

ENVIRONMENT AND ATTRACTIVE CITY SCRUTINY COMMITTEE

13 MARCH 2012

SUNDERLAND CITY COUNCIL LOCAL DEVELOPMENT FRAMEWORK: THE COMMUNITY INFRASTRUCTURE LEVY

REPORT OF THE DEPUTY CHIEF EXECUTIVE

1.0 Purpose of report

- 1.1 This report appraises Committee of the background to the Community Infrastructure Levy (CIL) as a mechanism to secure contributions from developers towards new infrastructure. The report provides background as to how CIL would be developed in Sunderland.

2.0 BACKGROUND

- 2.1 Ensuring the appropriate infrastructure is in place will be a powerful tool to support the city's aspirations for growth, job creation and attracting investment. But, with constrained public spending, the key challenge will be how the city can ensure continued investment in infrastructure.

- 2.2 Mechanisms are in place to ensure developers contribute to infrastructure as part of a development proposal. At present, when planning permission is sought, councils can enter into legal agreements with developers. Section 106 Agreements (as they are commonly known) are legally binding upon developers to mitigate the negative development impacts of proposals and facilitate development which might not otherwise occur. The Agreement is negotiated between the council and the developer. The contribution may be in either cash or kind, to undertake works, provide affordable housing or provide additional funding for services. Such contributions must be :

- necessary to make the development acceptable in planning terms
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

- 2.3 Section 106 Agreements in Sunderland are generally dealt with on a case by case basis and have largely been negotiated to secure :

- Open space maintenance;
- New roads and highway improvements;
- Children's Play and formal sport provision;
- Environmental improvements;
- Community infrastructure;
- Educational provision;
- Affordable Housing.

- 2.4 An additional measure, the Community Infrastructure Levy was introduced in April 2010. It has since been subject to minor amendments introduced by this Government in April and November 2011.

3.0 MAIN ELEMENTS OF THE COMMUNITY INFRASTRUCTURE LEVY

What is CIL and what can it be used for ?

- 3.1 CIL is an **optional** mechanism for authorities to raise funds from developers through a tariff based charge on development. By comparison to Section 106 Agreements, CIL is seen as a more transparent mechanism to secure developer contributions.
- 3.2 The council must spend CIL revenues on the infrastructure needed to support the level of growth as set out in its adopted development plan (that is the Local Development Framework's Core Strategy). The council can determine what infrastructure is needed and can even use funds to deliver infrastructure outside of its area so long as it directly supports the growth objectives within its own boundaries. Infrastructure is defined as :
- Physical and environmental eg transport and utilities, drainage, flood management, telecommunication and waste disposal;
 - Social infrastructure eg health, emergency services, education, sports & leisure, community & cultural services; and
 - Green Infrastructure eg public greenspace and allotments.
- 3.3 In addition to providing new infrastructure, CIL monies can : -
- Cover future maintenance and operational costs
 - Increase the existing capacity or repair failing infrastructure, provided its necessary to support the new development.
- 3.4 By contrast to Section 106 Agreements, CIL monies can be pooled to deliver infrastructure that is not directly related to the development from which the monies are secured. For example, it would be reasonable to pool all CIL contributions gathered from developments across the city towards a new road, or even to pool contributions across several authorities to deliver cross-boundary infrastructure requirements. There are no time limits by which CIL monies must be spent, which offers greater opportunity to gather sufficient monies to deliver the required infrastructure. The fundamental objective is that the required infrastructure is deemed critical to deliver the growth requirements set out in the Council's LDF over a 15 year period.
- 3.5 The Localism Act requires a "meaningful proportion" of CIL monies be returned to that neighbourhood where the development occurred. Further guidance is awaited as to how this would operate in practise.

Key Processes for Preparing CIL

- 3.6 Annex 1 sets out the regulatory steps in preparing CIL. Crucially, councils must have an up to date development plan (*ie* the LDF Core Strategy) which sets out the long term growth strategy and the infrastructure requirements.
- 3.7 There is no automatic right to prepare CIL. Firstly, evidence must demonstrate there would be a funding gap between what infrastructure is needed and what existing money is available for completion of that infrastructure. This evidence is gathered through an 'Infrastructure Development Plan' (discussed at Section 4).
- 3.8 CIL charges must take into account development viability and the ability of the development to contribute towards that infrastructure. Any

charges must therefore be supplemented by evidence of costed out infrastructure schedules alongside clear evidence of economic viability.

- 3.9 The final CIL Charging Schedule (which would only be 1 to 2 pages in length) would set out a simple suite of charges by use and / or area. Crucially the charges must strike a careful balance between the :
- Desirability of funding from CIL (in whole or part) and the actual and expected total costs of infrastructure to support the development of the area ;
 - Actual and expected sources of funding for local infrastructure ; and
 - Potential effects (taken as a whole) of the imposition of CIL upon the economic viability of development across its area over the next 15 years to cover the period of the LDF.
- 3.10 In simple terms, setting a levy too high means too many sites become unviable to develop which can deter investment from the city. Too low a charge would not secure the required levels of revenue needed to deliver on infrastructure priorities.
- 3.11 There is a requirement to consult with local communities and stakeholders on a draft charging schedules to allow interested parties to make representations. Comments received alongside the draft charging schedule are then considered by an independent Examiner who can recommend that the Charging Schedule is approved, rejected, or approved with modifications.
- 3.12 It is likely that the total costs of delivering all infrastructure requirements to meet the city's growth would far exceed the level of contribution that can be secured from development sites once viability has been factored in. Hence, the Council would need to prioritise its infrastructure requirements and at the end of the process set out how the CIL monies would be spent accordingly.

What types of development will pay CIL ?

- 3.13 New buildings or extensions over 100 square metres gross would be liable to CIL and payments are based in pounds per square metre. All new dwellings are liable regardless of size. CIL is not chargeable to changes of use of buildings where there is no increase in floorspace.

Relief from payment of CIL

- 3.14 Certain types of development will not be liable to CIL and the Regulations provide full relief from CIL in two specific instances :
- Where the development is used for charitable purposes
 - The development is for social housing.
- 3.15 A council may exempt certain types of development or set differential rates for different areas which reflect variances in development viability. For example, a council could not exempt office developments from CIL simply because it wishes to see greater levels of office development taking place. This could only occur where it's **proven** that it would be unviable to charge CIL for that type of development or in that particular area (based upon evidence of development viability). An extract of an adopted CIL Charging Levy below illustrates how certain exemptions by land use and area can apply (as informed by such evidence).

Example of a CIL Charging Schedule

Type of development	Shrewsbury, the market towns and other key centres	Rural – rest of Shropshire
Residential development (use class C3) <i>excluding affordable housing as defined below</i>	£40 per m2	£80 per m2
Affordable housing that meets the Council's definition of affordable dwellings and occupational dwellings that will default to affordable housing	Nil	nil
Employment, commercial and retail development (use classes A1-A5 and B1-B8). Hotels, residential institutions, assembly & leisure (use classes C1, C2, D1, D2). Agricultural development. Sui generis land uses	Nil	nil

(Source : Shropshire Council Community Infrastructure Levy, November 2011).

- 3.16 Once set, there will be no need to justify or negotiate CIL requirements - all developments that are liable to pay CIL must pay it, potentially leaving one-off sites unviable to develop. Developers may be able to claim for a reduction on the basis of viability but this could only be undertaken in exceptional circumstances.

Implications for Section 106 Agreements

- 3.17 CIL would subsume many of the matters and issues that are presently addressed through Section 106 Agreements. These Agreements will therefore be curtailed to deliver site specific and local matters that cannot otherwise be realised through CIL.
- 3.18 Some authorities (though not Sunderland) have adopted tariff based standards for Section 106 Agreements (similar to CIL) stipulating financial contributions for types of developments by floor space to provide *inter alia* education and open space. These are then negotiated with the developer on a case by case basis. From April 2014, such Section 106 tariffs will be illegal.

4.0 DEVELOPING THE COMMUNITY INFRASTRUCTURE LEVY FOR SUNDERLAND.

- 4.1 Tightening the parameters for using Section 106 Agreements would result in a significant reduction in infrastructure delivered through that mechanism, especially after April 2014. Not pursuing CIL would therefore see a reduction in the developer contributions towards the provision of necessary infrastructure in the city. This could result in a significant mismatch in development and infrastructure provision that could put severe pressure on some infrastructure in areas and impact on the sustainable delivery of sites across the city. It is therefore necessary to commence preparation of a CIL for the City.
- 4.2 Given the relative infancy of CIL, only two authorities have to date adopted CIL charging schedules (in late 2011). It is therefore difficult at this stage to :
- identify good practise / lessons learned
 - assess the true costs of completing CIL

- Assess how much money could potentially be accrued from CIL towards infrastructure provision.

4.3 At officer level, Sunderland is liaising with the other North East councils to develop as far as possible common methodologies and approaches to taking CIL forward.

The Infrastructure Delivery Plan

4.4 Infrastructure planning is fundamental to delivering the city's Local Development Framework (LDF). The Core Strategy will be subject to an independent examination and tested, in part, as to whether its policies and proposals are deliverable. Independent of preparing for CIL, core strategies must in their own right be supported by an Infrastructure Delivery Plan (IDP) setting out :

- What physical, social and green infrastructure is needed to enable the amount of development proposed for the area
- As far as possible, how and when infrastructure will be delivered (including an understanding of committed and planned spending as well as funding gaps); and
- Who will deliver the necessary infrastructure.

4.5 The IDP must include the operations of all infrastructure providers including the Council, and other public and private organisations. Alongside Sunderland's emerging Core Strategy, the IDP has been developed which covers infrastructure important for delivering the specific aims of the Core Strategy. A range of partners, agencies and service providers from the public and private sectors including internal stakeholders have been involved. These organisations have supplied information on their own plans, which through the IDP will help shape their strategic process and investment decisions. However, the IDP must be viewed as an evolving document which is monitored and updated regularly.

Developing the Economic Viability Evidence

4.6 Preparing the CIL Charging Schedule and in particular undertaking the economic viability / valuation assessments will be crucial to establishing the precise CIL charging levels. Consideration is presently being given as to how far this evidence can be delivered in-house.

4.7 In order to ensure that all forms of infrastructure are considered in the CIL, it will be necessary for all relevant Service areas and Members to partake in this project to identify their infrastructure needs and priorities in order to develop robust costs for the delivery of that infrastructure.

Timetable for Delivery.

4.8 CIL could not be adopted in Sunderland in advance of having an up to date development plan. It is proposed to align production of the CIL Charging Schedule to that of the Core Strategy (where possible undertaking joint consultations and a conjoined examination) into both documents and to adopt them simultaneously. A provisional timetable for the Core Strategy is as follows :

Key Milestone	Date
Revised Preferred Options Draft	Full Council – July 2012 (+ 6 week consultation)
Publication Draft	Full Council – November 2012 (+ 6 week consultation)

Submission Draft	April 2013
Examination in Public	July 2013
Receipt of Inspector's Report	November 2013
Adoption	Full Council – February 2014

5.0 CONCLUSION

- 5.1 The Coalition Government has confirmed the future use of the Community Infrastructure Levy as the primary means to seek contributions for infrastructure from developers. In addition, the future use of existing Section 106 Agreements will be significantly scaled back. Therefore in order for the Council to continue and make even greater use of contributions from developers for there scope and breadth of contributions towards infrastructure, there is a need to prepare a CIL.
- 5.2 All Regulations are currently in place for authorities to proceed. The changes that will come into force through the Localism Act are relatively minor and in the main will seek to provide more flexibility for authorities in the preparation of their CILs.

6.0 RECOMMENDATIONS

- 6.1 Committee is requested to note this report for information.

7.0 RELEVANT CONSULTATIONS/ CONSIDERATIONS

- a) **Financial Implications** – It should be noted that the costs of delivering CIL within Sunderland would be far outweighed by not implementing it (in terms of lost revenue for infrastructure from developers). However, there is scope within the CIL regulations to use 5% of the total receipts raised from CIL to recover such expenses.
- b) **Legal Implications** – Whilst developing CIL is not a mandatory requirement, there are (and will be) regulations that will need to be adhered to as it advances through its formal processes.
- c) **Policy Implications** – Development of a CIL charging schedule will facilitate the delivery of infrastructure that will be required to meet the growth requirements contained within the city's emerging Core Strategy.
- d) **Consultation** - Consultation on this report has been carried out with all relevant Council Services, including Commercial and Corporate Services, Property Services, Planning and Environment, and comments have been included into the report.

Background Papers

The Community Infrastructure Levy Regulations (April 2010)
The Community Infrastructure Levy (Amendment) Regulations (April 2011)
The Community Infrastructure Levy – An Overview (May 2011)
The Community Infrastructure Levy Relief (May 2011)
The Community Infrastructure Levy Guidance – Charge Setting and Charging Schedule Procedures (March 2010).

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Annex1: The Community Infrastructure Levy Programme

(Based on: Planning Act 2008 and SI 2010 948 as amended by SI 2011 987)

Stage 1. Prepare evidence base

Will need to cover:

- Actual and expected costs of infrastructure
- Economic viability of development
- Other actual and expected sources of funding for infrastructure
- CIL administrative expenses and the extent these will be funded from CIL

Stage 2. Prepare a preliminary draft charging schedule

This must set out:

- Rates (set in £/m²), or other criteria, having regards to:
 - Actual and expected costs of infrastructure
 - Economic viability of development
 - Other actual and expected sources of funding for infrastructure
 - Administrative expenses in connection with CIL and the extent to which these will be funded from CIL
- An OS map identifying the boundaries of differential rates zoning (if applicable)
- An explanation of how the chargeable amount will be calculated

Stage 3. Consult on preliminary draft charging schedule *(No timescales given in terms of a minimum period).*

Send copies to and consult with the consultation bodies:

- adjoining district councils
- adjoining county council
- responsible regional authority
- parish councils in the district

And notify and consult with:

- all local residents / businesses
- and other persons / bodies the district council considers appropriate

Stage 4. Prepare and publish report on consultation

Need to be able to demonstrate how the consultation responses have been taken into account (before publishing the draft of the charging schedule for examination)

Stage 5. Prepare and consult on draft charging schedule

Before submitting a draft charging schedule for examination, the council must :

- make copies of the draft schedule, evidence and statement of the representations procedure at the district council offices and publish the same information on website (including notice of where copies are held)
- send copies of the draft schedule, and statement of the representations procedure to the consultation bodies
- advertise the statement of the representations and where copies are held
- The consultation period shall be no less than 4 weeks

Stage 6. Assess responses and need for further modification

The council will need to assess the main issues raised through the consultation on the draft charging schedule, and whether any further modifications are needed.

Stage 7. Appoint examiner

Appointment of examiner (independent of the council and with appropriate qualifications and experience).

Stage 8. Submit draft charging schedule for examination

Submit schedule together with:

- a declaration that the council has complied with the Planning Act 2008, has used appropriate available evidence to inform the draft charging schedule
- number and main issues raised from consultation

- copies of any representations made
- modifications made to the draft charging schedule as a result of the consultation (NB because this is not subject to further consultation, and person may request to be heard by the examiner in relation to these modifications, provided that they make such a request within 4 weeks of the submission)
- relevant evidence

Following submission, the council must :

- make copies of the draft schedule, the declaration, information on the number and main issues raised through the consultation on the draft charging schedule, and any modifications made to the draft charging schedule as a result of the consultation at the district council offices and publish the same information on the Website (including notice of where copies are held)
- give notice to those person who requested that the draft has been submitted
- if the draft was modified, it must also send a copy of the modifications to each of the consultation bodies
- forward copies of any requests to be heard to the examiner on the modifications as soon as practical after the 4 week period

Stage 9. Organise and hold the examination

The council must publicise on its website and give notice by local advertisement the time and place at which the examination is to be held, and the name of the examiner. Any person that has requested to be notified or who has made a representation must also be notified, at least 4 weeks before the opening of the examination (or at least two weeks in the case of requests to be heard on a modification).

The examiner may refuse to allow representations to be heard if these are considered irrelevant, frivolous, vexatious or repetitious.

Two or more charging schedules may be examined jointly if the charging authorities agree. Examination may also be carried out jointly with the examination of a single DPD, if the SoS agrees.

Stage 10. Finalise the charging schedule

Examiners report received.

Council publishes the examiner's recommendations and reasons and the agreed charging schedule, which also needs to include :

- the date on which the charging schedule was approved
- the date on which the charging schedule takes effect
- a statement that it has been issued, approved and published in accordance with the CIL Regs and Planning Act 2008

Charging schedule takes effect – it must be:

- Published on the website
- Available for inspection at the council offices
- Its approval and availability be locally advertised
- Copies must be sent to each of the relevant consenting authorities if applicable

Stage 11. Monitor implementation and publish annual report

The council must prepare a report for any financial year in which it collects or holds money collected from CIL. The report must be published no later than 31 December following the year end, and must include:

- Total CIL receipts for the year
- Total CIL expenditure for the year
- Summary of what CIL has funded (including any admin or interest on borrowings)