NOTIFICATION OF PORTFOLIO HOLDER DECISION

On 5 December 2011 Cllr Vickers, the Planning and Transportation Portfolio Holder, made the following decision. Any member of the Council, who is not a Portfolio Holder, who considers that this decision should be reviewed should give notice to the Monitoring Officer (Grainne O’Rourke) (in writing or by e-mail) to be received ON OR BY 12 DECEMBER 2011.

Details of the documents the Portfolio Holder considered are attached.

DECISION:

To submit a response, in the terms set out in the Report considered by the Portfolio Holder, to the Department for Communities and Local Government on a number of proposed changes to the Community Infrastructure Levy.

REASON(S):

To ensure this Council’s views are presented to the Government as they consider the proposed changes.

ANY ALTERNATIVE OPTIONS CONSIDERED AND REJECTED:

None

CONFLICTS OF INTEREST DECLARED:

None.

For Further Information Please Contact:

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(democrat/Portfolio Holder Decisions 2009)standard
PLANNING & TRANSPORTATION PORTFOLIO HOLDER

CONSULTATION ON COMMUNITY INFRASTRUCTURE LEVY AND DETAILED PROPOSALS AND DRAFT REGULATIONS FOR REFORM

1. INTRODUCTION

1.1 The Department for Communities and Local Government (DCLG) is currently consulting on a number of changes to the Community Infrastructure Levy (CIL) Regulations. The consultation document proposes a number of questions to help guide them in making decisions regarding these proposed changes. The main emphasis on the changes relates to spending CIL so, regardless of the outcome, the process currently being undertaken by New Forest District Council to develop a CIL charging schedule will not be affected.

1.2 The consultation document sets out DCLG’s reasoning for the proposed amendments and sets a number of questions. This report summarises the main content of the document and the questions with particular regard to the emerging New Forest District Council’s Preliminary Draft Charging Schedule, and includes a recommended response to this consultation.

2. BACKGROUND

2.1 The Government introduced the CIL Regulations in April 2010. These Regulations were revised in 2011 and following this consultation it is proposed that they will be revised again in April 2012.

2.2 It is not a statutory requirement for a Council to adopt CIL. However, from April 2014 the ability of a Council to achieve a full package of planning gain and infrastructure from the current planning obligation/s106 process will be constrained.

2.3 The introduction of a CIL Charging Schedule has the following benefits:

- It provides a new mechanism for the Council to capture income from development, which can be reinvested in needed local infrastructure.
- The scope of the Section 106 planning gain process is to be reduced after April 2014. Without the financial provision of a CIL Charging Schedule the Council will find itself in a more challenging financial climate when meeting the infrastructure needs of the borough.
- It provides greater certainty to developers regarding the cost of development, which could be a catalyst for development within the borough;
- Has potential to speed up planning gain negotiations, leading to time savings and potentially reduced revenue costs through the need for legal agreements.

2.4 The process for introducing CIL is largely set out in Government Regulations, which indicate that a preliminary CIL Charging Schedule and then a draft CIL Charging Schedule should be subject to consultation. The robustness of the Charging Schedule has to then be considered at an Independent Examination.

2.5 Officers have undertaken much of the background work needed to set the local rate. A preliminary draft charging schedule will be presented to the January 2012 cabinet for approval to begin formal public consultation. Following this, the charging schedule can be revised before a further round of consultation on the draft charging schedule (proposed for May 2012) is carried out. The charging schedule will then be submitted for formal examination. The results of the current government consultation could have implications for the final details of the draft charging schedule consultation in May 2012.
3. RECOMMENDED RESPONSE OF NEW FOREST DISTRICT COUNCIL

3.1 The current DCLG consultation deals with two matters:

a) The inclusion of affordable housing within the spending powers of CIL as this is currently excluded.

b) Setting the definition of a meaningful proportion of CIL receipt to be spent on local / neighbourhood level infrastructure. The Government has always had the expectation that a meaningful proportion of the CIL receipt will be spent on local / neighbourhood level infrastructure but the amount was never defined.

The questions below are specific consultation questions outlined in the DCLG document. Where appropriate some of the specific questions have been merged in to one.

Should the duty to pass on a meaningful proportion of CIL receipts only apply where there is a parish or community council for the area where those receipts were raised and at what level should the Parish cap be set?

3.2 The current CIL Regulations state that a meaningful proportion of the charging authorities’ CIL receipts should be passed to the local community, but they do not specify whether this should be a proportion of the total amount for the authority or a proportion of the specific receipts in that parish/community.

3.3 New Forest District Council is entirely Parished and therefore CIL receipts should only be passed to the Parish Councils rather than to individual community groups. Once a CIL system is established within the New Forest District a close working relationship will be required with the Parish Councils to support them with the spending.

3.4 The proposals also state that if a project crosses Parish boundaries then the amount that is passed will be calculated dependent on the proportion of development in that Parish. The consultation proposes that the calculation is based on a per-household cap (based on the number of council tax dwellings). This is particularly favourable as it allows flexibility when schemes border Parishes and where new development has a major impact on an adjacent Parish but the adjacent Parish does not have funds available to mitigate the impact. It will also help ensure that smaller Parishes do not end up with a large CIL pot with insufficient projects to spend the monies on.

3.5 It is recommended that the Council supports the general principle of the proposal to pass a proportion to Parish Council’s based on the monies received within the individual Parishes. Flexibility, however, is required to ensure some CIL monies from a development within a Parish that has a major impact on infrastructure in an adjoining Parish, is passed to that adjoining Parish. The proposal for the per-household cap should help provide that flexibility.

What proportion of CIL receipts should be passed to parish or community councils?

3.6 Neither the current Regulations, nor the consultation document give any indication on what the percentage of CIL receipts to be passed to Parish Councils should be. It is therefore difficult to gauge what the Government’s thinking is on this matter.

3.7 If the percentage is large this could present issues for the deliverability of some projects (e.g. transport proposals) that are seen as priorities for this Council, particularly as growth levels within the District are relatively small so the CIL receipts will also be relatively small.
3.8 As the setting of CIL within a charging authority is undertaken on the basis of a judgement between viability and infrastructure need, then it does seem difficult to set a ‘one size fits all’ approach.

3.9 It is recommended that the Council respond advising that the ‘meaningful proportion’ should be set within different charging authority areas, taking into account the many variables that the establishment and process of CIL allows, and based upon the requirements of different neighbourhoods. Within the New Forest District a percentage of between 5-10% would seem a reasonable figure for the meaningful proportion to be passed to Parish Councils.

**Do the proposed reporting requirements on parish or community councils strike the right balance between transparency and administrative burden?**

3.10 One of the key criticisms of planning obligations has been the lack of transparency and accountability as to how much developers contributed and what the money was being spent on. To ensure this is rectified under the CIL, the Regulations currently require Charging Authorities to publish details of income and expenditure annually. The consultation proposes that this requirement is also fed down to Parish Councils.

3.11 The consultation proposes that Parish Councils must report on at least a yearly basis, but encourages them to report more frequently where there are substantive receipts or expenditure to report on. Draft Regulation 19 (new Regulation 62A(3)(a)) requires that the report is to be published on the councils website.

3.12 The only concern with this proposal is for smaller Parishes where there they do not have a website or a dedicated town clerk to undertake this work. In these instances it may be useful for the Regulations to state that the monitoring reports can be produced in conjunction with the Charging Authority.

3.13 It is recommended that the Council support the proposals for reporting arrangements but responds saying that the specific monitoring arrangements should be left to agreement between the Charging Authority and the Parish Council, i.e. if by agreement the Charging Authority could produce/publish the monitoring report in conjunction with the Parish as part of its own monitoring report.

**Should parish or community councils’ expenditure be excluded from limiting the matters that may be funded through planning obligations?**

3.14 It is a requirement for Charging Authorities to set out on their website how CIL receipts will be spent (called the Regulation 123 list). If an item is not included on the list then it can be funded by planning obligations to ensure there is no double charging for the same item of infrastructure (subject to the limit on pooling S106 contributions).

3.15 The consultation proposes that the monies passed to Parish Councils should not be confined to spending in accordance with the charging authority’s list nor should Parish Councils have to produce a list of their own. The only restriction on Parish Councils is that set out in the Regulations, i.e. that it must come under the definition of infrastructure and support new development. This would allow Parish Councils flexibility to spend as they see fit in accordance with the levy’s purpose.

3.16 Under this proposals there could be issues with ‘double charging’ as the District may agree an infrastructure scheme through a planning obligation (and therefore exclude that item from its Regulation 123 list), yet the Parish Council may want to use its CIL receipts for this project too. The consultation document is unclear on whether this would be allowed under the Regulations. Also, without the obligation for Parishes to produce their own ‘Regulation
123’ list this could make it difficult for Charging Authorities to allocate CIL to projects without a clear guide of what Parishes will be spending CIL on.

3.17 It is recommended that the Council responds saying that clearer guidance needs to be issued with regards to ‘double charging’ under this proposal and also that Parishes should be required to produce a type of ‘Regulation 123’ list to set their priorities and work in collaboration with the Charging Authority in drawing this up.

Should the cap on the amount of CIL funding that charging authorities may apply to administrative expenses be removed?

3.18 The current levy Regulations allow a Charging Authority to apply levy funding to administrative expenses incurred by it. This is currently capped at 5 per cent of receipts less expenses of up to 4 per cent of receipts incurred in collecting the levy. The consultation proposes to remove the cap on the amount of levy funding that charging authorities may apply to administrative expenses on any matter other than the collection of the levy.

3.19 Removing this cap could be beneficial, particularly as there may be close working with Parish/Town Councils on setting up processes and extra monitoring requirements. Also, with smaller Parishes they might prefer the District to take on a project management role for delivering/reporting on CIL and this would allow the Parish to pass back some of the monies to the District to do this.

3.20 It is recommended that the Council support this proposal.

Should local authorities be given the choice to be able if they wish to use CIL receipts for affordable housing and if so should they be given the choice to be able if they wish to use both the levy and planning obligations to deliver local affordable housing priorities?

3.21 Planning obligations already provide the Council with an appropriate mechanism to deliver affordable housing. This is well established practice, provides certainty for onsite delivery and supports the Government’s important policy objective to deliver mixed communities.

3.22 For developments of 4 dwellings or less, Core Strategy Policy CS15 allows a financial contribution to be made for off-site provision of affordable housing through planning obligations. This amount is currently negotiable. As CIL will not be negotiable, this flexibility in spending powers will allow for a more efficient provision of affordable housing and better support delivery of local policies, including for any off-site provision.

3.23 This flexibility could be particularly useful when concerns of viability arise within a development. In these instances, the amount of affordable housing contribution through planning obligations could be negotiated down, with the CIL making up the effective ‘shortfall’. This will help to achieve the viability of a development without reducing the affordable housing requirements.

3.24 The Council is aware that if CIL funding is used to fund off-site affordable housing then this will dramatically reduce the amount of funding available for other projects.

3.25 It is recommended that the Council supports the proposal to give local authorities the choice to use CIL receipts for affordable housing. Local authorities should also be given the choice on whether both CIL and planning obligations should be used to deliver local affordable housing priorities.

If local authorities are to be permitted to use both instruments, what should they be required to do to ensure that the choices being made are transparent and fair?
3.26 If local authorities are extended the choice to use levy receipts to fund and deliver affordable housing, then communities and developers need to be absolutely clear about the choices being made, and be given the opportunity to help inform those choices. The consultation welcomes views on requiring local authorities, as a matter of national policy, to set out clearly in policy statements the approach they will take in collecting contributions for affordable housing under the levy and/or planning obligations, and the anticipated level of contribution and delivery through each.

3.27 Charging Authorities are required to set out a policy statement prior to implementing any relief for CIL in exceptional circumstances and discretionary charitable relief. Within this statement the Council’s direction for spending on affordable housing could be incorporated.

3.28 Alternatively, as the current Regulations require Charging Authorities to set out in the Regulation 123 list what CIL receipts will be spent on, this seems a logical place for it to be identified when and where CIL contributions will be used in place of planning obligations.

3.29 **It is recommended that the Council responds stating that Charging Authorities should set out their intentions to CIL and planning obligations spending for affordable housing in either a policy statement prior to adopting the said policy or in the CIL spending priorities within the Regulation 123 list.**

If CIL can be used for affordable housing, should affordable housing be excluded from the Regulation that limits pooling of planning obligations, or should the same limits apply?

3.30 Planning obligations (made under Section 106 of the Town and Country Planning Act 1990, ‘Section 106’) are currently the main delivery mechanism for affordable housing. If affordable housing becomes capable of being funded by the Community Infrastructure Levy, then the existing Regulations which place a limit on the pooling of Section 106 contributions will apply to Section 106 affordable housing contributions.

3.31 If affordable housing is not excluded from this Regulation this could have a detrimental effect on the provision of affordable housing as potentially there may not be sufficient monies available from the 5 ‘pooled contributions’. This could also create issues with regards to where the affordable housing developments would be sited in the District.

3.32 **It is recommended that the Council responds stating the affordable housing should be excluded from the Regulation that limits pooling of planning obligations.**

4. **WHAT HAPPENS AFTER THIS CONSULTATION?**

4.1 Following the introduction of the Localism Act and the completion of this consultation, DCLG will consider the responses received and reflect on those before finalising the Regulations, which will then be laid before Parliament.

5. **FINANCIAL AND CRIME & DISORDER IMPLICATIONS**

5.1 Once the CIL charging schedule is adopted, or no later than 6th April 2014 where none is adopted, the scope for pooling S106 contributions is dramatically reduced, becoming restricted to contributions from no more than five developments for each infrastructure project.

5.2 CIL will, therefore, become the main source of funding available from developer contributions, other than for affordable housing, which, at the time of writing, currently lies outside of the remit of CIL collection and will continue to be secured through S106 agreements unless changed by the Government.
6. ENVIRONMENTAL IMPLICATIONS

6.1 None

7. RECOMMENDATION

7.1 It is RECOMMENDED that a response be made to Communities and Local Government based on the comments set out in section 3 of this report.

8. PORTFOLIO HOLDER ENDORSEMENT

I have agreed to the recommendation of this report.

Signed: CLLR F P VICKERS

Date: 5 December 2011

For further information contact:

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Background Papers:


Date notification of this Decision given – 5 December 2011:
Last date for call-in – 12 December 2011