

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

15 December 2010

Report of the Director of Planning Transport and Leisure

Part 1- Public

Matters for Information

1 COMMUNITY INFRASTRUCTURE LEVY

Summary

The Government has confirmed that the Community Infrastructure Levy will remain in force. This report considers the implications.

1.1 Background

1.1.1 The Community Infrastructure Levy (CIL) is a proposed charge to be placed on most new development with the proceeds being used to pay for the provision of both local and sub-regional infrastructure. CIL was introduced by the previous Government just before the election (by Regulations published 10 April). At the time it was questionable whether CIL would survive following the election and so no further action has been taken pending clarification about the future of the Levy. The new Coalition Government has now confirmed that, subject to some minor changes which will require primary legislation, CIL will remain in force. This is therefore now something that the Council will need to address in due course.

1.2 The Levy

1.2.1 Local Authorities are empowered, but not required, to levy the CIL on most types of development. CIL charges will be based on a simple formula which relates the charge to the size and type of development. The Government has concluded that local authorities should introduce the Levy because it will:

- deliver additional funding for them to carry out a wide range of infrastructure projects that support growth and benefit the local community
- give them the flexibility and freedom to set their own priorities for what the money should be spent on - as well as a predictable funding stream that allows them to plan ahead more effectively
- provide developers with much more certainty 'up front' about how much money they will be expected to contribute, which in turn encourages greater confidence and higher levels of inward investment

- ensure greater transparency for local people, because they will be able to understand how new development is contributing to their community and
- enable local authorities to allocate a share of the levy raised in a neighbourhood to deliver infrastructure the neighbourhood wants.

It is also designed to increase fairness by broadening the range of developments liable to pay for infrastructure; will enable the cumulative impact of small developments to be better addressed; and will enable important sub-regional infrastructure to be funded.

- 1.2.2 The Planning Act 2008 provides a wide definition of infrastructure which can be funded by the Levy, including transport, flood defences, schools, hospitals and other health and social care facilities. The definition allows the Levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, district heating schemes, police stations and community safety facilities. However, the Government makes it clear that CIL should only be used to fund the infrastructure needs of new development contemplated in the development plan and should not be used to remedy existing deficiencies unless these are made worse by the development. It should be noted that affordable housing will continue to be provided through the existing system of Section 106 agreements and not by CIL.
- 1.2.3 The charging authorities who will normally be responsible for administering, collecting and enforcing CIL will be district and unitary authorities and not County Councils, though some of the CIL funds collected by the districts may need to be passed to the County Councils to pay for those elements of infrastructure provided by the upper tier authorities. Some may also need to be passed to other agencies, such as the Environment Agency in the case of flood defences. The new Government also intends to require district councils to allocate a “meaningful proportion” of the Levy back to those neighbourhoods where development takes place. This is intended to complement the New Homes Bonus.
- 1.2.4 CIL needs to be based upon an up-to-date development plan, which this Council has in the form of the Core Strategy and the other documents in the Local Development Framework (LDF). In setting CIL Local Authorities will be required to prepare and have regard to the content of an **Infrastructure Plan** which indicates the likely total cost of infrastructure necessary to meet the needs of development identified in the Development Plan. Taking other sources of funding into account, the charging authority should then identify any gaps in funding in order to arrive at a proposed amount to be raised from CIL, subject to an assessment of local development viability. Whilst our development plan documents certainly had regard to the infrastructure necessary to support them, there was not at the time a requirement for us to prepare a specific Infrastructure Plan. The CIL Guidance makes it clear that where no Infrastructure Plan exists, a bespoke document will need to be prepared before CIL can be charged.

- 1.2.5 The Infrastructure Plan would form the basis of a **Charging Schedule** which will be a new type of document within the LDF. Whilst it will not be part of the Development Plan it will be subject to the same level of rigorous testing as a Development Plan Document, with a requirement for public consultation and a Public Inquiry before an independent Inspector who will report to the Local Authority. Whilst the report will not be binding, the Council would have to have very good reasons for not following its recommendations. There is no doubt that this will be an onerous, expensive and time-consuming task (assuming that the Government do not also alter the planning process in this respect) but under the Regulations, CIL cannot be levied until the Charging Schedule is finally adopted. Once a Charging Schedule is adopted the **Annual Monitoring Report** must indicate how much charge has been collected, how much has been spent, what it has been spent on and how much is left.
- 1.2.6 CIL will be levied on buildings rather than development more generally. For non-residential development there will be a *de-minimis* threshold of 100 square metres and charges of £50 or less should not be pursued. The charge will be on the basis of pounds per square metre of net additional floorspace, so a like-for-like redevelopment in terms of floorspace will pay nothing. Householder development will not be liable and there will be exemptions for charities and social housing. In some circumstances, it may be better for the authority to receive land instead of monies, but only if this land can be used to meet an infrastructure requirement. The charge will be index linked to the national "All-in Tender Price Index".
- 1.2.7 In exceptional circumstances, there is an allowance for a developer to not pay if he can prove that he cannot afford to do so. This will only be the case where there are Section 106 payments which are already greater than the CIL charge. The Council must publish in advance its policy for giving relief in such circumstances. This will clearly be an area where there will be considerable discussion and likely tension. In all such cases we will need to obtain the valuation advice.
- 1.2.8 The amount of CIL due will be calculated with reference to the Charging Schedule when planning permission is granted and the applicant will be so advised. It will then become a Land Charge Register entry. The responsibility to pay the Levy runs with the ownership of the land, but other parties, such as the developer, may agree to pay. Payment will not be due until the commencement of development. Developers or landowners will be required to notify the authority of their intention to commence work and there will then be 60 days within which payment should be made. Failure so to do will result in the need for enforcement action and a Stop Notice can be issued. Where the charge is over £10,000 the payment of CIL may be phased.

1.3 Planning Obligations

- 1.3.1 The use of planning obligations under Section 106 will run alongside the introduction of CIL but beyond 6 April 2014 (or earlier if a Charging Schedule is adopted) their use will be restricted to addressing the site-specific impacts of the

development in question. They will also continue to be used to secure affordable housing. The restrictions on the use of Section 106 agreements will also preclude the introduction of "Tariff Schemes" such as that originally proposed for Tonbridge Central Area. In future CIL would need to be used to raise funding for infrastructure improvements and environmental enhancements that do not relate to a specific development.

1.4 Commentary

- 1.4.1 Whilst CIL is promoted as though it is optional, the restrictions to be imposed on the use of Section 106 Agreements will be such that most authorities will find it advantageous to go down the CIL route whether or not they would, ideally, wish so to do.
- 1.4.2 The charge will need to be set at a level that pays regard to general development viability, but this cannot take into account the circumstances of individual sites. On the other hand, if the charge is set too low it will never yield sufficient funding to ensure the provision of the necessary infrastructure. In this respect, it is difficult to see how the timing of infrastructure provision is going to relate to the rate of development when its funding is no longer tied to individual sites. It is possible that Grampian conditions (e.g. precluding development until a particular piece of infrastructure is in place) may be held to be unreasonable under such circumstances.
- 1.4.3 The precise mechanisms for distributing CIL once it is collected currently lack clarity. It is not entirely clear how the proportion and timing of CIL to be distributed to other organisations, like the County Council, Police or Environment Agency and to local neighbourhoods will be determined, or indeed how much will be left for the Council to spend on its own capital projects to address identified local community needs. Since the amount and type of development and therefore the amount of CIL will vary year on year it would, of the face of it, be difficult to predict the flow of capital receipts from CIL and therefore difficult to confidently programme capital projects – although similar circumstances exist at present in relation to S106 contributions.
- 1.4.4 Whilst the flow of receipts from CIL might be welcome they can only be used for capital infrastructure projects identified in the Infrastructure Plan. However, up to 5% of the receipts can be used to cover the cost of setting up and administering CIL but in the early years there will be no such income. In this respect, Members should not underestimate the significant resource implications of preparing an Infrastructure Plan and Charging Schedule which will be not dissimilar to preparing a DPD in terms of evidence gathering, public consultation, Public Examination and Inspector's Report. From experience, the process is bound to take between 1 and 2 years. This process would have to be repeated every time the Council wished to change its charges, which following the recession it might well need to.

- 1.4.5 In development control there will be obvious operational consequences with equally significant resource implications. New regimes will have to be established to calculate the charges and notify the applicants, to monitor commencements and collect the charges and pursue enforcement if the charge is not paid. There will likewise be operational implications for Financial Services in terms of receiving the funds and then distributing them. Last, but not least, the Council would have to have an active Capital Plan with schemes designed and programmed and ready to go once the finance was available, remembering that *CIL is only meant to top up normal capital funding and not deal with existing deficiencies*.
- 1.4.6 Perhaps one of the most significant effects of CIL is going to be on the Council's ability to fund the regeneration initiatives in Tonbridge. We have held in abeyance the proposals for a Town Centre Tariff pending clarification of the new Government's proposals for CIL. What is now clear is that it will not be possible for the Council to have its own tariff system for Tonbridge. This means that if the Council wishes to continue to promote those initiatives it will have to be via CIL. However, under these circumstances the environmental and transport enhancements in Tonbridge will need to compete with all of the other borough-wide demands there will be on CIL and the transport contributions, for example, may well get lost in a general contribution to KCC for infrastructure provision since there seems to be no means of ring-fencing such contributions.
- 1.4.7 In conclusion, CIL may provide a significant new stream of capital funding for the local government. However, its reliability as a source of funding to the Borough Council is questionable, its implications on the development market are unknown and its resource implications, in terms of preparing and administering the charge, should not be under-estimated. But all the indications are that the council cannot now afford not to go down this route. It is intended to start work on taking this matter forward next year, as work on the Character Area Appraisals SPD nears completion. Clearly this will be a matter that goes beyond planning and will have corporate implications for the Council and potentially other agencies. We expect further guidance to be issued and should there be any further developments between now and the meeting there will be an update. In any event, the Planning and Transportation Advisory Board will be kept up to date with progress.

1.5 Legal Implications

- 1.5.1 None from this report.

1.6 Financial and Value for Money Considerations

- 1.6.1 As outlined in the report.

1.7 Risk Assessment

- 1.7.1 There is risk that in the early years the cost of setting up CIL will outweigh the income received. There is also a risk at the present time that the return from CIL may be severely restricted due to its effect on the viability of development.

None

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Nil

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