

CAMBRIDGESHIRE HORIZONS

Agenda Item No: 11b

Investment Package Update:

The Community Infrastructure Levy

To: **Cambridgeshire Horizons Board**

Date: **23rd March 2010**

From: **Chief Executive**

Purpose: **To update Board members on progress with work to establish the Community Infrastructure Levy in Cambridgeshire.**

Recommendation: **The Board is invited to note the contents of this report and offer any comments.**

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1. INTRODUCTION

The Board will recall that we took forward a significant piece of work to establish the attractiveness of moving towards a tariff-based system as a better method for collecting developer contributions. Given that some 40% or so of developments in Cambridgeshire contribute nothing to the overall infrastructure needs, the Board considered this to be worth pursuing. We had initially considered using the existing s106 legislation as the basis for a variable rate tariff on new development, however, as the Government were moving towards implementing the Community Infrastructure Levy (CIL), and this provided a stronger legal basis for any charge, and greater flexibility, it was decided to move from a presumption of implementing a variable rate tariff to a presumption of implementing CIL instead.

CIL will be a new system of collecting contributions to infrastructure from new development through standard charging. A standard charging system was initially proposed by the Barker Review in 2004, with enabling legislation including in the 2008 Planning Act. Draft regulations for the Community Infrastructure Levy (CIL) were published by the Department of Communities and Local Government (CLG) in July 2009. Cambridgeshire Horizons led a joint countywide response to the consultation on these regulations. This response was submitted prior to the deadline of the 23rd October and can be viewed here:

http://www.cambridgeshirehorizons.co.uk/documents/publications/horizons/joint_cil_consultation_response_Oct_09.pdf

Final regulations, amended in response to the consultation, were issued by the government on 10th February 2010. They are currently going through examination and debate by the House of Commons. Should the intended timetable be followed, the regulations will come into force on 6th April 2010. The final Regulations can be found here:

http://www.opsi.gov.uk/si/si2010/draft/pdf/ukdsi_9780111492390_en.pdf

CLG have stated that further guidance on the implementation of CIL will be published in due course. Horizons has been working with the local authorities in considering implementation issues, and in particular with Huntingdonshire District Council, East Cambridgeshire District Council and Cambridgeshire County Council on the potential piloting of CIL in the Hunts and East Cambs areas.

2. ANALYSIS

The joint Cambridgeshire response to the Community Infrastructure Levy consultation (submitted in October 2009) endorsed the principle of the CIL whilst raising a number of key issues. In response to the consultation, the Department of Communities and Local Government modified the regulations in several important respects. The regulation below picks out the fourteen key issues raised in the consultation response, and analyses how the final CIL regulations have addressed them.

i) The transition between regulation 106 and CIL

The final regulations do not provide the clarity requested in the consultation response as to how the transition to CIL will be managed. The alteration from entirely negotiated agreements to standard charges will require a step change in both the public and private sectors. However, the regulations do go some way to clarifying how the use of regulation 106 will be restricted once the CIL regulations come into effect.

ii) The residual use of regulation 106 agreements

As proposed in the consultation document, once CIL regulations come into force the policy tests within Circular 05/05 on planning obligations will be rationalised. As the tests within the CIL regulations will be statutory, they will have greater strength than the policy tests of the circular. The intention behind this is to avoid 'double counting', so that developers are not paying twice for the same infrastructure through CIL and regulation 106.

The CIL regulations state that:

- 'A planning obligation may only constitute a reason for granting planning permission [...] if the obligation is –
- a) necessary to make the development acceptable in planning terms;
 - b) directly relevant to the development; and
 - c) fairly and reasonably related in scale and kind to the development.'

(Regulations 122)

This approach broadly accords with the joint consultation response submitted by Cambridgeshire. It should however be noted that regulation 106 agreements that might duplicate collection of CIL are not completely prevented by the regulation above, although they must be disregarded in the decision to grant or refuse planning permission for development.

iii) Setting the rate of CIL

In the consultation response, we emphasised the need for a pragmatic approach to setting rates of CIL, with the recognition that setting rates perfectly would be impossible. We also noted that rates should not be based on the lowest value developments, but rather average values.

The final CIL regulations do not contain refer to lowest value developments when describing how rates should be set, and uphold the pragmatic approach that we proposed. Regulation 14 states that:

- 'In setting rates (including differential rates) in a charging schedule, a charging authority should aim to strike what appears to the charging authority to be an appropriate balance between-

- a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and
- b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.'

The regulations thus provide local authorities with the welcome flexibility to make judgements as to the appropriate levels of CIL. The requested guidance on 'reasonable' levels of developer profit (for use when considering viability) has not been included in the regulations.

iv) Additionality

Within our consultation response, we asked for reassurance that CIL would be an additional source of revenue for Local Authorities, rather than a substitute for existing avenues of infrastructure investment. No specific response to this point is included in the final regulations. Regulation 59, covering 'Application of CIL' is broad, and does not specify which infrastructure providers may or may not receive CIL. This regulation notes that,

'[...] any reference to applying CIL includes a reference to causing it to be applied, and includes passing CIL to another person for that person to apply to funding infrastructure.'

v) Cost of introducing CIL

The issue of costs incurred through the introduction and administration of CIL, including the requirement for new skills, structures, and procedures, was emphasised in our consultation response. The final CIL regulations have responded positively to this by explicitly stating that;

'A charging authority may apply CIL to administrative expenses incurred by it in connection with CIL.'

(Regulation 61)

However, the above regulation would not allow the administrative costs of other organisations, for example key infrastructure providers, to be met unless they were collecting authorities for CIL. The amount of CIL to be used to fund administrative expenses is capped at 5% of CIL revenue per annum, with slightly greater flexibility in the first three years after introduction, in recognition of the initial one-off costs of setup.

vi) Skills and Capacity

The final regulations and associated impact assessment do not fully address the issue of skills and capacity required for successful CIL implementation, which was given strong emphasis in the consultation response. In particular, the increased

requirement for delivery of infrastructure projects will be significant. Organisations that do not charge or collect CIL won't be able to claw-back CIL for any increased costs incurred through infrastructure project delivery. Nonetheless, as stated under point v) above, provisions are included for the claw-back of relevant set-up costs for charging and collecting authorities.

vii) Differential Rates of CIL

As noted under point iii), a pragmatic approach to setting CIL levels is proposed within the final regulations. Regulation 13 states that:

‘A charging authority may set differential rates-

- a) for different zones in which development would be situated;
- b) by reference to different intended uses of development.

In setting differential rates, a charging authority may set supplementary charges, nil rates, increased rates or reductions’

Further guidance on this is expected from the Department of Communities and Local Government (CLG). The ability to fit CIL to local conditions is nonetheless warmly welcomed, especially as it improves upon the slightly more proscriptive approach set out in the draft regulations.

Our consultation response proposed a procedure to set bespoke levies for sites above a certain size (for example, major urban extensions). Although this specific suggestion was not picked up in the final regulations, the ability to set geographically differentiated rates of CIL was confirmed. This will allow the rates of CIL to reflect major developments sites as necessary.

viii) Levying the charge on gross or net development

The draft regulations for CIL proposed to levy the charge on gross development, which could have acted as a disincentive to the redevelopment of brownfield sites. The final regulations instead propose net development as the metric of charge. Arguably the gross metric would have proved simpler (as it did not require knowledge of the volume of existing development on a development site); however a net metric was deemed to be fairer. It would certainly seem contrary to the principle of CIL to charge existing development as well as new, given that the charge may only be spent on infrastructure required by new growth. On the other hand, concern has been raised that redevelopment may not involve replacing like for like, and different uses have varying infrastructure impacts.

ix) Testing soundness of a CIL charging schedule

There remains a lack of information within the regulations as to how the independent examiner will test a CIL Charging Schedule, the document that a Local Planning Authority must adopt in order to charge CIL. The format and content of such a schedule are also largely left open to Local Authority discretion. Additional guidance from CLG will therefore be needed to gain a fuller understanding of examiners' expectations, and is likely to be provided in due course.

It can safely be assumed from other planning policy (notably Planning Policy Statement 12: Local Spatial Planning) that detailed evidence of infrastructure needs will be necessary. A substantial and growing body of information is available to the Local Authorities in Cambridgeshire to this end. Continued joint working between local planning authorities and infrastructure providers will ensure integration between Charging Schedules and capital programmes.

x) Phasing CIL payments

A particular concern raised in the CIL regulations consultation, both in our response and by groups representing the development industry, was the lack of flexibility regarding payment of CIL. The draft regulations stated that the entire charge would have had to be paid within 28 days of commencement. For large developments, this would have placed an unreasonable up-front financial burden on liable parties.

The final regulations have responded to this by including provisions for phasing payments, on condition that the chargeable amount of CIL exceeds £10,000. When the amount is greater than £40,000, payment is,

‘[...] due in four equal instalments at the end of the periods of 60, 120, 180 and 240’

(Regulation 70)

There is a lack of flexibility within these provisions; however this would avoid the lengthy negotiations as to phasing of payments which are a feature of regulation 106 agreements.

For major sites that require phased delivery, regulation 8 enables CIL to be paid by phased reserved matters application. This avoids the cashflow difficulties that would arise on a strategic site, should the CIL required by the entire development become due within the 240 day window.

xi) CIL collection in two-tier Local Authorities

Within the consultation document there was a lack of recognition of the implications for CIL of two-tier local authority structures, and the challenges that these would pose for the management of the levy. Throughout the tariff and CIL work in Cambridgeshire, it has been very clear that there would need to be clear agreements in place between the two tiers of Local Authorities in order for standard charging to work effectively. Close co-ordination when infrastructure planning would also be vital, with County Councils provided with the opportunity to sign off an agreed schedule.

The final CIL regulations require Local Planning Authorities to consult County Councils on a preliminary draft charging schedule when proposing to introduce CIL. However, there are no further provisions regarding the role of upper tier councils. In Cambridgeshire, discussion of how this key relationship will work has already begun. Our experience to date suggests that one-off agreement between each district and

the county council is needed. This agreement would set out the percentage of CIL/tariff collected that the county council will receive and when it will be transferred.

xii) Treatment of Affordable Housing

The joint consultation response raised particular concerns regarding the treatment of affordable housing in the draft CIL regulations. The draft proposals were not clear, and based on a definition of affordable housing that was obscure and poorly known. Exemption from CIL was based on charitable status, and included an additional criterion of receiving public subsidy. On balance, we felt that the proposals had the potential to reduce the delivery of affordable housing.

The final regulations have clarified the picture. Charitable development has a mandatory exemption from CIL, based on the developer being a charitable institution and the development being for charitable purposes. Affordable housing is subject to social housing relief, provisions for which include relatively a wide definition of affordable housing (although this may nonetheless act as a deterrent to tenure innovation in the sector). As with the other forms of relief, the onus is on the planning applicant to apply for relief and demonstrate why it is needed. The Local Authority must then follow regulation 50 which sets out the calculation of relief. This appears to limit discretion regarding rates of affordable housing relief.

Other reliefs from CIL are discretionary, allowing the Local Authority flexibility to use them at the appropriate level. The potential reliefs a Local Authority can offer are discretionary charitable relief and discretionary relief for exceptional circumstances.

xiii) Exceptions to CIL

The draft consultation document noted that providing exception to CIL on economic viability grounds would undermine the basis of the charge. Our consultation response did not disagree with this, but requested that a narrow exceptions policy be included. This would allow Local Authorities some discretion when key policy goals were at stake with particular developments, for example a regeneration project.

The final regulations include such a policy. Regulation 55 states that:

- ‘A charging authority may grant relief (“relief for exceptional circumstances”) from liability to pay CIL in respect of chargeable development if-
- a) it appears to the charging authority that there are exceptional circumstances which justify doing so; and
 - b) the charging authority considers it expedient to do so.’

In order to use this procedure the Local Authority must first have set out a policy on relief for exceptional circumstances. Such relief must be claimed by the planning applicant, accompanied by an assessment of why relief should be granted. There is no procedure to appeal if the application for relief has been turned down, unless the Local Authority has incorrectly calculated the amount of CIL to be paid.

Conditions that must be met for relief to be granted include that a Section 106 agreement must already be in place, with a value greater than the CIL liability. This

could prevent exceptional circumstances relief being used to exempt schools and other CIL-funded infrastructure projects from incurring liability. It should also be noted that only one form of CIL relief can be claimed; the three may not overlap.

xiv) Payment in-kind

The draft CIL regulations did not include provision for CIL to be paid ‘in kind’, through direct provision of infrastructure. Although this is a common approach to regulation 106 contributions, it seems counterintuitive under CIL, the purpose of which is to de-link the infrastructure contribution to be paid from the development paying it. Our consultation response noted the potential difficulty in securing land for new infrastructure under CIL.

The final regulations have responded to this by adding provisions for payment of CIL in part of whole by transfer of land. The value of the land is then offset against CIL. This should in principle prove highly useful to secure sites for new schools, for example.

3. NEXT STEPS

As mentioned above, Huntingdonshire District Council and East Cambridgeshire District Council intend to pilot the Community Infrastructure Levy. A working group, which includes senior officers from both districts and the County Council, has been convened to prepare for the implementation of CIL. To advise this group, Cambridgeshire Horizons have retained DentonWildeSapte, the legal firm who previously assisted with the variable rate tariff work. A key workstream for the group will be negotiating governance arrangements between the districts and county council and ensuring that robust Charging Schedules are developed and agreed.

There remains the risk that the CIL regulations will not be implemented on April 6th. Should this be the case, there remains the potential for the regulation 106-based variable rate tariff to be introduced instead. The Conservative party have also indicated in their green paper ‘Open Source Planning’ that they may wish to abandon CIL as currently constituted, and replace it with a local community tariff (which may replicate much of the core elements of CIL). All the partners involved in CIL are closely monitoring the progress of the levy, and the wider political situation, in order to ensure that, notwithstanding a changing political landscape, we can move to the most effective means of securing infrastructure investment from new developments across Cambridgeshire.