

The Vale of Glamorgan Council

Cabinet Meeting: 24 April, 2017

Report of Cabinet Member for Regeneration and Education

Community Infrastructure Levy

Purpose of the Report

1. The purpose of this report is to advise Cabinet on the progress made to adopt Community Infrastructure Levy (CIL) to date within the Vale of Glamorgan, the recent independent review of CIL commissioned by the Department for Communities and Local Government (DCLG), current S106 procedures and contributions and the likely future of CIL in Wales and the Vale of Glamorgan.

Recommendations

1. That until a clear direction from Department for Communities and Local Government (DCLG) or the Welsh Government on the future of CIL (depending on when any devolved powers are in place), progress on CIL is placed in abeyance.
2. Subject to the approval of Recommendation 1, that a further report is presented to Cabinet when there is clear direction from Department for Communities and Local Government (DCLG) or the Welsh Government on the future of CIL, on any changes to the CIL regulations or proposals for a replacement development tariff.
3. That this report be referred to Planning Committee for information.

Reasons for the Recommendations

1. To avoid unnecessary or abortive work on CIL preparation given the financial costs and significant officer time to continue to progress CIL and given that it is likely that CIL to be replaced by a new form of development tariff.
2. To ensure that Cabinet is advised of any changes in legalisation and devolved powers and to agree a way forward, should a new form of development tariff be introduced.
3. To advise Planning Committee of the current position in respect of CIL.

Background

2. The Community Infrastructure Levy (CIL) came into force in April 2010 and allows local authorities to raise funds from owners or developers of land undertaking new

building projects in their area, to help fund infrastructure. CIL legislation falls within the remit of the Department for Communities and Local Government (DCLG), and has not been devolved to Welsh Government.

3. On 21st February 2011, Cabinet resolved to commence work on preparing a Community Infrastructure Levy (CIL) for the Vale of Glamorgan. CIL has been progressed in tandem with the preparation of the Local Development Plan (LDP). The LDP Examination in Public commenced in January 2016. Following hearing sessions, the submission of a number of Action Points and further hearing sessions, the Council is currently awaiting the Inspector's Report, which will advise whether the Plan can be adopted by the Council.
4. The Council has been in the process of updating the evidence necessary, based on the growth identified in the LDP, to establish a draft charging schedule for CIL. It was hoped that the Council would have a CIL charging schedule in place in 2017. Work has been undertaken with consultants updating viability work and officers are working on providing a robust evidence base to cost all infrastructure works to accommodate growth to identify any gaps in funding, which would justify the introduction of CIL.

Relevant Issues and Options

5. CIL was intended to operate alongside a scaled back system of section 106 planning obligations, which will only be used for site-specific items and affordable housing. CIL is a local levy and it is the responsibility of planning authorities in England and Wales to decide whether to introduce it. CIL was introduced with a view of providing a faster, fairer and more transparent way of collecting contributions towards the infrastructure necessitated by the impacts of development.

DCLG CIL Review

6. The Government commissioned an independent review of the Community Infrastructure Levy in November 2015. The research examined the amount of revenue CIL is raising, the types of development that are paying CIL, impacts on viability and the operation of the neighbourhood share of CIL. The independent review group submitted their report to Ministers in October 2016 and was published in February 2017 - A New Approach To Developer Contributions (see Appendix A) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589637/CIL_REPORT_2016.pdf. In summary, the report concludes that CIL was not achieving its original objectives of providing a faster, fairer and more transparent way of collecting contributions towards the infrastructure necessitated by the impacts of development, and that there is a better way of achieving the original objective.
7. Principally, it is stated that CIL has not raised as much money as was envisaged by Government, nor is it raising as much as local authorities were anticipating. The revenue collected since the introduction of CIL is materially less than was expected at the outset. The situation has, however, been mixed for charging authorities with some, after an initial delay, collecting around the level expected, but others receiving as little as 50% of what they had anticipated which they attribute largely to the number of subsequent exemptions.
8. It is clear that the potential role of CIL in meeting infrastructure costs has often been overstated resulting in unrealistic expectations amongst local communities as well as developers as to the amount of infrastructure that will be provided. Figures cited in the report by respondents suggest that CIL is only yielding between 5% and 20% of the funding required for new infrastructure in an area leaving the balance to be found by local authorities who are having to address their own financial challenges

9. It should also be noted that National Government has sought to support certain types of development by exempting them from CIL or allowing relief to be claimed, such as affordable housing and self-build housing. A consequent effect of so many exemptions and reliefs are that fewer and fewer types of development then carry the remaining burden of CIL, which raises an issue of fairness. Given the potential for extensive exemptions and reliefs, this can lead to local authorities to impose higher rates for those remaining developments, potentially tipping them towards unviability.
10. There is, however, a further and more significant problem with so many exemptions and reliefs in that they reduce substantially the amount of money that can be collected for infrastructure. In some areas, the report states that over forty per cent of development was exempted for one reason or another. A number of local authority respondents suggested that their expected CIL income had reduced by some 50% because of exemptions.
11. In terms of the way forward, the report recommends that Government consider a twin-track approach that allows local authorities to take advantage of the best elements of the existing CIL and Section 106. It is recommended that the Government should replace the Community Infrastructure Levy with a hybrid system of a broad and low level Local Infrastructure Tariff (LIT) and Section 106 for larger developments
12. Other recommendations (as summarised) include:
 - LIT should be calculated using a national formula based on local market value set at a rate of £ per square metre
 - Government should devise a LIT formula for commercial development that ties it to the residential rate but which does not exceed it
 - very few or no exemptions to the LIT
 - No examination process for LIT - a simple mechanism to address any representations on coverage or quantum of the LIT rates
 - requirement for a Regulation 123 list should be removed and spending of the LIT should be reported through the Authorities' Monitoring Report
 - small developments (10 units or less) should pay only the LIT and no other obligations, unless exceptional circumstances apply
 - for large/strategic developments local authorities should be able to negotiate additional and specific Section 106 arrangements
 - pooling restrictions set out in Regulation 123 should be removed
 - amendments to the regulations as an interim measure to address the most immediate issues arising from CIL
 - that a LIT should be a mandatory charge except where it would bring in insufficient funds to justify the cost of collection
 - that Government allows for sufficient transitional arrangements to be put in place. 2020 would appear to be a sensible date for transition to be completed.
13. The report also recommends a provision is made for Combined Authorities to agree the imposition of a low level 'Mayoral' type Strategic Infrastructure Tariff to be imposed across the Combined Authority area. The Strategic Infrastructure Tariff should be restricted for use on a small number of major projects that will benefit the wider area.

14. LIT is likely to be a mandatory charge except where it would bring in insufficient funds to justify the cost of collection.

Future of CIL in England and Wales

15. As of 1st October 2016, within England and Wales, there are 130 authorities charging CIL (not including the Mayor of London and the London Legacy Development Corporation) with a further 88 working towards adopting a CIL. Generally CIL implementation is further advanced in the south and east of England, including almost complete coverage in London. However, it is noted that implementation is much patchier in the north, midlands and Wales.
16. In terms of the Welsh perspective, of the 22 Councils, only 3 have a CIL charging schedule in place, namely, Caerphilly, Merthyr Tydfil and Rhondda Cynnon Taff. Newport's CIL Draft Charging Schedule was examined by a Planning Inspector over the summer of 2016 and the Inspector recommended that the Charging Schedule be approved, although progress on CIL has been halted pending the outcome of the CIL review. Both Cardiff and Monmouthshire undertook Public Consultation on September/October 2016 and March/May 2016 and are reviewing their positions.
17. More generally, a number of authorities who do not yet have a CIL in place have ceased progressing CIL, pending the outcome of the CIL review and the future of CIL given the possibility of devolved powers to Wales.
18. There is also evidence that CIL has had an impact on the delivery of affordable housing in Local Authorities (LA's). Ordinarily, where there are viability issues, authorities can prioritise the delivery of affordable housing against financial contributions. LA's that do have a CIL charge in place, cannot re-negotiate the CIL contributions and where there are viability issues, it is the affordable housing provision that tends to suffer.
19. In light of the above, many LA's have chosen not to progress CIL and work within the restrictions set out in the CIL regulations in securing financial contributions under S106, to allow flexibility to prioritise financial contributions and affordable housing.

Wales Act and CIL Powers coming to Wales

20. The Wales Bill was published by the UK Government on 7 June 2016. Its principal purpose was to amend the Government of Wales Act 2006 to move to a reserved powers model of law-making for the National Assembly for Wales. The Bill received Royal Assent as the Wales Act 2017 on 31 January 2017.
21. Welsh Government have confirmed that CIL has been devolved to Wales as part of the Wales Act and they currently anticipate the powers coming across in April 2018. A Transfer of Functions Order will be required to allow Welsh Ministers to modify existing secondary legislation.
22. In light of this, Welsh Government may choose to continue with CIL as set out in the existing regulations, or chose to amend the system or scrap it altogether. Given this degree of uncertainty to the future of CIL in Wales it would be prudent to put all work on CIL in abeyance until there is clarity on the way forward.

Current S106 and Council procedures

23. The Vale of Glamorgan Council was the first Council in Wales to appoint a dedicated Section 106 Planning Officer as part of the Development Control Team. As a

consequence the Council has adopted Supplementary Planning Guidance (SPG) on Planning Obligations and Affordable Housing, updated in draft in November 2015, and introduced protocols to enable effective negotiation and implementation of Section 106 agreements.

24. On 6th April 2015, Regulation 123 of the Community Infrastructure Levy (CIL) Regulations 2010 (As Amended) came into effect which restricts the way in which Local Planning Authorities can use section 106 agreements to pool financial contributions to deliver an infrastructure project. The restriction prevents pooling of contributions from 5 or more obligations entered into since 6th April 2010 (Regulation 123 refers). The Council keeps up-to-date detailed records of all section 106 agreements (which can be viewed on the Council's website) and each time negotiations are entered into with developers, officers check that the pooling restriction would not be breached by a proposed development and associated obligations.
25. In most cases, Section 106 obligations are site-specific and relate to the immediate locality of the development site, where the pooling restrictions are unlikely to take effect. However, a key area where this issue is relevant, is education contributions given the catchment areas within the Vale of Glamorgan, particularly the large catchment areas for secondary schools, welsh medium schools and denominational schools. Despite these restrictions, officers have been working with the Education Department, to identify specific projects within each school, in order to prevent the pooling restrictions being triggered.
26. Despite, the pooling restrictions being in place since April 2010 under the CIL regulations, the Council has secured significant contributions since 2009, as set out in the table below:

Financial Year	Total number of Planning Permissions with legal agreement	Total value of Financial Contributions in these legal agreements
2009/10	21	£993,270.50
2010/11	15	£5,700,691.50
2011/12	18	£10,263,858.68
2012/13	12	£511,873
2013/14	22	£5,431,630.24
2014/15	18	£3,876,452.81
2015/16	21	£8,029,190.00

27. To date in terms of the 2016/2017 financial year, 21 legal agreements have already been secured with a value of £9,481,963.

Way Forward

28. The recommendation to Government (by the CIL review panel), is that CIL is replaced by a low level Local Infrastructure Tariff (LIT) and Section 106 for larger developments. Whilst this is only a recommendation to Government, it is likely that the Government will in due course act on the recommendations and progress amendments to legislation to abolish CIL and draft legislation for its replacement,

likely to be in the form of a Local Infrastructure Tariff (LIT). It is likely that transitional arrangements will be put in place, with a 2020 date given for the transition to be completed.

29. In the interim the recommendation is that the pooling restrictions set out in Regulation 123 should be removed. This would allow Local Authorities to continue to secure S106 financial contributions, without any restrictions on how many funding sources can pay for a single infrastructure project.
30. In terms of the Welsh perspective, CIL will be devolved to Wales. However it is not clear on what form CIL will take, whether it will be amended, or scrapped with a view to replacing it similar to the recommended proposals for a Local Infrastructure Tariff.
31. Based on the above, there is clear uncertainty in respect of the way forward in respect of CIL. Welsh Government have confirmed that the powers coming across in April 2018, with a Transfer of Functions Order will be required to allow Welsh Ministers to modify existing secondary legislation.
32. It is recommended that until such time as there is a clear direction from Department for Communities and Local Government (DCLG) or the Welsh Government on the future of CIL, that further works on CIL is put into abeyance given the financial costs and significant officer time needed to progress CIL, where any further works are likely to be abortive. This is on the basis that officers can continue to secure financial contributions under Section 106 and work effectively within the pooling restrictions. This is clearly proven given the value of the contributions already secured (as set out in the above table) without having the CIL in place.
33. Following a clear direction from Department for Communities and Local Government (DCLG) or the Welsh Government on the future of CIL, or its replacement, or any changes to the CIL regulations, that a further report is present to Cabinet advising of the latest position.

Resource Implications (Financial and Employment)

34. The contributions paid by developers under the current S106 procedures have a wide impact on many of the Council's functions including education, community facilities, open space, highways and public transport.
35. CIL would potentially affect a larger number of planning permission by S106, however the relief to self-builders under the CIL regulations would significantly reduce the number of developments where CIL would be chargeable. Not progressing with CIL at the current time, would not impact on the level of contributions received from developers under the current S106 procedures, given that officers have successfully worked within the CIL regulations to avoid pooling issues and since the introduction of the CIL regulations in 2010 have continued to secure significant levels of financial contributions (as set out above) from development, despite not having a CIL charging schedule in place.

Sustainability and Climate Change Implications

36. Financial contributions either through the current S106 procedures or any amended tariff on new developments, would be used to mitigate the impacts of new developments. In particular sustainable transport contributions can be used to enhance and provide new walking and cycling routes and infrastructure as well as enhancement to public transport services. This will ensure that developments are

not solely reliant on the use of the private car, to minimise the impacts of development on the environment, part of which could address the climate change.

Legal Implications (to Include Human Rights Implications)

37. The planning obligations and CIL regulations are covered by S106 of the Town and Country Planning Act 1990 (as amended), The Planning Act 2008 (as amended), The Community Infrastructure Levy Regulations 2010 (as amended) and the Localism Act 2011. The Wales Act 2017 devolves CIL powers to the Welsh Government.

Crime and Disorder Implications

38. None that would specifically arise from the report, although planning obligations or any tariff on development can indirectly address crime and disorder matters, through improvements to existing infrastructure.

Equal Opportunities Implications (to include Welsh Language issues)

39. None arising out of this report, although contributions or any tariff on developments to enhance community and public transport services, can improve accessibility and opportunities for a wide range of users, who may not otherwise have access to those facilities.

Corporate/Service Objectives

40. The contributions paid by Developers under the current planning obligations system or any future tariff on developments, would have a positive impact on many of the Council's functions including education, community facilities, highways and public transport, and seek to mitigate the impact upon services created by new development. More specifically, Section 106 financial and in-kind obligations assist in meeting the Council's Corporate Plan Objectives:
- Objective 2: Providing decent homes and safe communities – increasing the number of sustainable, affordable homes delivered within the Vale of Glamorgan.
 - Objective 3: Promoting regeneration, economic growth and employment –delivering sustainable transport improvement schemes; developing opportunities for employment and training through new developments; and Links between Penarth Haven and the Town Centre.
 - Objective 4: Promoting sustainable development and protecting our environment - developing a Community Infrastructure Levy which uses developer contributions to improve community facilities.
 - Objective 5: Raising overall standards of achievement – using Section 106 Education contributions to assist the education department to meet the Council's aims set out under this objective.
 - Objective 7: Encouraging and promoting active and healthy lifestyles – using Section 106 Sustainable Transport contributions to deliver infrastructure which will encourage and promote active and healthy lifestyles; using Section 106 Public Open Space contributions to support play development.

Policy Framework and Budget

41. This report is a matter for Executive decision by Cabinet.

Consultation (including Ward Member Consultation)

42. No Ward Member consultation has been undertaken as the report has implications for the Vale of Glamorgan as a whole, rather than specific wards. Consultation has been undertaken with the representatives of the relevant service areas.

Relevant Scrutiny Committee

43. Environment and Regeneration.

Background Papers

Town and Country Planning Act 1990

The Community Infrastructure Levy Regulations 2010

Planning Obligations SPG

A New Approach To Developer Contributions - report by CIL review team

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