

**HAMPSHIRE COUNTY COUNCIL**

**Report**

<b>Committee:</b>	Environment and Transportation Select Committee
<b>Date of meeting:</b>	29 June 2010
<b>Report Title:</b>	Community Infrastructure Levy
<b>Report From:</b>	Director of Environment

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**1. Purpose of Report**

1.1. To provide Members with an update on the Community Infrastructure Levy and to highlight the implications that its introduction will have on the County Council.

**2. Contextual Information**

2.1. The Community Infrastructure Levy (CIL) is a new planning charge which came into force on 6 April 2010. Local authorities in England and Wales will be empowered, but not required, to levy a charge on most types of new development in their areas. The levy will provide funding for new local and sub-regional infrastructure to support the development of an area in line with the local authorities' development plans.

2.2. The authorities responsible for charging CIL (Charging Authority) will be districts, unitary authorities and national park authorities. The County Council will not be a charging authority but will be able to collect CIL payments on behalf of the charging authority in respect of applications for which they are the planning authority (Collecting Authority).

2.3. The charging authority will be required to identify and cost the infrastructure required to meet the needs of the development expected to come forward through the adopted Local Development Framework (LDF). Expected funding sources will need to be established in order to identify the funding gap which could potentially be filled by CIL. A charging schedule will then need to be drawn up identifying the charges per square metre of development – differential rates can be set for different locations or types of development. However, the rate at which the charge is set must have regard to the viability and should not be set at a rate such as to put the overall development of an

area at risk. This means that the CIL charge will need to be set at the lowest rate any development in the district or zone can pay and still be economically viable.

- 2.4. Expenditure of the CIL funding collected is not restricted, in that it may be spent on any scheme within a district, as long as it is spent on the infrastructure identified in the charging schedule. The CIL regulations have been introduced in order to provide infrastructure to support the development of an area rather than to make a specific development acceptable and therefore the need to relate the spending of monies to a specific development has been removed.
- 2.5. It is up to the Charging Authority to determine how the CIL funding is spent and therefore it will be the district and borough councils which, if they introduce CIL, will be setting the priorities and allocating funding to the County Council and other external infrastructure providers such as the PCT. However, the regulations require infrastructure to be provided in a timely manner as need arises and therefore it will be incumbent on the Charging Authority to distribute the appropriate funding to the County Council in order to deliver essential infrastructure.

### **3. Impact of CIL on funding Hampshire County Council**

- 3.1. There are a number of ways in which the introduction of the CIL Regulations will impact upon the County Council's ability to collect funding from developments:

- (i) **Impact of CIL Legislation from 6 April 2010**

In order to make way for CIL and ensure that it is the sole mechanism for securing pooled contributions for infrastructure, the use of Section 106 Agreements will be limited.

CIL regulation 122 places into law for the first time the policy tests set out in Circular 05/2005 on the use of planning obligations. From 6 April 2010 it will be unlawful for a planning obligation to be taken into account when determining an application if the obligation does not meet all of the following tests:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

Whilst these tests are currently contained within Circular 05/2005, the change from policy to statute will no doubt cause concern for local authorities whose Section 106 Agreements may now be challenged at

appeal or by Judicial Review if the planning obligations are considered to be unlawful, regardless of whether or not a developer has agreed.

(ii) **If a District introduces CIL**

(a) **Developing the charging schedule**

In order to develop the charging schedule the district council will have to liaise with all infrastructure providers, including the County Council, to identify what infrastructure is required in order to accommodate the level of development proposed within the core strategy.

Given that any levy introduced is unlikely to fund all of the infrastructure required, it will be up to the district to prioritise the list and identify what infrastructure items will be funded first. It will therefore be vital that the County Council works closely with the district in order to provide the evidence base for the infrastructure need and ensure that priority is correctly identified. There will be an opportunity to make representations at the Examination in Public if it is considered that the district has not taken account of the County's requirements.

Once the charging schedule has been agreed the County Council will need to liaise closely to ensure that funds are received from the district in order to provide the infrastructure in a timely fashion as development proceeds.

(b) **Impact on Section 106 Agreements**

CIL regulation 123(3) takes effect as soon as a CIL charging schedule takes effect and prevents local authorities from securing planning obligations towards infrastructure where they are capable of being funded by CIL. In effect, all contribution tariffs designed to raise funds for infrastructure will be inoperable from this date. Local authorities will not be permitted to omit infrastructure or be specific with the infrastructure listed on the charging schedule with the purpose of circumventing this policy. This will impact upon both Highways Development Planning and Children's Services who have tariff based policies in operation at present. This will also impact upon those departments looking to develop a tariff system in the near future.

However, Communities and Local Government has confirmed that where contributions are sought towards revenue (ie bus services), local authorities will be encouraged to develop a tariff policy in order to ensure transparency and certainty for developers.

(c) **County Council applications**

The County Council will be liable to pay CIL for any applications made as landowner, regardless of whether the application is for the provision of infrastructure to be funded by CIL (ie a school). The only way to avoid this is for the charging authority (ie the district) to exempt or set a zero charge for the particular use which, in the case of schools, is use class D1. However, this would need to be done on a basis of economic viability and the charging authority would need to present the necessary evidence at the EIP to justify its proposal. The charging authority could not set differential rates which would impact disproportionately on a particular sector or small group of developers.

(iii) **If a District does not introduce CIL**

If a district chooses not to introduce CIL the implications will not be truly seen until 6 April 2014 when regulation 123(3) takes effect, regardless of whether or not a CIL is introduced. The County's tariff policies will all become unlawful and it will not be possible to secure planning obligations for infrastructure.

There will be an opportunity for a limited number of planning obligations to be secured and pooled towards a specific type of infrastructure or scheme. A maximum of five planning obligations may be secured within a district towards a specific scheme or type of infrastructure, however this limit will not enable authorities to provide all of the infrastructure required in order to accommodate development. This will result either in additional pressure being placed on existing services and pressure for the local authorities to use their own limited funds to address the problems, or infrastructure providers, such as the County Council, objecting to planning applications on the basis that it would have an unacceptable impact on existing infrastructure.

In practice, due to the restrictions that the CIL regulations put on planning obligations, districts will be forced to introduce CIL in order to ensure that infrastructure can be delivered to accommodate development in their areas.

#### **4. Conclusions**

- 4.1. It is clear that the CIL has serious implications for the County Council. The funding that has traditionally been collected by the County Council will be collected by the districts, should they choose to implement CIL, and they will prioritise the spending of those funds. Given that it is accepted that CIL will not raise all of the funds necessary to pay for the infrastructure required to support the level of development expected in Hampshire, there is a real concern that development will proceed without adequate mitigation resulting in further pressure on existing infrastructure.

- 4.2. The Conservative planning green paper 'Open Source Planning' stated that it was their intention to 'scrap' CIL. It is hoped therefore that the CIL Regulations will be abolished by the new Government in the near future in order to make way for a local tariff system, which is more appropriate for two tier authorities.
- 4.3. The majority of districts within Hampshire are waiting to see what changes to the planning system are brought about by the new Government before committing any resources to CIL. In any event, they will need to have an approved Core Strategy in order to introduce CIL.

**Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

Document

Location

None

**IMPACT ASSESSMENTS:**

**1. Equalities Impact Assessment:**

1.1. Not applicable.

**2. Impact on Crime and Disorder:**

2.1. Not applicable.

**3. Climate Change:**

a) How does what is being proposed impact on our carbon footprint / energy consumption?

Not applicable.

b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

Not applicable.