



Walsall Council

PLANNING COMMITTEE **7th January 2016**

REPORT OF HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION

Government Consultation on Community Infrastructure Levy

1. PURPOSE OF REPORT

To advise Committee of the review of the Community Infrastructure Levy, formally launched by the Department for Communities and Local Government (DCLG) on 19 November, in order to agree a Committee response to be forwarded to the DCLG. The aim of the review is to assess the effectiveness of CIL in funding infrastructure and to recommend changes to improve its operation.

2. RECOMMENDATIONS

i) That Planning Committee instructs officers to forward the comments set out in this report to the DCLG as the Council's response to the questionnaire.

ii) That Planning Committee agrees that the Head of Planning, Engineering and Transportation should share this report with the borough's MPs, the Black Country Local Enterprise Partnership (LEP), other West Midlands Metropolitan Councils, the Local Government Association and others concerned with the regeneration of the borough.

3. FINANCIAL IMPLICATIONS

None arising directly from this report.

The Government's questionnaire seeks the views of Local Authorities, developers and others on the effectiveness of CIL to enable a review to take place and to make recommendations for improvement. It is not yet known whether Government recommendations will have financial implications and this would need to be assessed at that time.

4. POLICY IMPLICATIONS

None arising directly from this report, which is seeking to respond to the issues raised by the Government consultation.

5. LEGAL IMPLICATIONS

i) None arising directly from this report

6. EQUALITY

i) None arising directly from this report

7. **ENVIRONMENTAL IMPACT**

i) None arising directly from this report and any impacts will not be known until such time as the Government consults on any proposed amendments to CIL.

8. **WARD(S) AFFECTED**

All.

9. **CONSULTEES**

Officers from Planning Policy and Development Management have been consulted in the preparation of this report.

10. **CONTACT OFFICER**

Shawn Fleet, Group Manager: Planning – Extension 0453
Michael Brereton, Senior Planning Officer – Extension 2611

11. **BACKGROUND PAPER**

Consultation on CIL - <https://www.gov.uk/government/news/ensuring-local-communities-benefit-from-development>

Steve Pretty, Head of Planning, Engineering and Transportation

Planning Committee
7th January 2016

12.0 BACKGROUND AND REPORT DETAIL

12.1 The questionnaire seeks responses on a number of CIL matters. The Government has asked for comments by Friday 15 January 2016. A copy of the questionnaire and supporting information can be viewed at:

<https://www.gov.uk/government/news/ensuring-local-communities-benefit-from-development>

12.2 The Government's questions, along with the recommended responses in italics, are set out below:

Please provide the following general background:

a. Brief description of your interest and involvement in CIL.

Walsall Council is a Local Planning Authority currently in the process of preparing and adopting a CIL Charging Schedule.

b. If a local authority, the precise stage you have reached in the CIL process.

Walsall Council has recently completed the first stage of consultation; the Preliminary Draft CIL Charging Schedule. The Council aims to adopt a CIL Charging Schedule by the end of 2016.

c. If a developer/consultant, some indication of the number of different CIL processes you have been involved in, in relation to both:

1. the setting of CIL rates, and
2. payment of CIL for specific developments including details of the land use and the scale and type of development.

Not applicable.

On Infrastructure:

i. To what extent is CIL contributing, or will it contribute, to infrastructure to support development and is that infrastructure being delivered?

The Council's draft Infrastructure Delivery Plan has identified a funding gap of over £180 million for borough-wide infrastructure projects. Whilst the Council's 'Infrastructure List' is yet to be developed following this exercise, forecasted receipts from CIL are likely to fall significantly short of the funding gap over the plan period (up to 2026). It is considered that CIL will provide some assistance, albeit at a small scale given the large funding gap, in providing infrastructure required to support development, particularly in light of the significantly scaled back use of Section 106.

ii. Has the role of the Planning Authority changed with the introduction of CIL and if so where has this worked most effectively?

The Council has not yet adopted and implemented CIL.

iii. How are large items of essential infrastructure critical for key sites or growth locations being secured in the CIL and s.106 system?

The borough is generally well served by most forms of infrastructure due to its urban nature and any future infrastructure requirements to support new development (mostly smaller sites

spread across the borough) is likely to be the improvement or maintenance of existing infrastructure as opposed to any significant large items of infrastructure. In some cases though, larger infrastructure projects to unlock land for delivery of development carry significant costs and due to the forecasted low levels of CIL receipts and relatively low S106 contributions (due to viability issues), it is unlikely these contributions alone would meet the cost of such projects.

Any site-specific infrastructure required to make an individual development acceptable in planning terms is likely to continue to be required through S106 and CIL receipts would be used towards other strategic infrastructure.

iv. What role are CIL and s.106 playing alongside other sources of infrastructure funding and could changes to CIL (e.g. the ability to borrow against it or in kind contributions) allow it to be more effective?

Due to viability issues, Section 106 contributions are low value and often unable to fund the infrastructure needed meaning the contributions need to be pooled and combined with other forms of funding to deliver the required infrastructure. The government should consider removing the current pooling restrictions on Section 106 to enable Local Authorities to more effectively utilise a number of small contributions towards an infrastructure project. Due to the relatively low forecasted receipts from CIL it is considered the ability to borrow against future receipts would not result in a more effective mechanism. In kind contributions may be acceptable in some instances and should only be offered on a case by case basis at the discretion of each Charging Authority.

v. What has been the impact of pooling restrictions? Is there a difference between authorities which have adopted CIL and authorities which have not adopted CIL?

Walsall Council is in the process of adopting CIL and aims to adopt a charging schedule by 2016. The restriction on pooling of Section 106 contributions has added to the administrative burden on Local Authorities at a time when resources are limited and reduces the effectiveness of Section 106, which, in the case of Walsall Council has historically relied on the pooling of many small contributions to help meet the cost of infrastructure projects. The government should consider removing the current pooling restrictions on Section 106 to enable Local Authorities to more effectively utilise a number of small contributions towards an infrastructure project.

vi. What impact do exemptions and reliefs have on delivering infrastructure?

Walsall Council has a good track record of working with applicants to balance the benefits of sustainable development against viability issues and the need to provide the necessary supporting infrastructure. Whilst sometimes unavoidable, exemptions and reliefs will inevitably reduce the funding available to put towards infrastructure, which is already limited, meaning significant infrastructure such as motorway junction improvements are likely to require other sources of central Government funding.

vii. How are local authorities who have not adopted CIL making provision for infrastructure and how effective are these approaches?

Walsall Council is continuing to collect Section 106 contributions where possible, in line with Government policy and tests and case by case viability appraisals to deliver infrastructure needed to support individual development schemes.

On Viability

viii. Has a lack of viability resulted in a failure to develop a CIL?

A lack of viability has shown that, in some areas of Walsall, it may not be possible to set CIL rates and that in the remaining areas of Walsall only some forms of development (retail and residential) would have sufficient headroom for CIL rates to be set. Walsall is proceeding with CIL because it would provide some more resources than would be available from s106 obligations (especially following the Government's imposition of pooling restrictions).

ix. Have viability concerns resulted in a low CIL level and has this had an adverse impact on the delivery of infrastructure to support development?

Initial viability evidence suggests CIL rates are likely to be set at a low level. Forecasted receipts from CIL at around £5 million over the plan period (up to 2026) falls significantly short of the funding gap of over £180 million identified in the draft Infrastructure Delivery Plan (attached to this response for reference) meaning many infrastructure projects are likely not to benefit from any CIL receipts.

Some service and /or infrastructure providers appear to consider that CIL might lead to a significant increase in the resources potentially available whilst the Council's viability evidence shows this will not be the case. Specific examples include:

- West Midlands Police would like to receive CIL monies to provide infrastructure to police new developments, but such funding has not been sought previously and the requests for funding represent an additional call on the resources available for infrastructure;*
- Highways England have indicated that they would like CIL to contribute towards major highway improvements (e.g. for motorway junctions). However, the scale of such projects mean that they would require CIL receipts over decades and to the exclusion of all of the other kinds of infrastructure;*
- Natural England seems to expect that the potential impacts of developments on European sites might be mitigated by levying a charge on housing developments across a notional 'zone of influence'. Whilst such an approach might be questionable on a number of grounds it is most relevant here in that it embodies the assumption that all areas can afford to pay CIL and that a significant proportion of the receipts can be called on for a particular purpose and would not be better-used for other things. There seems no allowance for a situation where an existing urban area would be zero-rated for CIL, with the potential consequence that development could be stopped from taking place.*

x. Are there appropriate tools available for establishing viability? Would standardisation using just one methodology be helpful or feasible?

It is understood that there are various viability models and any standardisation is considered would ensure a consistent approach is taken.

xi. Do you have specific examples where non-viability on account of CIL has prevented development?

Not able to comment at this time as CIL has not yet been adopted by the Authority.

xii. Is CIL impacting on affordable housing provision?

Not able to comment at this time as CIL has not yet been adopted by the Authority.

xiii. In setting a CIL Charging Schedule has the development community played their part and been properly consulted on issues of local viability?

In preparing Walsall's Preliminary Draft CIL Charging Schedule the development and landowner community were engaged in a workshop prior to the start of consultation and formally consulted during this process to promote on-going engagement.

On Charge-setting:

xiv. Is the EIP process suitably robust?

Not able to comment at this time as Walsall's CIL has not yet been subject to the EIP process.

xv. Should there be a requirement to review charging schedules at set times, if so when and why?

Any review should be at the discretion of each charging authority to reflect local economic and market conditions.

xvi. Should partial reviews (eg. types of use or location) be possible?

Yes, where appropriate it may be helpful to have the option to only review a charging schedule in part and this should be at the discretion of each charging authority to reflect local economic and market conditions.

On CIL Regulations and Guidance:

xvii. Are the CIL regulations and guidance easy to use and understand?

It is not possible to offer comments on the ease of use in calculating, collecting and spending CIL as CIL has not yet been adopted by the Authority. The guidance and regulations are considered easy to use in preparing CIL.

xviii. Are there improvements that could be made to the arrangements for collecting and spending CIL?

In some cases, it is unclear whether CIL should be used towards certain kinds of infrastructure. A particular example is Education where in the past some contributions towards school provision have been secured through s106 obligations. Officers are aware both that many authorities have been using CIL to fund school places, but also that representatives of the DfE have made statements to the effect that CIL should not be needed for this purpose. More clarity, but above all sufficient funding is needed to ensure that infrastructure needs are met, especially where councils have statutory responsibilities.

CIL cannot currently be used to remediate land and this fails to address one of the Council's key issues in unlocking key sites for growth. Consideration should be made as to whether CIL funds should be able to be expended on site remediation.

On Neighbourhood issues:

xix. How have the requirements for the Neighbourhood proportion of CIL been implemented?

Not able to comment at this time as CIL has not yet been adopted by the Authority.

xx. Is this encouraging communities' to support development?

Not able to comment at this time as CIL has not yet been adopted by the Authority.

Finally, on the overall system

xxi. Has the introduction of CIL made the system for securing developer contributions and delivering infrastructure simpler, fairer, more predictable, transparent and efficient?

Whilst in principle a simple rate based approach is considered more transparent and efficient, it is considered that the ever increasing CIL exemptions and reliefs when combined with the complicated calculation methods and continued use of Section 106 is likely to have resulted in an overly complex mechanism. However, CIL should not be abolished or reduced unless there are robust and practical arrangements in place to ensure that necessary infrastructure can be properly funded.

xxii. Is the relationship between CIL and s.106 fit for purpose and how is this working in practice?

Whilst the Authority has not yet adopted CIL, Section 106 is considered will need to continue to play a role in mitigating specific development impacts and the dual approach of CIL and S106 results in a complex approach placing further resource burdens on Local Authorities. An example of the complexity is town centre road improvements. Where more than one development needs to contribute towards a road junction improvement in order for the infrastructure to be delivered it is unclear whether this should be through pooled s106 contributions (to mitigate specific impacts of development in an area) or whether it would be considered as strategic infrastructure to be funded through CIL receipts. This complexity and overall lack of funds towards infrastructure makes securing and delivering infrastructure complicated.

xxiii. Is there a better way of funding the infrastructure needed to support development?

The Government imposed pooling restrictions on S106, combined with their low value and failure of CIL in meeting the infrastructure funding gap for infrastructure means significant investment is likely to be required from central Government funding to meet the shortfall and ensure necessary infrastructure is delivered.