affordable housing in the conventional way (on site planning obligation for direct provision by the developer). Affordable housing is also the subject of mandatory exemption from making levy payments to ensure that there is a strong incentive to developers to provide and that costs of provision are reduced to meet this priority need. (See also below on possible legislative changes proposed).
21. It is recommended good practice for local planning authorities to prepare s106 developer contributions supplementary planning documents (SPD) to provide guidance on affordable housing and non-CIL infrastructure requirements. Where councils adopt CIL they should adopt such SPD at the same time.

⁷There is no limit on the number of s106 obligations which may be entered into which pool contributions for an item or type of infrastructure until either the charging authority has adopted CIL or April 2014, whichever is the sooner.

22. At the present time affordable housing is the subject of mandatory exemption from CIL under the CIL regulations. As things stand affordable housing is to be secured through s106 obligations. The possibility of directly funding affordable housing through CIL has been raised during the passage of the Localism Bill through the Commons and House of Lords. The government will be consulting on changing the current levy rules to allow receipts to be spent on affordable housing.
23. The government will also consult at the same time on plans to allow (or possibly require) a proportion of CIL receipts to be passed to parish or community councils for use in meeting local needs and also to act as an incentive for local councils to support new development. This adds an important dimension to application of CIL under localism.

SPIP's role

24. The introduction of CIL and the scaling back of s106 obligations to prevent the pooling of financial contributions in the future represents a significant change in circumstances. This, together with the abolition of the regional tier of government should give pause for thought, and it is felt that SPIP should review the role it plays in the provision of strategic infrastructure.
25. To achieve sustainable development it is essential that a co-ordinated approach is taken to the provision of key strategic infrastructure. In order to do this effectively key strategic infrastructure priorities need to be agreed to ensure that necessary infrastructure is delivered in a timely manner in step with development
26. At present SPIP's role in this process is to identify key strategic and cross-authority infrastructure schemes and priorities, and to set out a programme for their delivery. It is suggested however, that in response to the changing circumstances this role could be extended to include facilitating the transfer of CIL revenues to fund strategic infrastructure.
27. The Local Investment Plan, produced by SPIP in partnership with the HCA, provides a solid basis on which to develop the new arrangements for funding strategic infrastructure. Although this may require a refresh it essentially includes all the identified major infrastructure projects across the county, albeit that SPIP stopped short of prioritisation between projects, which it would now need to do

28. Under the old s106 obligation system financial contributions from developers to the provision of this infrastructure are negotiated on a development site-by-development site basis by the district and county councils in consultation with each other and infrastructure providers. The financial contributions agreed are received as individual payments by either the district or county council and either used by them to fund the item or type of infrastructure specified in the obligation, or passed to the bodies responsible for providing it. In short, the financial contributions obtained relate to specific items or types of infrastructure needed for individual developments, and payments received are tied directly to the provision of the specific infrastructure in question.
29. In direct contrast, as CIL will provide infrastructure for an area CIL revenues will not be tied directly to the provision of a specific item or type of infrastructure for an individual development. All CIL revenue, bar the instances where the county council will be the collecting authority, will be collected and distributed by the districts and Oxford City.
30. Without questioning the Oxfordshire authorities' willingness to co-operate with each other and infrastructure providers it may not be enough to rely upon bilateral negotiations between collecting authorities and infrastructure providers as a means of transferring CIL revenue where this is needed to fund strategic, cross-authority, or indeed cross-county, infrastructure, which serves the wider interests of the Partnership.
31. A new mechanism, by which the collecting authorities may pass monies to other bodies such as to the Environment Agency for flood defence, or the county council for education, needs to be developed to deliver infrastructure of benefit to the development of their areas. The mechanism needs to allow, where necessary, the passing of monies between collecting authorities and to bodies outside their areas to fund strategic infrastructure. There may also be a need for the collecting authorities to pool funds from their respective levies to support the delivery of sub-regional infrastructure, such as a larger transport project. There is also a need for accounting and audit processes to be put in place.
32. It would seem that SPIP is the appropriate body to develop and agree the new mechanism. It will require further examination and could be the subject of a further paper, with recommendations, for consideration at the next meeting of the partnership.

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