**TONBRIDGE & MALLING BOROUGH COUNCIL**

**PLANNING and TRANSPORTATION ADVISORY BOARD**

**18 November 2009**

**Report of the Director of Planning, Transport and Leisure**

**Part 1- Public**

**Matters for Information**

## 1 COMMUNITY INFRASTRUCTURE LEVY – DRAFT REGULATIONS

**Summary**
**The Community Infrastructure Levy is proposed to be introduced from April next year. This report explores the implications of its introduction.**

### 1.1 Background

1.1.1 I have informed Members previously about the Government's intention to introduce a Community Infrastructure Levy (CIL) which will be a charge placed on most new development with the proceeds being used to pay for the provision of both local and sub-regional infrastructure. The necessary primary legislation has been enacted. The Government has now published draft Regulations. It is intended that the final Regulations will come into effect on 10 April 2010. In this context, it is of note that there remains considerable doubt if CIL would survive a change of Government at the election next year.

### 1.2 The Proposals

1.2.1 Local Authorities will be 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 propose that CIL will improve predictability and certainty for developers as to what they may expect to pay; will increase fairness by broadening the range of developments asked 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 Government proposes that the definition of infrastructure should be wide enough for Council's to decide what infrastructure is appropriate to their local areas, but it is made clear that affordable housing will continue to be provided through the existing system of Section 106 agreements and not by CIL. However, the Government also 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.

1.2.3 The charging authorities who will 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 will need to be passed to the County Councils to pay for those elements of infrastructure provided by the upper tier authorities. Some will also need to be passed to the Regional Development Agency to pay for elements of regional infrastructure. It is not yet clear how these proportions would be calculated or when these contributions would be made.

1.2.4 There needs to be an up-to-date development plan for an area containing a costed **Infrastructure Plan** before CIL can be charged. The Infrastructure Plan would indicate the likely 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.

1.2.5 The Infrastructure Plan would be supported by 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, a Public Inquiry before an independent person appointed by the Secretary of State whose report would be binding on the authority. This will be an onerous, expensive and time-consuming task but under the Regulations CIL cannot be levied until the Charging Schedule is finally adopted.

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. Householder development will not be liable and there will exemptions for charities and possibly a discount for affordable housing. In exceptional circumstances there will be allowance for a developer not to pay if he can prove that he cannot afford to do so. This will clearly be an area where there will be considerable discussion and likely tension.

1.2.7 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. However, payment will not be due until commencement. Developers will be required to notify the authority of their intention to commence work and there will then be 28 days within which payment should be made. Failure to do so will result in the need for enforcement action. On larger developments, where there is an outline permission, CIL would be phased and payable in respect of the approval of reserved matters.

### 1.3 Planning Obligations

1.3.1 It is intended that the use of planning obligations under Section 106 will run alongside the introduction of CIL but their use is likely to become increasingly

restricted to addressing the site-specific impacts of the development in question. They will also continue to be used to secure affordable housing. The proposed restrictions on the use of Section 106 agreements would preclude the introduction of "Tariff Schemes" such as that 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. It is proposed that there would be a transitional period of at least 2 years before any such restrictions would come into effect. The Government will continue to encourage planning authorities to use planning conditions in preference to planning obligations wherever possible.

**1.4 Commentary**

1.4.1 Whilst the aims of CIL, as set out in para 1.2.1, might be seen as laudable, it seems highly questionable whether the system that has been devised will deliver those objectives, or certainly deliver them easily. There is a perception in the development industry that CIL will be a deterrent to development at a time when the industry is struggling to come out of recession. It is seen by developers and land owners as an additional tax on development which will augment, rather than replace, Section 106 Agreements. Whilst the charge is supposed to be set at a level that generally pays regard to development viability, 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. It is also difficult to see how the timing of infrastructure provision is going to relate to the rate of development when its funding is not tied to individual sites. Grampian conditions (eg. precluding development until a particular piece of infrastructure is in place) may be held to be unreasonable under such circumstances.

1.4.2 The precise mechanisms for distributing CIL once it is collected currently lack clarity. It is clear that some of the funding may need to be transferred to the County Council to deal with education provision, social services, libraries and highway infrastructure, but payments may also be necessary to the police and fire services, and national bodies like the Environment Agency (for flood defences) and the Highways Agency. It is not at all clear how the proportion of CIL to be distributed to these other organisations will be determined, or indeed how much will be left for the Council to spend on its own capital projects to address legitimate 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.

1.4.3 Whilst the flow of receipts from CIL might be welcome they can only be used for capital infrastructure projects identified in the Infrastructure Plan. They cannot be used to augment what I perceive to be the quite high revenue costs of preparing for and then administering CIL. To prepare an Infrastructure Plan and Charging Schedule will be resource intensive and 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. It certainly does not seem to be a system that is going to be responsive to market changes. On the other hand I can see some advantages in preparing an informal Infrastructure Plan regardless as to whether the Council decides to implement CIL. To have such a plan will put the Council in a better position to negotiate developer contributions on individual sites even if CIL is repealed.

1.4.4 In development control there will be obvious operational consequences with resource implications, and new regimes would 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 was not paid. There would 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.

1.4.5 CIL is promoted as though it is optional, but the restrictions likely to be imposed on the use of Section 106 Agreements will be such that most authorities will find themselves obliged to go down the CIL route whether they like it or not. Perhaps one of the most significant effects of this 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 Government's proposals for CIL. What is now clear is that when CIL is introduced 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 more or less be obliged to introduce CIL. However, the environmental and transport enhancements in Tonbridge will then need to compete with all of the other 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.

1.4.6 Under all the circumstances it will not be my intention to recommend whether the Council should embark on the introduction of CIL until next year. In the meantime, however, I will be making some preliminary enquiries into the preparation, with our LSP partners, of an informal Infrastructure Plan for the Borough. I believe this will be useful whether CIL is introduced or not.

**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 CIL will not survive the general election, in which case it would be prudent to wait to see what happens and not commit too many resources to progressing matters at this stage.

## 1.8 Conclusion

1.8.1 CIL if introduced could provide a significant new stream of capital funding for 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.

Background papers: contact: Brian Gates

Nil

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