



## **PORTFOLIO HOLDER DECISION NOTICE**

### **INDIVIDUAL DECISION BY THE LEADER**

### **DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT: CONSULTATION ON COMMUNITY INFRASTRUCTURE LEVY FURTHER REFORMS**

### **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 Chief Operating Officer, the Chief Executive and the Chief Finance Officer are consulted together with the Chairman and Vice Chairman of The Overview and Scrutiny Committee and any relevant overview and scrutiny committee. In addition, all Members are notified.

If five or more Members from those informed so request, the Leader may require the matter to be referred to Cabinet for determination.

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### **SUMMARY**

This draft decision notice sets out the recommended response to the Department of Communities and Local Government's (CLG) consultation on further reforms to the Community Infrastructure Levy. The consultation period ends on 28 May 2013, and the consultation document can be viewed at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/190882/Consultation\\_on\\_Community\\_Infrastructure\\_Levy\\_further\\_reforms.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/190882/Consultation_on_Community_Infrastructure_Levy_further_reforms.pdf)

This is the latest set of proposed changes to the CIL regulations (mostly in respect of its introduction and operation), and, coincidentally, the consultation period runs more or less parallel with the City Council's own six week consultation period on its Draft Charging Schedule (until 24 May).

The consultation document states that the Government is committed to the levy and to ensuring that it is workable and effective. Only a small number of planning authorities have so far introduced CIL, and CLG advises that the Government has "listened carefully to issues being raised in the light of early

experience.” Through this consultation, CLG is seeking views on further regulatory reforms; “by making these changes we expect the levy will operate and roll out more effectively without the need for further major amendments.”

This report recommends that the City Council submits comments on the consultation document on the basis of the approach described below.

## **DECISION**

That the Council responds to the consultation with the answers and supporting comments set out on CLG’s formal response form, as attached at Appendix 1.

## **REASON FOR THE DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

### **1. Background**

The Government brought the CIL Regulations into force in 2010, since when they have been amended in both 2011 and 2012. CLG’s current consultation covers a range of amendments to the regulations, mostly in relation to the setting of rates and the operation of the levy in practice.

It is useful to note that the proposed changes emerged from a cross-sector advisory group set up by the British Property Federation (BPF), involving representatives from both the public and private sector, that worked with CLG in the second half of 2012. BPF were reported in the planning press (*Planning*, 19 April) as being delighted with the proposals, as part of a positive reception from the development sector. Elsewhere the proposals have been less well received; the Planning Officers Society, for example, said the changes would make CIL “more complicated to understand and administer”, “more onerous and resource intensive” and reduce “resources available for infrastructure provision” (*Planning*, 19 April).

The City Council will, of course, be able to form its own view on the merits or otherwise of the proposed changes, but the fact that its own proposals for the introduction of CIL are well advanced is a highly relevant consideration. As Members will be aware, the Council is currently undertaking public consultation on its proposed Draft Charging Schedule, to allow for the submission, independent examination, and possible adoption of a levy before the end of 2013.

Given the timescales involved in the Government’s previous CIL consultation (November 2011) and subsequent amendments (November 2012), it could be anticipated that if the regulations are to be amended again, as a consequence of this current CLG consultation, the changes may not be introduced until late 2013 or even early 2014 – quite possibly after a levy for Winchester has been adopted.

The Government recognises that its proposed changes to the CIL process should not provide an obstacle to those authorities, such as Winchester City Council, that have made good progress towards the adoption of CIL. CLG's consultation document states that a number of the proposed changes, "on reliefs and exemptions, for instance", would apply to all charging authorities (including those who have adopted charging schedules). CLG advises that:

- "The Government intends to apply transitional measures to ensure that charging authorities who have completed a substantial volume of work on their charging schedule do not have to significantly delay or revise their charging schedules." (para. 88).
- "We will include general transitional provisions to ensure that the regulations do not have a retrospective effect or cause unfairness." (para. 89).
- "We are considering whether changes related to the charge setting process and examination should not apply to those authorities who have published a draft charging schedule in accordance with regulation 16. Those authorities would not then have to use additional resources and time to redo that work." (para. 90).

Indeed, the consultation document deals with this issue; Question 25 asks whether the respondent agrees that the changes relating to the charge setting and examination should not apply to authorities who have already published a draft charging schedule.

As the City Council has already published its draft charging schedule (in accordance with regulation 16), this 'exemption' would clearly be of benefit to the authority, and it is on this basis that officers have considered the other 24 questions within the CLG consultation document.

## **2. Recommended Response to Consultation**

The proposed changes to the CIL regulations are relatively numerous, and are divided into seven sections within the consultation document as set out below. The document describes briefly each proposed amendment, each of which are covered by one of the questions on CLG's response form. All but one of these questions simply requires a yes or no response, although CLG also invites comments on each.

The response recommended by your officers is set out on the form attached as Appendix 1, and the approach is summarised below.

### **Rate setting and evidence (Questions 1-3)**

These proposed amendments relate to the process of developing evidence and proposing the levy rate(s) for the district. The City Council has passed this stage, and, as explained above, the Government appears to be minded to 'exempt' authorities (such as Winchester) that have made good progress and

already published their draft charging schedules (see Question 25). The recommended response therefore to each of these questions is 'not applicable'.

### **The infrastructure list** (Questions 4 and 5)

'Not applicable' would be an appropriate response to Question 4, as this covers the role of infrastructure evidence up to and including the examination; the City Council is also likely to be exempt in this regard too, and, in any case, it is intending to present evidence on infrastructure (including the 'draft list' of spending priorities) to the examination, as now required by CLG's *CIL Guidance* published in December 2012.

Question 5 seems to reflect a Government dilemma. The consultation document suggests that interested parties should have an opportunity to comment on any changes in Council's infrastructure spending plans, but also recognises that priorities need to be flexible, and that consultation (for undefined "minor changes") could be "a very light touch" (para.33). The Government is seeking views on whether this provides an appropriate balance between transparency and flexibility. The recommended response is 'no', on the basis that the infrastructure spending priorities (as set out on the required 'Regulation 123 list') will be subject to annual review, monitoring and reporting, and if an urgent and unforeseen priority emerges, the Council may well need to direct funding immediately without risking delay (or unnecessary expense) from further consultation, 'light touch' or otherwise.

### **The relationship between CIL, S106 Planning Obligations, and S276 Highways Agreements** (Questions 6 and 7)

The Government is proposing to extend the transition stage between the S106 and CIL 'regimes' by delaying the restrictions on the pooling of planning obligations from April 2014 to April 2015. However, the restriction would apply to the City Council on the adoption of its CIL – likely before April 2014, and certainly by April 2015 – and the recommended response to Question 6 is therefore 'not applicable' (although this proposal is likely to be supported by many other local planning authorities).

The Government is proposing that the use of S278 agreements (between the Local Highway Authority and developers to ensure delivery of necessary highway works, under S278 of the Highways Act 1980) is limited to avoid this mechanism being used funding infrastructure for which CIL is earmarked (on a Council's Regulation 123 list). The recommended response to Question 7 is 'no' – the way to avoid the risk of so-called 'double-dipping' of developer contributions is to clearly set out specific strategic highway infrastructure priorities on the R123 list; Local Planning and Highway Authorities (and the Highways Agency where England's Strategic Road Network is concerned) should retain the authority to seek *necessary* site-specific highway works to mitigate the traffic impact of a development and ensure it is acceptable in planning and highway terms.

### **CIL payments** (Questions 8 – 16)

The CIL regulations currently allow charging authorities to accept land in lieu of the levy. The Government is suggesting that circumstances may arise where it is sensible for a developer to provide infrastructure as well as (or instead of) land. Guidance would make it clear that in-kind payments of infrastructure should only be accepted where the charging authority considers it would bring cost and/or time savings (or other benefits) when compared to the procurement of the infrastructure through levy funds. This approach has some merit, although it also has some potential drawbacks in terms of transparency and accountability of process, and monitoring of quality and delivery. On balance, and on the basis that the proposed regulations and guidance would introduce necessary safeguards, the recommended response is 'yes'.

If the response to Question 8 is 'yes', the response to the supplementary Questions 9 and 10 – which relate to such safeguards – can also be positive.

Question 11 relates to the proposal to amend the regulations to allow full as well as outline planning permission to be considered as multi-phase schemes in terms of development and subsequent CIL charging. The Government suggests that this would not reduce the amount of levy payable but allow for it to be paid in phases in accordance with the planning permission. The recommended response to this proposal is 'no'; this proposed change would introduce a serious risk of the infrastructure considered necessary (by the planning authority) to support a balanced and sustainable development being delayed until well after occupation, or even not delivered at all, if the first phase (and associated infrastructure) is not completed satisfactorily, or later phases are delayed or not commenced. Equally, this could again hamper the Council's ability to plan and fund district-wide and strategic infrastructure priorities.

If the response to Question 11 is 'no', the response to the supplementary Question 12 is 'not applicable'.

The Government proposes that the regulations should make it possible for the charging authority to re-calculate the levy liability of a development when the provision of affordable housing is varied (Question 13). This appears to be a reasonable proposal, and the recommended response is 'yes'.

The liability for CIL is currently calculated on the date on which planning permission is granted. The Government is proposing to amend the regulations to reflect its concern that by the time the last of any reserved matters have been finalised, the liability should reflect the new viability circumstances rather than those at the time of the permission (Question 14). The recommended response is 'no'; there can be a significant delay in satisfactorily securing all reserved matters, and the risk that the eventual liability could be significantly different to that originally anticipated would not assist the local planning authority in its planned delivery of district-wide and strategic infrastructure priorities.

The next proposed amendment is potentially very significant in planning terms. The Government is concerned that the existing vacancy test (where in certain circumstances vacant floorspace is offset against the CIL liability) “may not be working effectively and may be difficult to enforce” (para. 64). The consultation document advises that CLG may therefore remove the vacancy test (the levy would only be paid if the previous use had been ‘abandoned’ in planning terms), although it recognises that “levy revenues are likely to be reduced”. The recommended response to Question 15 needs to resolve two opposed arguments:

- on the one hand, the current arrangement could potentially discourage positive development that involves, for example, the demolition of a large and long-vacant industrial building and the construction of a new residential or commercial scheme (in the circumstances where off-setting would not apply). This scenario could cause particular difficulties in the regeneration of larger urban areas;
- and, on the other, with the removal of the vacancy test (except in the relatively rare case of abandonment), a significant number of demolish-and-develop schemes may come forward, with limited CIL revenue contributions (only the additional floorspace being liable), and at an increased risk to the heritage and sustainable use of the built environment.

Removing the vacancy test would be likely to make the determination of such planning applications less onerous. However, on balance, from a Winchester perspective, officers would wish to see the retention of the vacancy test to ensure that new developments – even where demolition only leads to a negligible or modest increase in net floorspace – do contribute financially to the improvement in infrastructure required to support that development. The restrictions on off-setting should therefore be retained, and the recommended response to Question 15 is ‘no’.

Finally in this section, the Government is proposing also to extend the ‘abatement provisions’ to cover earlier (initial) CIL payments, so that when a new application introduces design changes to a scheme approved previously, the earlier CIL payments would be off-set against the new liability figure. This would appear to be reasonable, and the recommended response to Question 16 is ‘yes’.

### **Exemptions and reliefs (Questions 17 – 22)**

Questions 17, 18 and 19 deal with relief for social housing, with the Government proposing to give local authorities the discretion to apply relief for discount market sales within their local area (Question 17), along with proposed definitions of when (Question 18) and where (Question 19) social housing relief from CIL is provided. This set of proposals appears to be reasonable, and the recommended response to these three questions is ‘yes’.

The CIL regulations currently allow charging authorities to set discretionary relief for exceptional circumstances. The City Council has stated in its published Draft Charging Schedule that it does not wish to offer such relief; the recommended response to Question 20 is therefore 'not applicable'.

The consultation document makes a detailed case in favour of exempting self-build housing from paying the levy. The Government accepts that such housing does have an impact on local infrastructure, but is keen to encourage this sector. CLG states an intention to issue clear guidance on definitions and procedures (including the need for extensive evidence from the self-builder). The proposal may be well-intentioned, but the recommended response to Question 21 is 'no', as the potential loss of CIL contributions (this does not relate to social housing) and an increase in regulation and monitoring (including the difficulties of definition) would be likely to be detrimental to the Council and its strategic sustainable development objectives.

If the response to Question 21 is 'no', the response to the supplementary Question 22 is 'not applicable'.

### **Appeals (Questions 23 and 24)**

Two proposals are set out in relation to the appeal process. The first is a minor amendment in respect of appeal procedures (time periods for representations), likely to be of little consequence to the City Council and the smooth operation of its proposed levy regime. The recommended response to Question 23 is therefore 'yes'.

Under the current regulations there is no right to request a review or appeal against the chargeable amount once development has commenced. The Government believes that this could "raise issues where a planning permission is granted after the commencement of development" (para. 86). However, the recommended response to Question 24 is 'no', as the proposal does nothing to discourage retrospective planning applications, and therefore would not be helpful to the City Council in its protection of the environment and amenity.

### **Transitional measures (Question 25)**

As explained above, it would be a significant relief to the City Council if any amendments to the CIL regulations – as they relate to charge setting and examination – do not apply to the City Council, as an authority that has already published its draft charging schedule. The recommended response to this last question is therefore a firm 'yes'.

**RESOURCE IMPLICATIONS**

None immediately, but longer term implications will depend on the Government's response to the CLG consultation. The recommended response to the consultation reflects, amongst other factors, an interest in ensuring viable development contributes to the cost of infrastructure, and that the administrative burden on the Council is minimised.

**CONSULTATION UNDERTAKEN ON THE DECISION**

n/a

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

n/a

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

n/a

**DISPENSATION GRANTED BY THE STANDARDS COMMITTEE**

n/a

**Approved by: (signature)**

**Date of Decision: 29.05.13**

**Councillor Keith Wood – Leader**



## APPENDIX 1

### CLG Consultation on Community Infrastructure Levy further reforms

#### Recommended Winchester City Council response to consultation questions

**Question 1** - We are proposing to require a charging authority to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy on the economic viability of development across the area.

Do you agree with this proposed change?

Yes  No

Comments

Not applicable – on the basis that the City Council published its draft schedule in April 2013 (see Question 25)

**Question 2** - We are proposing to allow charging authorities to set differential rates by reference to *both* the intended use and the scale of development.

Do you agree with the proposed change?

Yes  No

Comments

Not applicable - – on the basis that the City Council published its draft schedule in April 2013 (see Question 25)

**Question 3** - Should the period of consultation on the draft charging schedule be extended from “*at least 4 weeks*” to “*at least 6 weeks*”?

Yes  No

Comments

Not applicable - – on the basis that the City Council published its draft schedule in April 2013 (see Question 25)

**Question 4** - Should the regulation 123 list form part of the relevant evidence under section 211(7A) and (7B) so that it is available during the rate setting process, including at the examination?

Yes  No

Comments

Not applicable - – on the basis that the City Council published its draft schedule in April 2013 (see Question 25)

**Question 5** - We propose to amend the regulations so that a new infrastructure list can only be brought forward after proportionate consultation with interested parties.

Do you agree that this approach provides an appropriate balance between transparency and flexibility?

Yes  No

Comments

The Council's infrastructure spending priorities (as set out on the required 'Regulation 123 list') will be subject to annual review, monitoring and reporting, and if an urgent and unforeseen priority emerges, the Council may well need to direct funding immediately without risking delay (or unnecessary expense) from further consultation, 'light touch' or otherwise.

**Question 6** - We are proposing to move the date from when further limitations on the use of pooled planning obligations will apply (to areas that have not adopted the levy) from April 2014 to April 2015.

Do you agree?

Yes  No

Comments

Not applicable – The City Council's timetable for the introduction of CIL anticipates that the levy would be adopted before April 2014.

**Question 7** - Do you agree that regulation 123 (excluding regulation 123(3)) should be extended to include section 278 agreements so that they cannot be used to fund infrastructure for which the levy is earmarked?

Yes  No

Comments

The Council would contend that the way to avoid the risk of so-called 'double-dipping' of developer contributions is to clearly set out specific strategic highway infrastructure priorities on the R123 list; Local Planning and Highway Authorities (and the Highways Agency where England's Strategic Road Network is concerned) should retain the authority to seek *necessary* site-specific highway works to mitigate the traffic impact of a development and ensure it is acceptable in planning and highway terms.

**Question 8** - Do you agree that, where appropriate and acceptable to the charging authority, the levy liability should be able to be paid (in whole or in part) through the provision of both land *and/or* on-site or off-site infrastructure?

Yes  No

Comments

The Council's agreement in principle is subject to the regulations and proposed guidance ensuring satisfactory safeguards are introduced.

**Question 9** - Do you agree that actual construction costs and fees related to the design of the infrastructure should be used to calculate the sum by which the amount of levy payable will be reduced, when the levy is paid by providing infrastructure in kind?

Yes  No

Comments

**Question 10** - Should the payment in kind provisions be limited to the capital value ceilings as set out in the EU procurement rules – currently thresholds of £173,934 for goods and services and £4,348,350 for works?

Yes  No

Comments

**Question 11** - Should all planning permissions (outline and full) be capable of being treated as phased development with each phase a new chargeable development?

Yes  No

Comments

The Council would contend that this proposed change would introduce a serious risk of the infrastructure considered necessary (by the planning authority) to support a balanced and sustainable development being delayed until well after occupation, or even not delivered at all, if the first phase (and associated infrastructure) is not completed satisfactorily, or later phases are delayed or not commenced. This could hamper the Council's ability to plan and fund district-wide and strategic infrastructure priorities.

**Question 12** - Do you agree that the phasing of levy payments will make adequate provision in relation to site preparation?

Yes  No

Comments

Not applicable – on the basis of the response to Question 11.

**Question 13** - Do you agree that the regulations should make it possible for a charging authority to re-calculate the levy liability of a development when the provision of affordable housing is varied?

Yes  No

Comments

**Question 14** - Should we amend the regulations so that the date at which planning permission first permits development is the date of the final approval of the last reserved matter associated with the permission or phase?

Yes  No

Comments

There can be a significant delay in satisfactorily securing all reserved matters, and the risk that the eventual liability could be significantly different to that originally anticipated would not assist the local planning authority in its planned delivery of district-wide and strategic infrastructure priorities.

**Question 15** - Should we change the regulations to remove the vacancy test, meaning the levy would generally only be payable on any increases in floorspace in refurbishment and redevelopment schemes, provided that the use of the buildings on site had not been abandoned?

Yes  No

Comments

The Council would wish to see the retention of the vacancy test to ensure that new developments – even where demolition only leads to a negligible or modest increase in net floorspace – do contribute financially to the improvement in infrastructure required to support that development. The restrictions on off-setting should therefore be retained.

**Question 16** - We are proposing to amend the regulations so that new applications bringing forward design changes, but not increasing floorspace (other than section 73 applications) would trigger an additional liability to pay the levy but the amount payable would be reduced by the levy already paid under the earlier permission.

Do you agree with the proposed change?

Yes  No

Comments

**Question 17** - Would you support giving charging authorities the discretion to apply social housing relief for discount market sales within their local area, subject to meeting European and national criteria?

Yes  No

Comments

**Question 18** - If the social housing relief was to be extended, do you agree the key national criteria for defining the types of affordable housing provided through intermediate tenures, to which social housing relief could apply, should be that:

- The housing is provided at an affordable rent / price (at least 20% below open market levels);

- The housing is meeting the needs of those whose needs are not being met by the market, having regard to local income levels and local house prices (either rent or sales prices); and
- The housing should either remain at an affordable price for future eligible households or, if not, the subsidy (amount of social housing relief) should be recycled for alternative affordable housing provision?

Yes  No

Comments

**Question 19** - Do you agree that we should amend regulation 49 so that the areas taken into account when assessing eligibility for social housing relief include the gross internal area of all communal areas (including stairs and corridors) and communal ancillary areas (such as car parking) which are wholly used by - or fairly apportioned to - people occupying social housing?

Yes  No

Comments

**Question 20** - Which of the following options do you prefer (a) remove the requirement for a planning obligation which is greater than the value of the CIL charge to be in place, before discretionary relief in exceptional circumstances can be provided, or (b) change the requirement so that the relevant planning obligation must be greater than a set percentage of the value of the CIL charge (for example, 80%), or (c) keep the existing requirement?

Option a)  Option b)  Option c)

Comments

Not applicable - The City Council's timetable for the introduction of CIL anticipates that the levy would be adopted before April 2014.

**Question 21** - Should we introduce a relief from the payment of the levy for self-build homes for individuals as set out above?

Yes  No

Comments

The potential loss of CIL contributions and an increase in regulation and monitoring would be likely to be detrimental to the Council and its strategic sustainable development objectives.

**Question 22** - We are proposing to amend the regulations to reflect the above process and the evidence self-builders would need to provide to qualify for relief from the levy, including provisions to avoid misuse by non-self-builders.

Do you agree that this approach provides a suitable framework to provide relief for genuine self-builders?

Yes  No

Comments

Not applicable – on the basis of the response to Question 21.

**Question 23** - Should we change regulation 120 so that any comments must be *received* within 14 days and allow discretion for the appointed person to extend the representations period in any particular case?

Yes  No

Comments

**Question 24** - Should we amend the regulations to allow for the review or appeal of the chargeable amount in relation to planning permissions granted after development has commenced?

Yes  No

Comments

The Council contends that the proposal does nothing to discourage retrospective planning applications, and therefore would not be helpful to the planning authority in its protection of the environment and amenity.

**Question 25** - Do you agree that changes related to the charge setting process and examination should not apply to authorities who have already published a draft charging schedule?

Yes  No

Comments

The Council would very much favour this approach,