



PORTFOLIO HOLDER DECISION NOTICE

INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR BUILT ENVIRONMENT

TOPIC - SUPPORTING HOUSING DELIVERY THROUGH DEVELOPER CONTRIBUTIONS

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 Legal Services Manager, the Chief Executive and the Strategic Director: Resources are consulted together with Chairman and Vice Chairman of The Overview and Scrutiny Committee and any other 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.

Contact Officers:

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SUMMARY

The Government has stressed on a number of occasions its commitment to increasing housing delivery with the aim of providing 300,000 new homes per annum. It has looked at a variety of ways to improve the supply of housing and this paper deals with planning obligations and Community Infrastructure Levy which are important elements of the planning system and affect the rate at which development occurs.

DECISION

That the comments attached at Appendix A are agreed as the Council's response to the consultation.

REASON FOR THE DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

Government remains of the view that the new development should provide or contribute towards the infrastructure needed to mitigate its effects and this should form part of the planning process.

However, Government announced last year that the current method of securing mitigation for the effects of new development through the planning system (through the use of planning obligations (commonly called s106 agreements and undertakings) and the Community Infrastructure Levy (CIL)) is not working efficiently. Furthermore it allows developers to negotiate their contribution towards affordable housing and infrastructure.

Government is therefore consulting on proposed changes to the planning system in relation to planning obligations and CIL. The Council's response to the consultation is attached at Appendix A.

The overall objective of the proposed changes is to make the system work better for local authorities, developers and communities. The measures in this consultation are intended to be implemented in the short term and further amendments could be made following a wider review. The key issues to be addressed by these proposed changes are set out below:

Reducing complexity/increasing certainty – CIL adoption process is quite slow and involves significant work for local planning authorities. The aim is to streamline the process by removing statutory requirements for consultation so that a more proportionate approach can be taken and aligning evidence relating to viability and infrastructure needed for Local Plans with CIL. This is timely for the Council as we are about to start a Local Plan review including a review of CIL

A more proportionate approach to administering CIL is also proposed with, clarification on indexation where planning permissions are amended; extending abatement provisions to phased developments secured before CIL came into effect where they are subsequently varied, and, allowing a grace period for developers claiming CIL exemptions where the notice was not served before building work commenced.

These matters have not been particular issues for Winchester City Council and the proposed changes are unlikely to have a significant impact. The pooling restrictions on s106 obligations would also be removed in certain circumstances. This would be welcomed by many councils, particularly those where major development areas are planned, as this restriction can lead to complications on these larger sites.

Swifter development: Viability negotiations on planning applications cause delays so Government proposes that this matter should be settled at the Local Plan stage making negotiations on planning applications unnecessary. In other words developers would need to make arguments at the Local Plan stage when policy is

made not later when applications are submitted. It also considers that all assessments should be open book.

In principle this approach is welcomed as the Council spends significant time and resources considering viability issues in relation to individual planning applications especially where there is a policy requirement for affordable housing. The Council has adopted an open book approach for several years. However the detail will be important and will determine how effective this change in approach will be.

Increasing market responsiveness – The Current CIL system means councils are not always benefitting from the up-lift in value that result from housing permissions being given (generally higher increases for greenfield sites over brownfield) despite being able to charge different rates across their areas. Evidence tends to suggest that rates are set at the lowest common denominator. Government proposes to allow CIL rates to be set based on current land use. This could be complex for sites with multiple uses. Councils would also be encouraged to set one rate for such sites (composite charge) or base it on majority use (80% of the site) or differing charges for apportioned between different uses. This approach is logical and should help to increase CIL income.

Indexation: House prices often increase at a higher rate than indexation of CIL which means councils are receiving less income than they could do. One option proposed therefore is to index residential values to regional or local house prices. Non residential development could be linked to a factor of house prices and Consumer Price Index. This would mean that CIL would be more responsive to house prices and councils would not have to revise charging schedules to better reflect the prevailing market situation whilst providing developers with certainty including in a climate where property prices are falling.

Improving transparency and increasing accountability- Research suggests that communications with communities and developers as to how CIL is used could be better. Regulation 123 lists (these identify infrastructure councils may use CIL to fund) also vary greatly in detail and some are very general whilst others list specific projects.

Government is proposing to remove the regulatory requirement for R123 lists that do not provide clarity about how contributions will be used. Councils will be required to publish Infrastructure Funding Statements to show how forecasted income will be prioritised from both CIL and s106s over 5 years, monitor funds received and their use.

This seems reasonable. The Council has a clear spending protocol but more could be done to explain to local communities and developers how CIL funds generated within the District are spent.

Government is also proposing to make the use of s106 contributions more transparent and whilst the rationale is understood this change could be quite resource intensive for the Council (Government is asking if an administration charge

could be included for planning obligations to help with this). Section 106s are only secured where required to make developments acceptable so the reasons for having them should be clear from the planning application reports. However this is essentially about making the use of contributions secured from the planning process clearer and more accessible.

Introducing a Strategic Infrastructure Tariff - This is happening in London already and it is proposed to extend this to combined authorities and joint committees thereby allowing combined authorities and combined committees with strategic planning powers to introduce a Strategic Infrastructure Tariff. Although this would not currently apply in Hampshire it seems logical in areas where they exist. However, it is unclear how this would be rolled out and align with CIL (viability considerations etc...). The consultation suggests this tariff would be on top of CIL.

Summary:

Overall this consultation closely reflects the research paper commissioned by Government and publicised last year. The changes being consulted on do not represent major or fundamental revisions to the system but they are nevertheless significant and the impact on the Council in relation to how CIL operates and funds are allocated will depend on the detail which is not evident in the consultation.

The consultation also suggests that further changes beyond those outlined in the paper are likely to be introduced in future. This is unfortunate as it would be better to reform the system in one go rather than to make changes incrementally.

RESOURCE IMPLICATIONS:

None in relation to responding to this consultation.

CONSULTATION UNDERTAKEN ON THE DECISION

No external consultation undertaken but relevant services within the Council have had opportunity to comment.

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

None.

DISPENSATION GRANTED BY THE STANDARDS COMMITTEE

n/a

Approved by: (signature)

Date of Decision: 09.05.18

Councillor Caroline Brook – Portfolio Holder for Built Environment

APPENDICES:

Appendix A Developer Contributions Response

Developer Contributions Consultation response form

If you are responding by email or in writing, please reply using this questionnaire pro-forma, which should be read alongside the consultation document. You are able to expand the comments box should you need more space. Required fields are indicated with an asterisk (*)

This form should be returned to developercontributionsconsultation@communities.gsi.gov.uk

Or posted to:

Planning and Infrastructure Division
Ministry of Housing, Communities and Local Government
2nd floor, South East
Fry Building
2 Marsham Street
LONDON
SW1P 4DF
By 10 May 2018

Your details

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Are the views expressed on this consultation your own personal views or an official response from an organisation you represent?*

Organisational response

If you are responding on behalf of an organisation, please select the option which best describes your organisation.*

Local authority (including National Parks, Broads Authority, the Greater London Authority and London Boroughs)

If you selected other, please state the type of organisation

Click here to enter text.

Please provide the name of the organisation (if applicable)

Winchester City Council

Reducing Complexity and Increasing Certainty

Question 1

Do you agree with the Government's proposals to set out that:

- i. Evidence of local infrastructure need for CIL-setting purposes can be the same infrastructure planning and viability evidence produced for plan making?

Yes

- ii. Evidence of a funding gap significantly greater than anticipated CIL income is likely to be sufficient as evidence of infrastructure need?

Yes

- iii. Where charging authorities consider there may have been significant changes in market conditions since evidence was produced, it may be appropriate for charging authorities to take a pragmatic approach to supplementing this information as part of setting CIL – for instance, assessing recent economic and development trends and working with developers (e.g. through local development forums), rather than procuring new and costly evidence?

Yes

Question 2

Are there any factors that the Government should take into account when implementing proposals to align the evidence for CIL charging schedules and plan making?

No comment

Ensuring that consultation is proportionate

Question 3

Do you agree with the Government's proposal to replace the current statutory consultation requirements with a requirement on the charging authority to publish a statement on how it has sought an appropriate level of engagement?

Yes

Question 4

Do you have views on how guidance can ensure that consultation is proportionate to the scale of any charge being introduced or amended?

It would be helpful if Government could clarify what would be considered proportionate for district councils setting CIL by providing examples of the scale and nature of consultation expected whilst allowing discretion to be used to reflect local circumstances

Removing unnecessary barriers: the pooling restriction

Question 5

Do you agree with the Government's proposal to allow local authorities to pool section 106 planning obligations:

- i. Where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106?

Yes

- ii. Where significant development is planned on several large strategic sites?

Yes

Question 6

- i. Do you agree that, if the pooling restriction is to be lifted where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106, this should be measures based on the tenth percentile of average new build house prices?

No

- ii. What comments, if any, do you have on how the restriction is lifted in areas where CIL is not feasible, or in national parks?

In relation to Q6 i relying solely on this measure would not take account of other local circumstances which means adopting CIL would not be feasible in a particular council's area. It would be better if councils set out the reasons why CIL would not be feasible in their area based on a wider set of economic criteria set out in Government guidance.

Question 7

Do you believe that, if lifting the pooling restriction where significant development is planned on several large strategic sites, this should be based on either:

- i. a set percentage of homes, set out in a plan, are being delivered through a limited number of strategic sites; or

This is the most logical approach.

- ii. all planning obligations from a strategic site count as one planning obligation?

Question 8

What factors should the Government take into account when defining 'strategic sites' for the purposes of lifting the pooling restriction?

The scale of development proposed on strategic sites in relation to the total number of homes being planned for across the life of the Local Plan to ensure such sites are truly strategic.

Question 9

What further comments, if any, do you have on how pooling restrictions should be lifted?

None.

Improvements to the operation of CIL

Question 10

Do you agree with the Government's proposal to introduce a 2 month grace period for developers to submit a Commencement Notice in relation to exempted development?

Yes

Question 11

If introducing a grace period, what other factors, such as a small penalty for submitting a Commencement Notice during the grace period, should the Government take into account?

It would be appropriate to charge a penalty in such circumstances to encourage developers to comply with the regulations promptly.

Question 12

How else can the Government seek to take a more proportionate approach to administering exemptions?

No further changes required.

Question 13

Do you agree that Government should amend regulations so that they allow a development originally permitted before CIL came into force, to balance CIL liabilities between different phases of the same development?

Yes

Question 14

Are there any particular factors the Government should take into account in allowing abatement for phased planning permissions secured before introduction of CIL?

No comments to add

Question 15

Do you agree that Government should amend regulations on how indexation applies to development that is both originally permitted and then amended while CIL is in force to align with the approach taken in the recently amended CIL regulations?

Yes

Increasing market responsiveness

Question 16

Do you agree with the Government's proposal to allow local authorities to set differential CIL rates based on the existing use of land?

Yes

Question 17

If implementing this proposal do you agree that the Government should:

- i. encourage authorities to set a single CIL rate for strategic sites?

Yes

- ii. for sites with multiple existing uses, set out that CIL liabilities should be calculated on the basis of the majority existing use for small sites? Yes/No

Yes

- iii. set out that, for other sites, CIL liabilities should be calculated on the basis of the majority existing use where 80% or more of the site is in a single existing use?

Yes

- iv. What comments, if any, do you have on using a threshold of 80% or more of a site being in a single existing use, to determine where CIL liabilities should be calculated on the basis of the majority existing use?

Question 18

No further comments.

What further comments, if any, do you have on how CIL should operate on sites with multiple existing uses, including the avoidance of gaming?

No further comments.

Indexing CIL rates to house prices

Question 19

Do you have a preference that CIL rates for residential development being indexed to either:

- a) The change in seasonally adjusted regional house price indexation on a monthly or quarterly basis; OR

No

- b) The change in local authority-level house price indexation on an annual basis

Yes

Question 20

Do you agree with the Government's proposal to index CIL to a different metric for non-residential development?

Yes

Question 21

If yes, do you believe that indexation for non-residential development should be based on:

- i. the Consumer Price Index? OR

No

- ii. a combined proportion of the House Price Index and Consumer Prices Index?

Yes

Question 22

What alternative regularly updated, robust, nationally applied and publicly available data could be used to index CIL for non-residential development?

No further comments.

Question 23

Do you have any further comments on how the way in which CIL is indexed can be made more market responsive?

No further comments.

Improving transparency and increasing accountability

Question 24

Do you agree with the Government's proposal to?

- i. remove the restrictions in regulation 123, and regulation 123 lists?

Yes

- ii. introduce a requirement for local authorities to provide an annual Infrastructure Funding Statement?

Yes

Question 25

What details should the Government require or encourage Infrastructure Funding Statements to include?

IFSs would be a useful tool in communicating how CIL spending will be prioritised over a set period. Whilst they could identify individual projects the use of CIL funds will be affected by various factors so programmes for delivery of infrastructure need to be flexible and responsive to changing circumstances and not set in tablets of stone. It would also provide a helpful means for clarifying how CIL income has been spent which will enable developers and communities to see how funds have been deployed which will provide reassurance that CIL is being used to develop much needed infrastructure in the area. The case for including planning obligations in IFSs is less convincing. S106 is potentially more onerous (many consents include planning obligations) and the purpose for having them should have been clear when the applications were determined so the process should be transparent already.

Permissions subject to planning obligations which will be specific to that development by their nature so may not be of wider interest. If they are to be included within IFSS it is suggested that they are reported by purpose i.e. affordable housing, open space improvements etc...

Question 26

What views do you have on whether local planning authorities may need to seek a sum as part of Section 106 planning obligations for monitoring planning obligations? Any views on potential impacts would also be welcomed.

Monitoring development does use local authority resources so it would be reasonable to expect developers to contribute towards these costs.

A Strategic Infrastructure Tariff (SIT)

Question 27

Do you agree that Combined Authorities and Joint Committees with strategic planning powers should be given the ability to charge a SIT?

Yes

Question 28

Do you agree with the proposed definition of strategic infrastructure?

Yes

Question 29

Do you have any further comments on the definition of strategic infrastructure?

The relationship between CIL and SIT will need to be clarified particularly in relation to viability considerations. Developing SIT in an area where CIL already exists will need to factor in existing costs to developers to ensure development remains viable.

Question 30

Do you agree that a proportion of funding raised through SIT could be used to fund local infrastructure priorities that mitigate the impacts of strategic infrastructure?

Yes

Question 31

If so, what proportion of the funding raised through SIT do you think should be spent on local infrastructure priorities?

This would need to be determined locally and evidence led.

Question 32

Do you agree that the SIT should be collected by local authorities on behalf of the SIT charging authority?

Yes

Question 33

Do you agree that the local authority should be able to keep up to 4% of the SIT receipts to cover the administrative costs of collecting the SIT?

Yes

Technical clarifications

Question 34

Do you have any comments on the other technical clarifications to CIL?

No further comments to add.