



PORTFOLIO HOLDER DECISION NOTICE

INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR PLANNING AND ACCESS

TOPIC – Community Infrastructure Levy consultation paper

PROCEDURAL INFORMATION

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Corporate Director (Governance), the Chief Executive and the Head of Finance are consulted together with Chairman and Vice Chairman of the Principal Scrutiny Committee and all Members of the relevant Scrutiny Panel (individual Ward Members are consulted separately where appropriate). In addition, all Members are notified.

Five or more of these consulted Members can require that the matter be referred to Cabinet for determination.

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SUMMARY

The government has issued a consultation draft on proposals for the introduction of a Community Infrastructure Levy (CIL). The CIL would be set by the local authority and collected on new developments and used to fund essential infrastructure in the local area.

There have been several different proposals suggested for collecting some form of levy over recent years, as part of a reform of the planning obligations/contribution system. The Housing Green paper of July 2007 set out a number of options for developer contributions including the proposal for a Planning Gain Supplement (PGS). This advocated a tariff-based system. However in October 2007 the Government announced that PGS would be deferred and a new charge proposed. Accordingly, the principle of an infrastructure levy was included in the 2008 Planning Act and the details are now contained in the Draft Regulations currently being consulted on.

Local planning authorities will have the power to develop a CIL which will be charged on all new developments in the District above 100m². The CIL will be used to support the funding for infrastructure that would be necessary to enable the development proposed by the development plan for the area.

Infrastructure planning, to be carried out as part of the Core Strategy, should identify the likely cost of necessary infrastructure and – taking into account the funding sources available – should calculate the amount of revenue to be raised by CIL to fill any funding gap.

A charging schedule will be prepared and agreed following a procedure similar to that for a Development Plan Document (DPD), including a public consultation period, an Examination in front of an Inspector and the publication of a binding report by the Inspector. The charging system is intended to be simple, consisting of £X per square metre x Y square metres of building. There is discretion to vary the charge in different areas of the District or for different types of development if desired.

The monies collected across the District will be pooled together for use on necessary area-wide infrastructure.

It will still be possible to have planning obligations, but it is intended to restrict the use of these and new regulations will be drawn up in regard to this matter. It is not suggested that sites liable for planning obligations would be exempt from all CIL payments, but neither should development be required to contribute twice to the same infrastructure item. It is proposed that planning obligations should only relate to mitigation of harm on or adjacent to the site and contributions will only be spent on purely local infrastructure provision closely related to the site itself. Under the new system, it will not be possible to use planning obligations to secure contributions to District or regional-wide infrastructure. Similarly, authorities will not be able to use planning obligations to collect and pool funds via a tariff system.

Authorities are not obliged to implement a CIL. However, given the proposed limitations on the planning obligations arrangements, it will be the only means of collecting monies for infrastructure that is not purely related to a single development site.

The draft regulations exclude affordable housing provision from the CIL scheme, as it is considered that this is best provided on an individual site basis, ideally as on-site provision. Affordable housing will therefore continue to be provided via the (amended) planning obligations system.

The CIL system is intended to have the advantages of simplicity and transparency. Once established the system should be easy to administer and negate the need for the legal documentation that accompanies planning obligations. CIL will apply equally to any size of development (above 100 metres square) and will enable the pooling of resources to fund larger scale infrastructure – including at a regional level. However, CIL is initially likely to be very time-consuming, complex and costly to set up. The process will involve detailed planning for infrastructure for the plan period,

and coming to conclusions regarding the costs of, and funding for, each item of infrastructure. It is likely to involve considerable work with outside partners and the development of a schedule will also require a Public Examination, with associated resource implications.

Aside from these resource and technical issues, the proposed CIL raises other matters of concern which, it is recommended, require clarification and should be raised through comments to DCLG as part of the consultation. These are:

1 Role of planning obligations/benefits in kind – The draft regulations propose that it would be possible to request planning obligations to address site-specific infrastructure needs but that developers should not be made to pay twice for the same item of infrastructure. The Government considers that there would not be an overlap between the two types of contribution as CIL contributions are for general infrastructure needs, whereas planning obligations should be to secure the necessary infrastructure to facilitate a particular development. In practice, it may be difficult to separate the two elements, for example a new District-scale road could be argued to benefit an adjacent site more than a site many miles away, which may not make any use of the road.

Benefits in kind will not be permitted under CIL as the government suggests that these would not normally be appropriate for the area-wide scale of infrastructure that is being funded by CIL. However, there may be circumstances where it would be beneficial in financial terms or in purely practical terms, for infrastructure to be physically provided by the developer, or partially funded directly.

Despite the occasional difficulties of separating the two elements, it is considered very important that larger development sites can make provision for on-site/closely related infrastructure, otherwise provision of such infrastructure may lag behind the development if it has to wait for adequate CIL funds to accumulate. Therefore the City Council should welcome the Government's proposal that there is still a role for planning obligations within the CIL system, to enable adequate and timely provision of on-site infrastructure. However, the system should also allow for the provision of benefits in kind where it better serves the timely development of an area. There is a concern that developers may be paying twice for the same form of infrastructure, for example by providing an on-site school and also contributing to education via CIL. It is considered vital that some form of discount or relief from CIL should be included in these circumstances in order not to prejudice the viability of the development.

2 Local CIL/pooled contributions – The proposed regulations provide for the pooling of contributions only where they are justified by the characteristics of the development and the consultation document proposes that this should go further to prevent the future use of planning obligations for pooled contributions and tariffs under any circumstances. The Government propose that a local CIL could be introduced if an authority wished to seek contributions to mitigate cumulative or incremental impacts. It is considered that this may be difficult to implement and is only likely to relate to a site of the scale such as West of Waterlooville in this District. It is considered that there is a role for the pooling of contributions, particularly for

affordable housing (where on-site provision is not possible), but also for other purposes such as open space provision or local-scale, but not site-specific, road schemes. The City Council's comments should suggest that collecting monies or payments in kind for specific identified projects which are wider than a single site should be permissible under CIL, where this is specified in the initial charging schedule.

3 Timing of migration to CIL – The draft regulations propose that tariff schemes and the pooling of contributions negotiated through planning obligations should cease. The DCLG would like this to happen as soon as possible and have suggested a period of 2 years from the commencement of the new regulations in April 2010. However, the draft regulations do state that the Government should work with the Planning Inspectorate and authorities to see how long it would take to migrate to CIL.

Winchester makes use of the pooling of contributions via tariff schemes, most notably the Public Open Space Scheme and the recently-introduced development funded local transport schemes. It is considered that a significant period of time would be needed, even after the adoption of the Core Strategy, to migrate to CIL. This would also depend on when any Winchester CIL schedule would be adopted. Given that the regulations are still in draft and work has not commenced on preparing a CIL schedule, it is unlikely that this could occur at the same time as the Core Strategy, so a longer period is likely to be required. In any event, the consultation implies that CIL could only be introduced after adoption of the Core Strategy. It is, therefore, recommended that the City Council should argue strongly that there should not be a defined period from the commencement of the Regulations to discontinue tariff schemes and that, if there is such a period, it should be substantially longer than 2 years.

4 Contributions for affordable housing only via planning obligations – The draft regulations specifically exclude any contributions for affordable housing from the CIL scheme, arguing that they are best provided on-site and negotiated according to local circumstances. It is considered that on-site provision is preferable and so the continuation of planning obligations for this matter is welcomed.

However, there also needs to be the flexibility to accept cash-in-lieu contributions and the pooling of contributions for off-site provision where this is the best means of securing provision. The City Council has recently consulted on a draft Core Strategy policy which would remove the site size thresholds for affordable housing and require pooling of contributions from a number of small housing sites in order to secure provision of affordable housing. The proposed Regulations would not permit this.

The issue of small development sites not making a contribution to infrastructure is one which the Government states it is seeking to address with CIL, but this would not cover affordable housing provision. It is therefore recommended that the City Council comment that the reform of planning obligations should allow for the collection and pooling of tariff-based contributions in the case of affordable housing.

This should extend to the removal of the site threshold below which contributions cannot be sought.

5 Units of capture for CIL/obligations – The consultation document suggests that CIL would be sought in developments of 100m² or more. While this would be sensible for most forms of development, it may not be appropriate for housing as some single dwelling units would be below this size and larger single dwellings would be above it. A proposal for rates to be related to numbers/size of dwellings would be more appropriate in the case of housing development.

6 Varying rates of CIL – The draft regulations allow for variable rates of CIL to be set within an area or for different classes of development. This is sensible as some classes of development will be valued more highly per square metre than others. A lower rate will assist with viability for some uses. It is also likely that more infrastructure is needed in areas where more development is proposed. It could be argued that it is not equitable for developments in one area to effectively subsidise developments in other parts of the District. The overall approach of being able to set different levels of CIL should be supported as it would assist with viability for some uses and could sensibly be applied to different areas within a large and varied authority (notwithstanding the fact that determining the boundaries between different geographically-based CILs is likely to be problematic).

7 Sub-regional funding – CIL can be spent to fund sub-regional scales of infrastructure - PUSH would be of relevance here. However it is the individual authorities who set the rates and collect the CIL, and therefore the authorities will have to work together to determine appropriate CIL contributions. This adds another layer of complexity in areas such as PUSH: however, such an approach is considered logical in view of its definition as a Growth Point. Despite assurances in the draft document that regional funding for bodies such as the Highways Agency and Environment Agency will continue, there is a concern that local developments will be expected to fund projects that should be funded at regional or national level. An example of this is where funding has not been forthcoming for essential road improvements to the regional network. It is recommended that the City Council should agree that CIL is a useful additional means of funding sub-regional and regional infrastructure but should make clear that these elements should largely be subject to central/regional government funding.

8 Ad hoc infrastructure requirements - Despite strategic infrastructure planning, there will inevitably be a need for other infrastructure that emerges over the course of the plan period, possibly well after the schedule was first approved. The draft regulations allow for authorities to revise their charging schedule when they feel appropriate, but a new scheme will have to be drawn up and proceed through the adoption process. It is recommended that the Council should suggest a more flexible amendment procedure than allowed within the draft regulations.

DECISION

That the Portfolio-holder for Planning and Access notes the issues raised by the Government's consultation paper on Community Infrastructure Levy and agrees the recommended responses to the key issues raised above in paragraphs 1 – 8 above.

That delegated authority be given to the Head of Strategic Planning to submit detailed answers to the government in response to the specific questions in the consultation paper on Community Infrastructure Levy.

REASON FOR THE DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

The draft CIL regulations consultation raises some important issues for the Council which the Council should submit representations on to the DCLG. The option of not responding to the consultation was considered, but it was concluded that this is a very important issue which the City Council should seek to influence.

FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION NOTICE

None

Note for Author: please include detail of any representations received (including those of consulted Members). This will include your response to any alternatives suggested by those making representation and the reasons why these alternatives were rejected. Include comments on risk management where relevant. These need to be taken into consideration when the Portfolio Holder makes the final decision in consultation with the Case Officer.

DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR OFFICER CONSULTED

None

DISPENSATION GRANTED BY THE STANDARDS COMMITTEE

Not relevant

Approved by: (signature)

**Date of Decision
Signed 22.10.09**

Councillor Keith Wood – Portfolio Holder for Planning and Access