

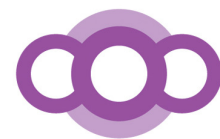
The District Councils' Network and County Councils Network

Community Infrastructure Levy Advice Note



January 2012

District Councils'
Network



Section 1: Purpose and Introduction

1.1 The purpose of this good practice note is to support county and district colleagues in their understanding of the purpose and processes involved in the Community Infrastructure Levy (CIL.) This guidance has been designed to further assist charging authorities to successfully implement the charge, account for spending of receipts and ease difficulties and tensions that can otherwise arise between Counties and Districts.

1.2 The Planning Officers Society has recently produced a useful guide to CIL providing background information and advice on the processes and purposes of the levy. It is not the purpose of this note to reproduce that advice which can be found at ([CIL and Infrastructure Planning: An advice note](#)) but rather to explore the practicalities of developing and implementing CIL, reducing tensions between County and District in respect of infrastructure delivery, including in respect of release of receipts from CIL as contributions towards infrastructure.

1.3 Sections 3 and 4 of this guidance note set out the practical experiences of developing a CIL charging regime and of taking this through to successful outcomes via its independent examination. Section 4 of the note emphasises the need for clear protocols to be developed between Counties and Districts in terms of identifying funding gaps which CIL might reasonably be expected to fill and the nature of the evidence needed to support these findings.

1.4 CIL represents a significant opportunity, especially in the current economic climate, to take a more evidence based and prioritised approach to the delivery of key strategic infrastructure. The processes of CIL however, including the independent examination of charging schedules and the subsequent and necessary auditing and transparency of spending dictate that clear and agreed protocols will need to be developed if tensions between County and District are to be minimised. Too often communities have felt let down by promises of the timely delivery of infrastructure in Planning Policy documents. Too often also have we witnessed the development industry seeking to reduce or remove themselves from due responsibility for legitimate provision. In many instances this has been assisted by the fact that the evidence supporting requests for contributions and the clear and identified priorities for provision of infrastructure appear uncertain. This situation satisfies no community. We hope that the following note will enable clear and agreed protocols surrounding the successful implementation of CIL to achieve better.

Section 2: Designing A CIL System

2.1 The following observations are based on the experiences of Newark and Sherwood District Council in developing the first CIL system in the UK. They are not intended to act as a guide to the Regulations but offer some practical points and interpretation of the Statutory Guidance.

The Infrastructure Funding Deficit

2.2 This is the first test of a CIL system. Each Authority will need to establish a list of infrastructure to which CIL will contribute. Most Authorities will have good evidence

of the Infrastructure required to support growth as part of their Core Strategy work. It will also be necessary to obtain reasonable cost estimates for any infrastructure to be funded by CIL and to identify any alternative bespoke sources of finance in order to determine the funding deficit. Alternative funding sources need not include funding that is not ring-fenced for infrastructure (eg New Homes Bonus).

2.3 There is no requirement to balance the books in designing a CIL system. CIL is best seen as a contributor to infrastructure costs. It is advisable to ensure the costs of infrastructure to be funded by CIL put forward for Examination exceed the projected revenue to be generated by CIL. If infrastructure costs are successfully challenged at Examination, to the point where they fall below the revenue generated by proposed CIL rates, the system will fail the first test (as the proposed rates will be higher than required to meet the infrastructure funding gap). By ensuring there is a significant margin between infrastructure cost and projected CIL revenue there should be sufficient flexibility. The overall costs of infrastructure will in any case exceed CIL (as it is a gap fund) and so, ultimately the key tests will be to make sure a reasonable attempt has been made to account for other available funding streams (such that the charging authority is not 100% reliant on CIL) AND that CIL does not affect the viability of development.

Key issues for two tier areas:

Preparation of a CIL needs to be done on the basis that there is an established and effective relationship over infrastructure planning. This should have been achieved as part of the preparation of an Infrastructure Development Plan as part of the Local Development Framework Core Strategy. Effective engagement of county services in the Infrastructure Plan is essential. Some County Councils have found that appointing a single point of contact to coordinate input to an LDF / Infrastructure Plan helps to ensure that engagement is effective.

County and District Council officers need to understand the principle that CIL is only a contributor to infrastructure and will not replace mainstream funding sources.

Infrastructure Spending Priorities

2.4 The list of infrastructure put forward for Examination that is used to justify the Infrastructure Funding Deficit need not be reflected by the Regulation 123 List when CIL is adopted. Charging Authorities have the flexibility to alter the list of infrastructure projects that CIL will fund at any time. Inevitably spending priorities will change over time and the CIL Regulations allow for this. The primary purpose of the list is to ensure that Planning Obligations are not used to secure any infrastructure on the CIL list ie there is no 'double counting'.

Key issues for two tier areas:

As the flexibility to alter infrastructure lists remains with the Charging Authority,

County Councils will be keen to engage with charging authorities on the preparation of Regulation 123 lists. District Councils will therefore want to give some consideration to the timing, principles and context for reviewing lists and how they

can ensure active engagement with County Council colleagues to ensure that the re-prioritisation of infrastructure priorities is managed.

Both tiers will need to bear in mind that other funding or investment streams which might become available should not be neglected on the basis that a need is potentially covered by CIL.

Evidence Base

2.5 The Statutory Guidance and emerging practice notes advise that CIL may be informed from a variety of existing sources of valuation and viability information. This may be acceptable for a simple CIL system with fixed rates or minor differentials but where it is envisaged that a series of different rates and different charging zones may emerge, then more sophisticated viability testing supported by more comprehensive evidence may be required. In any event the assumptions underlying different sources of evidence should be checked for consistency. Viability tests are very sensitive to minor input variations and will only be as robust as the quality of evidence they rely on.

Land Valuation

2.6 It is generally accepted that CIL will be extracted from the residual land value between Sales Revenue and Development Cost. The difficulty is in the approach to establishing a land value that is sufficient to persuade a landowner to release land but which also takes account of the contributions that Local Authorities may reasonably expect in terms of CIL, Affordable Housing and other Planning Obligations.

2.7 Viability appraisals that are used to support Affordable Housing Studies tend to rely on a 'Benchmarking' approach which relies on assessing existing use value (EUV) and potential Alternative Use Value (AUV) and then fixing a % uplift on the higher of these values to simulate the 'benchmark' value at which a landowner will be sufficiently incentivised to sell the land. This is an approach which the Homes and Communities Agency refer to in 'Investment and Planning Obligations: Responding to the Downturn'. This guide states: "*a viable development will support a residual land value at a level sufficiently above the site's existing use value (EUV) or alternative use value (AUV) to support a land acquisition price acceptable to the landowner*". The key difficulty is fixing a realistic existing/alternative use value to cover the majority of development scenarios and, more importantly, a % uplift that realistically reflects the reasonable aspirations of the landowner.

2.8 The starting point in many appraisals is a low value existing use with an assumption that landowners will release land based on a modest 10-20% uplift. This approach is more justifiable in Affordable Housing Studies as they generally set policy targets which are subject to further viability assessment at planning application stage. It is therefore understandable that these appraisals attempt to maximise affordable housing provision by minimising base land values.

2.9 This approach may be less robust with CIL. Once adopted, CIL is a fixed levy which will not be subject to further viability assessment. It may therefore be

unrealistic to take a 'lowest common denominator' approach to land value as it will simply not reflect the majority of market circumstances that are likely to guide landowners decisions.

2.10 The alternative approach is to consider the value of land with planning permission for the chargeable category under consideration. This is a much more realistic approach to real world circumstances. It will rely on assessment of value from comparable evidence and will therefore be consistent with property sales value evidence which will almost certainly be based on comparable evidence. Landowners will always have an aspirational value based on the planning permission that might be achieved. Any assessment should however temper landowner aspiration with acknowledgement of the contributions that may reasonably be expected by the Local Authority as discussed above. It should represent the minimum value at which land is likely to come forward and will generally rely on a professional Surveyors assessment.

Viability Appraisal

2.11 Viability Appraisal will generally be based on a residual testing model which calculates the additional margin of any given development beyond a reasonable developers profit (having established a robust land value) to enable payment of CIL.

2.12 Various approaches may be considered. Fixed rates of CIL may be tested in the appraisal to determine which ones are viable or appraisals can be structured to determine the maximum rate of CIL that could be charged whilst maintaining economic viability. It would then be for the Charging Authority to set its own 'Appropriate Balance' either setting low rates to cover the costs of basic infrastructure whilst encouraging growth or setting high rates to generate maximum revenue for infrastructure but accepting that the viability of some development may be threatened.

Differential or Fixed Rate CIL

2.13 CIL can operate as a fixed rate system or have differential rates according to Charging Zones and categories of development. Fixed rates may be appropriate, particularly in homogenous urban areas, as the system is simple to administrate and understand. However it will have one rate of tax in all areas and for every category of development. There may be political implications in such a system where schools and community buildings pay the same rate as a new superstore.

2.14 For most Authorities, particularly larger Authorities with varied economic circumstances in different sub-markets, it is likely that a Differential System will emerge. A Differential system allows zero rates to be charged in economically challenged areas or on categories of development that are unviable from a development perspective (eg schools, community centres, hospitals etc). A differential approach must however be based solely on economic viability evidence to justify different rates for different areas and types of development in order to be State Aid compliant.

Key issues for two tier areas:

County Councils, as authorities covering large areas, are likely to have differential systems covering at least part of their area. They are well-placed to consider and offer views to the Charging Authorities about potential cross-border issues and opportunities to bring consistency. County Councils may be able to offer support from their Property/Estate teams to provide additional expertise to charging authorities on assessing viability.

State Aid

2.15 The Statutory Guidance makes it clear that differential CIL rates may only be based on a comparative assessment of economic viability evidence. The guidance makes it clear that zero rates should only be considered if viability appraisal indicates very low or negative viability and that rates should not selectively favour any particular development sector. Differential Rates must be set in such a way that they do not grant any selective advantage and it will be the responsibility of Charging Authorities to ensure that their CIL system is State Aid compliant. This is important in that it is not necessarily the responsibility of the CIL Examiner to consider State Aid issues and legal challenges may occur beyond Examination if CIL is not State Aid compliant.

2.16 The underlying message is that CIL should not be used a policy tool. There may be very sound policy based reasons to promote growth of a particular sector (eg employment use) but CIL should not be used to achieve this by zero rating.

Key issues for two tier areas:

County and District Councils, whilst being aware of the State Aid restrictions, may want to share their perspectives on future economic development and whether the implementation of CIL will lead to any changes to current economic development policies and priorities. District Councils will want to consider how their Local Enterprise Partnership can be involved in CIL policies and the infrastructure investment that will materialise.

Section 3: Collecting & Implementing CIL

CIL Collection

3.1 Collecting CIL is a four stage process involving :-

- The developer/landowner submitting a Notice of Charging Development outlining the net floorspace of the scheme and calculating the CIL Charge. An assumption of liability will also need to be made.
- The Charging Authority acknowledging the liability and confirming that the CIL Charge is correct.

- The developer/landowner confirming when development is going to commence
- The Charging Authority submitting a CIL demand notice

3.2 In the event that no instalment policy exists the default collection period is 60 days from the commencement date of development (regulation 70). This may be varied by adoption of an Instalment Policy allowing developers to spread the initial cost of CIL, particularly for large developments with cash flow implications.

3.3 Monitoring the collection of CIL will be a complex process and is likely to require expansion of the Authority's planning obligation contributions systems and integration with financial administration systems.

Monitoring & Reporting

3.4 The Charging Authority must publish annual reports (for the financial year) indicating:-

- How much CIL has been collected;
- How much of that money has been spent;
- The items of infrastructure on which it has been spent;
- The amount of expenditure on each item of infrastructure;
- Any amount used to repay money borrowed;
- The amount of CIL used to cover administrative expenses; and
- The amount of CIL retained at the end of the reported year

3.5 It is recommended that CIL is reviewed periodically or in response to a significant shift in market conditions. Any review will be subject to full consultation procedures as outlined in the Regulations.

Key issues for two tier areas:

Charging authorities should monitor and report on CIL income and expenditure in a way which reflects the Government's transparency agenda. In addition to publication of annual reports on the Council's website, District Councils could consider more frequent reporting. An open approach to monitoring cash collected and commitments made will facilitate the ability of the County Council to understand the picture across all Charging Authorities in its area.

Distribution of the Meaningful Proportion of CIL to the Community

3.6 The Localism Act has introduced an obligation on Charging Authorities to distribute a meaningful proportion of CIL to the community through Parish or Community Councils. This will add a significant additional administrative burden as it

is likely that Charging Authorities will need to monitor where CIL is collected and distribute it proportionately having regard to caps related to existing population.

The Future Relationship of CIL and Planning Obligations

3.7 Once CIL is adopted and in any event by April 2014, the future use of Planning Obligations will be restricted to 5 to meet the cost of any piece or type of infrastructure. The 5 obligation limit will include any obligations entered into after April 2010 when the CIL Regulations came into force. The use of generic planning obligations such as 'transport contributions' will become a thing of the past.

3.8 In practical terms this will require Authorities who intend to continue to use Planning Obligations to forward plan infrastructure delivery over the entire plan period. It will need every infrastructure project to be identified and costed. The 5 development sites which are likely to make contributions to the infrastructure project will then need to be identified to ensure the 5 obligation limit is not breached. It is likely to become a material consideration in the site allocations process with only the larger sites being capable of generating enough planning obligation revenue to meet infrastructure cost. Overall it will become a very complex area wide planning process as the unrestricted use of pooled contributions will no longer be possible.

Key issues for two tier areas:

District and County Councils should recognise the constraints which will operate and make arrangements for collaboration to ensure that the potential for Planning Obligations is utilised effectively. Plans and costs for infrastructure will need to be better prepared than in the past. Large applications will require effective attention and engagement at both tiers.

Section 4: Developing a Protocol between District and County authorities.

Purpose of the Protocol

4.1 The CIL regulations came into force in April 2010 and provide District Councils as 'Charging Authorities' with a new mechanism for collecting developer funding for infrastructure needed to support growth. Charging authorities must have a charging regime in place prior to 6th April 2014 to enable monies to be collected. After 6th April 2014 the regulations restrict the local use of planning obligations for pooled contributions towards items that maybe funded by the levy. Pooled contributions can only be sought from up to five separate planning obligations for an item of infrastructure that is not locally intended to be funded by the levy. In the interim period charging authorities can continue to use the section 106 mechanism to collect money - the CIL Final Impact assessment clearly identifies that planning obligations will still exist as a tool for mitigating site specific impacts.

4.2 The relationship between District Councils, as the charging authority, and County Councils, as provider of key strategic infrastructure, is crucial to ensure the application and administration of developer contributions is successful. The challenge of timely infrastructure delivery in two tier situations is one that can sometimes lead

to tensions between Authorities if appropriate protocols for understanding of the regulations and delivery mechanisms are not clearly set out and agreed.

4.3 To assist in the administration of developer contributions through CIL such a protocol is necessary to provide a clearly agreed procedure between District and County authorities and to avoid misunderstandings and tensions that may otherwise surface as to the level of information and justification required to use receipts. This draft protocol covers arrangements for the administration of CIL and the collection of section 106 funding in the interim period including the allocation, spending of and accounting for, any payments made.

Relevant planning policies

4.4 In considering contributions arising from S106 and CIL the following planning policy documents will be used as the basis for negotiating and delivering section 106 agreements/ CIL;

- ODPM Circular 05/05 - Planning Obligations.
- DCLG - Community Infrastructure Levy Regulations 2010.
- All other relevant development plan policy(s) and the relevant sections of any valid SPD/SPG of the district or county authority.
- Planning Act 2008 – Part 11 Community Infrastructure Levy
- Community Infrastructure Levy (Amendment Regulations) 2011
- DCLG Community Infrastructure Levy Guidance – Charge Setting and Charging Schedule Procedures March 2010

The criteria for determining developer contributions

4.5 To promote good practice it is considered that the following criteria should be adopted by District and County authorities when dealing with developer contributions.

4.6 Developer contributions will only be released by charging authorities when robust evidence is provided for each individual scheme for which the charge has been requested. This should include evidence of existing demands (including demands from permitted developments), additional demands likely to arise from the proposed development, the extent to which relevant existing infrastructure or services are capable, in terms of location, capacity and suitability, of meeting those additional demands and the estimated costs of providing new infrastructure or improving existing infrastructure to meet these additional demands. Where practicable and in most cases this should be based upon a clear costed scheme and where delivery of that scheme is identified for implementation within agreed time scales.

4.7 It is important to recognise that CIL contributions are intended to fill funding gaps and are not expected to provide 100% of delivery costs nor indeed to pay for

what might be considered "historical deficits" of infrastructure provision. With regard to release of CIL payments by charging authorities monies should only be released when it can be reasonably demonstrated that there are no other funding mechanisms or streams available that could deliver the scheme being proposed. This will require transparency in looking at agreed capital programmes for example for transport or education matters and a reasonable exploration and assessment by Counties of other potential resource/ funding sources.

4.8 When setting a CIL charge a funding gap is required to be established to justify setting the levy in the first place. This will require significant potential detail from those infrastructure providers to provide a robust evidence base of infrastructure needs and justification for contributions .Such evidence will in any case require to be independently assessed at CIL examinations and when it is expected that county Council will not only be willing to provide such detail but also to defend this evidence if appropriate at CIL examinations. Alternative possible sources of funding are also required to be identified to reduce the funding gap. Clarity on the location of the scheme being supported through CIL and the proportion being sought from the development scheme will also be required.

4.9 The CIL regulation 123 list sets out items or types of infrastructure the charging authority intends to fund through CIL. This will ensure that funds are directed to the schemes identified as supporting development and growth within the district in line with the CIL regulations. In addition to the robust nature of the evidence that will be required above commitment should also be provided in the form of an indemnity agreement between Districts and County Councils to ensure that funds are spent in accordance with the terms of the s106 agreement or the CIL regulation 123 list.

4.10 Developer contributions will be set against District Authorities policies and objectives relating to the provision of affordable housing provision where the viability of a scheme is in question.

A suggested Protocol for requesting developer contributions from the charging authority

4.11 County Councils are keen to ensure that spending priorities and projects across an area are agreed in advance through the Regulation 123 list. However within this framework there will be a need for them to request funding from the charging authority to deliver those projects.

4.12 In line with the criteria above, where County Councils wish to access developer contributions from the charging authority to either implement or maintain the works schedules set down within the section 106 agreements or to fund works identified within the CIL regulation 123 list it is considered that tensions will be likely to be reduced if a clear and easily audited process is used . Some areas are working towards a formal governance structure for managing CIL receipts, or have existing systems in place based on historic models of joint working. In other areas it is recommended that the upper tier authority should submit a request (in the form annexed below or similar) detailing the amount requested, the basis upon which this has achieved conformity with the criteria outlined in section 3 above and confirming

that the works are planned to commence within 12 weeks and seeking release of funding.

4.13 Charging authorities will need to develop clear procedures for the collection, dissemination and spending of CIL receipts and be in a position to regularly report and place information on this matter on their websites/ in the public domain .To assist the development of such procedures it is further recommended that following receipt of the appropriate form from the County Council the charging authority will notify the county council within 2 weeks whether the proposed use of funding conforms with the s106 agreement or regulation 123 list and complies with the criteria noted in section 3 above. Following such confirmation funding can be agreed to be released, with the agreement not to be unreasonably withheld.

4.14 For the charging authorities this degree of transparency and accountability will mean additional resources on the development of CIL, upon administration, dissemination and potentially enforcement of CIL. District Councils will be enabled to periodically review and reprioritise CIL spending through their regulation 123 lists .It is recommended that such reviews involve close working between County and Districts and take place within agreed consultation procedures and timescales in order that changed priorities and capital programmes/ other funding sources can appropriately be taken into account.

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Annex 1: Request to the charging authority for development contributions funding

4.15 This proforma is to facilitate the County Councils in submitting requests for CIL funding and to enable Charging authorities to seek confirmation that proposed expenditure complies with the terms of the section 106 agreement or CIL regulation 123 list and the criteria set out in the agreed protocol between the charging authority and county council.

Application number:

Site/ development:

Development contributions requested:

Conformity with criteria set out in the agreed protocol:

- Compliance with local and national planning policy and guidance
- Robust evidence to support request;
- Evidence of existing and additional demands and the extent to which existing infrastructure can meet those demands
- Estimated costs for the scheme and timing for delivery of the scheme
- The reasonable assessment of alternative funding mechanisms available.