



Nottinghamshire
County Council

Report to Cabinet

7 December 2011

Agenda Item:6

REPORT OF CABINET MEMBER FOR ENVIRONMENT AND SUSTAINABILITY

THE COUNTY COUNCIL'S RESPONSE TO THE DRAFT PROPOSALS FOR A COMMUNITY INFRASTRUCTURE LEVY.

Purpose of the Report

1. To seek Cabinet approval for the Council's response to the consultation on Community Infrastructure Levy (CIL):

Information and Advice

2. The Department of Communities and Local Government (DCLG) recently published a draft consultation paper on the Community Infrastructure Levy and requested responses by the 30th December 2011.

3. The consultation seeks views on the Government's proposals to:

- Implement neighbourhood funds
- Allow receipts to be used to provide affordable housing
- Provide transitional provisions to allow fair operation of the levy in Mayoral Development Corporations
- Require charging authorities to report more openly and regularly on receipts and expenditure to improve transparency and understanding of the contribution that developers are making and how those funds are used
- Add new Development Orders to the list of developments that may be liable to a charge.

4. A summary of the CIL detailed proposals and draft regulations for reform is available as a background paper.

5. The CIL will enable local authorities to charge a levy on new development in their area in order to raise funds to meet the additional demands and costs placed on the infrastructure of their area and to enable growth. The money raised must be used to provide infrastructure to support any proposed development and to address any issues which are needed for it to proceed – for example by providing new roads and transport. CIL applies to most new buildings and charges are based on the size and type of the new development.

6. Only single tier and lower tier local authorities in England and Wales will be able to charge the levy, and upon receipt, can either spend the money themselves, pass funds to other bodies, such as upper tier authorities, or fund infrastructure outside their area provided that the spending supports the development of their area, for example providing strategic transport infrastructure.
7. Charging authorities must produce a charging schedule that sets out the rate or rates they will charge following consultation with their residents and stakeholders.
8. The New Homes Bonus, which was introduced in April 2011, sits alongside the existing planning framework for making planning decisions. The New Homes Bonus is an additional source of funding and is not linked to CIL or Section 106 obligations.

The County Council's response.

9. The County Council fully supports the main thrust of the Localism agenda and remains committed to the key principles of devolving power to local communities as well as removing unnecessary bureaucracy and hurdles in the planning process. Equally, the Council endorses any move to promote open and transparent governance. However, as proposed, the County Council cannot support the draft regulations as they contain a number of fundamental flaws, particularly in the way that they would operate in a two-tier local government situation.
10. The regulations, as drafted, rely on funding transfers between lower and upper tier authorities taking place based solely on good will with no financial structure or governance arrangements in place to control the process. Even in times of prosperity, this approach would be optimistic to say the least, and in the current economic climate it is considered to be totally unrealistic. As local government funding continues to be squeezed, it is imperative that local authorities are allowed to operate in a climate of certainty to be able to manage ever increasing financial challenges. The draft regulations would create a field of uncertainty around future funding levels for upper tier authorities making strategic infrastructure decisions extremely difficult, if not impossible. This would greatly impact on the County Council's ability to promote economic development and growth within Nottinghamshire, one of the key objectives of the proposals.
11. As the County Council will not be given status as a charging authority, its ability to receive revenue directly from a developer towards items of infrastructure will be significantly reduced. Planning obligations using the s106 legislation may still be utilised for certain items of infrastructure, but this will be severely restricted following the proposed changes to the 106 funding system.
- 12 Assuming that the County Council is consulted adequately when the District charging schedules are produced, which in itself is not guaranteed by the proposals as currently drafted, there is no requirement for the District charging authority to include all requests submitted by the County Council when establishing its charging schedule.
- 13 The County Council is the determining authority for minerals and waste planning applications, however, any CIL revenue generated by such developments would be received and allocated by the District/Borough councils and not the County Council.

Minerals and Waste planning is a highly specialised function, and these specialist planners are best placed to determine how much money should be requested to mitigate the impact of their developments, and where it should be spent. The proposals would divorce these two processes with the obvious negative impact.

- 14 The County Council currently collects planning contributions, in the majority of districts, via Section 106 tariff based policies, relating to the education and highways infrastructure. Should the government restrict the use of planning obligations in the way suggested, the ability to use Section 106 tariffs would be greatly reduced. Any Section 106 amendments need to leave sufficient scope for planning contributions to be collected to contribute towards the funding of County Council infrastructure developments.
- 15 The Government proposes to provide a percentage of CIL to Parish Councils, in the form of 'Neighbourhood Funds' which implies that not all of CIL will be used to provide the necessary strategic infrastructure developments.
- 16 With regard to whether CIL should be used to provide affordable housing with Section 106 contributions, the County Council believes that CIL should be used to provide better strategic infrastructure. Also, if CIL is to be used in combination with Section 106 receipts there needs to be safeguards put in place to ensure that developers are not charged twice.
- 17 The County Council also seeks clarification as to what will happen in areas where an adopted CIL is now operational and the infrastructure has already been costed. Will the Districts be obliged to contribute a proportion of the CIL money that has already been attributed to a project, and will a new charging schedule need to be drawn up?
- 18 To conclude, the County Council has grave concerns that the draft regulations will not address infrastructure funding gaps which are certain to occur in two tier areas. The County Council strongly urges the Government to reconsider the proposals in light of the impact of this funding gap on local communities and enable upper tier authorities to raise the necessary funds for infrastructure delivery.

Other Options Considered

- 19 This report has considered all of the relevant issues and options leading to the recommendation, as set out below.

Reason for Recommendation

- 20 To propose a response to the DCLG's consultation which is in the best interests of the County Council.

Statutory and Policy Implications

- 21 This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION

1) It is recommended that the comments as set out in the report form the basis of Nottinghamshire County Council's response to CLG on the 'Community Infrastructure Levy: Details proposals and draft regulations for reform Consultation (October 2011).

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Portfolio Holder for Environment and Sustainability**

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Constitutional Comments (SHB.07.11.11)

22 Cabinet have power to decide the Recommendation.

Financial Comments (DJK 18.11.11)

23 The contents of this report are duly noted; there is concern as to the manner in which the County Council would be reimbursed for the levies and further details from Government would be required prior to any agreement.

Background Papers

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Community Infrastructure Levy: Detailed proposals and draft regulations for reform – Consultation (October 2011)

Draft Statutory Instrument 2012 Community Infrastructure Levy, England and Wales: The CIL (Amendment) Regulations 2012

Newark and Sherwood Community Infrastructure Levy (CIL) Charging Schedule (incorporating the CIL instalment Policy (December 2011))

Regulation 123 List of Scheme to be funded by CIL (December 2011)

Summary of the Community Infrastructure Levy (October 2011)

Electoral Division(s) and Member(s) Affected

All

Appendix 1 – Summary of the Community Infrastructure Levy (October 2011)

Chapter 1 - Neighbourhood Funds

Clause 103 of the Localism Bill allows ministers to lay regulations to place a duty on charging authorities to pass a proportion of the funds that they raise through the levy to other persons. The Government intend to use the powers conferred by this clause to require charging authorities to allocate a meaningful proportion of the revenue generated from the levy to the local elected council for the area where the development and growth take place.

Neighbourhood funds form an important part of the Government's objective to strengthen the role and financial autonomy of neighbourhoods. This will provide neighbourhoods more ability to determine the shape of their area and to help communities to accommodate the impact of new development.

Alongside the physical barriers to new development, growth can be slowed or restricted by local concerns and about its impacts. People are more likely to accept and support new development if they are satisfied that it is meeting the demands that it will place on their areas and see that their communities will benefit, or at least not suffer, as a result.

Through the charges, communities that accept new development will be able to decide for themselves how the demands placed on their area are best addressed. By channelling resources close to where development takes place the Government will help change attitudes towards development, particularly when neighbourhoods see that the needs arising from development are being directly met with meaningful control over the funds placed with the community itself.

The Government will give local authorities the means and flexibility to manage the impacts of new development and ensure that they share in the benefits of growth.

Implementing Neighbourhood Funds

The Localism Bill provides for the detail of how neighbourhood funding will work to be covered in regulations and guidance. The Government is proposing an approach that sets out the main requirements in regulations (where there needs to be certainty and consistency) that are supplemented with statutory guidance that will provide local authorities and neighbourhoods with flexibility.

Parish Councils

The Government want to ensure that all neighbourhoods have a meaningful say in how the impacts of new development are managed. At the same time by ensuring that the appropriate controls, transparency and accountability of public funds are in place.

The Government set out in the House of Commons consideration of the levy clauses, and proposed that the duty to pass on a meaningful proportion of the funds raised through the levy should apply where there is a locally elected council for the areas where the development that gave rise to the payment takes place. That is the parish council or a town council in England. The Government believes that the requirement to pass a proportion of levy funding to

neighbourhoods should apply to all charging authorities in England and Wales which choose to charge the levy.

Charging authorities to retain and spend funds where no parish or community council exists

Not all areas of England are represented by a parish council. Where no parish council exists, the Government proposes that the charging authority will retain the funds and should engage with their communities in determining how to spend those receipts. The Government believes that this should be set out in statutory guidance rather than regulations as this approach will allow for charging authorities to determine the appropriate approach for their area. This flexibility would allow them, for example, to determine the areas within the local authority boundary where receipts will be applied and how to engage with the residents, businesses and other interests in determining how monies will be spent.

Further matters to note

Where development crosses more than one parish boundary the draft regulations provide that each parish council will receive a proportionate amount of the levy payment based on how much development is located within their area.

Meaningful proportion

The Government proposes to specify that a minimum percentage of receipts levied from development in an area must be passed to the relevant parish council or in the absence of such a body, spent by the charging authority to support the development of that area following consultation with their residents.

Charging authorities will be able to pass on a higher proportion if they want and the existing regulations already enable them to pass receipts to other bodies or persons if they wish to do so.

The draft regulations do not propose the proportion of receipts that the charging authority should pass on. However, the Government is clear that the level must be sufficient to give neighbourhoods a meaningful contribution to meeting the impacts of development in their area. This will need to be balanced with the central purpose of the levy, which is to ensure that the cost of providing the infrastructure to support new development is met by that development.

Capping payments

In setting the proportion of funds that must be passed to a parish council the Government are mindful of the need to consider appropriate safeguards so that funds are directed to the areas where the costs of hosting the development arise.

This would address the situation that could arise where significant funding is generated from a major development in a sparsely populated area. It is essential that receipts are directed to where a contribution to the costs of hosting development is needed and the Government do not want money to be unspent or wasted.

Use of Neighbourhood Funds

The Localism Bill proposes that funding passed to parish councils must be used to provide infrastructure to support the development of the area, as must all funds raised through the levy. The draft regulations confirm this.

Neighbourhoods will be able to spend the funds on the infrastructure that they want, for example open space provision, or by contributing to larger projects funded by other bodies such as the county council.

Provisions in the Localism Bill clarify that receipts may be spent on the ongoing costs of providing infrastructure. The purpose of this is to ensure that an appropriate range of infrastructure spending is feasible and that charging authorities and parish councils have the flexibility to spend on the matters that they determine are a priority for the local area. It is important to understand that the charging authority or the parish council will still have to demonstrate that the funding supports the development of the area; this is not about allowing councils to use the money as an alternative funding source to maintain existing infrastructure.

As with other Community Infrastructure Levy spending, neighbourhood funding could not, for example, be used to remedy pre-existing deficiencies in infrastructure provision, except to the extent that they will be aggravated by new development. The purpose of the funds is to contribute to the cost of hosting new development, not to be substituted for general spending.

Timing of Payments

The Government proposed to allow charging authorities the flexibility to determine the timing of payments themselves, but the draft regulations propose a default position in the absence of such a agreement. This will allow charging authorities to agree different arrangements locally where they choose to.

Under the default position, the charging authority will be required to pass on payments within 28 days of the end of each 6 month period in the financial year.

Reporting and Monitoring

One of the key criticisms of planning obligations has been the lack of transparency and accountability as to how much developers contributed and what the money was being spent on.

The existing levy regulations address these concerns by requiring charging authorities to publish draft and final charging schedules and to publish details of income and expenditure annually. However, this will be strengthened as charging authorities will be required to report more regularly and openly in their Annual Monitoring Reports (AMRs), which will include income and expenditure of levy receipts.

The Government wish to maintain levels of transparency and accountability when levy funds are passed to parish councils. It is essential that local communities see and understand how much development is contributing to their area and how those resources are being used to mitigate its impacts.

At the same time, the Government do not want to create overly burdensome reporting arrangements for parish councils. Therefore the draft regulations propose that parish councils

must report on levy funding and provide the information identified in draft regulation 19 (new regulation 32A (2)(a-d)). This is to ensure that it is clear and transparent where and how much levy money received by parish councils is being spent.

To provide parish councils with flexibility, the draft regulations do not prescribe a particular format for the reporting of parish councils and can combine the reporting on levy funding with other reports that they already produce. The regulations propose that each parish council must report on at least a yearly basis, but will encourage them to report more frequently where there are substantive receipts or expenditure to report, the Government will do this through statutory guidance.

Relationship between parish councils' expenditure and planning obligations

Planning obligations are agreements that establish the steps that a developer must make to address the site specific impacts that the development has on local infrastructure. These agreements are negotiated between the local planning authority and the developer. They are intended to make acceptable development which would otherwise be unacceptable in planning terms.

There is still a legitimate role for development specific planning obligations to operate alongside the Community Infrastructure Levy. Planning obligations enable a local planning authority to address site specific impact mitigation measures without which a development could not be granted planning permission. By contrast, levy funds are ideally suited to use where the need arises from the cumulative impact across an area.

To ensure that the CIL and planning obligations operate in a complementary way, a number of provisions have been introduced in regulations to scale back the way planning obligations operate. This includes preventing developers from being charged twice for the same item of infrastructure through planning obligations and the CIL.

Charging authorities can set out how revenues raised from the levy will be spent on their website, allowing certain items to be funded by planning obligations as that there is no double charging for the same item of infrastructure (regulation 23 of the current levy regulations). Where no list is produced, then regulation 123 specifies that all infrastructure capable of being funded by the levy can not be funded through planning obligations.

The Government has considered how this relates to neighbourhood funds when a charging authority sets out an infrastructure list under regulation 123. The Government propose that parish councils should not be confined to spending in accordance with the charging authority's list nor should they have to produce a list. The only restriction on charging authorities should be that set out in the regulations. This will allow charging authorities to secure planning obligations secured by Section 106 agreements without being constrained by a parish council's spending decisions, and will also allow parish councils maximum flexibility to spend as they see fit in accordance with the levy's purpose.

Removing the administrative cap for charging authorities

Regulation 61 (1) of the current levy regulations allows a charging authority to apply levy funding to administrative expenses incurred by it. However, this is currently capped at 5% of receipts less expenses of up to 4% of receipts incurred in collecting the levy.

The Government propose to remove this cap on the amount of levy funding that charging authorities may apply to administrative expenses on any matters other than the collection of the levy.

The Government are proposing this change to provide charging authorities with more flexibility on the operation of the levy. The Government also want to reflect the additional role for charging authorities in delivering neighbourhood funds, particularly in engaging with residents and businesses in those areas not covered by a parish council. In return for the increased flexibility, the Government will require charging authorities to report on their levy income and expenditure more openly and more regularly to ensure that their residents see and understand how the contributions are being used. This transparency will be essential if the levy is to provide an incentive for residents to accept new development and will help to ensure that councils are open and accountable to them for their spending decisions. Within the new reporting requirements, charging authorities will be required to set out how much funding has been applied to administrative costs.

The proposals set out in the consultation would not create new burdens on collecting authority functions, which are concerned with the collection of liabilities arising when new development commences. The Government do not therefore propose to remove or increase the existing 4% cap on the amount of levy receipts that can be used to meet the administrative costs of delivering these functions.

Chapter 2 – Affordable Housing

During the House of Common's Committee's consideration of the Localism Bill the Government set out their commitment to consider and consult on whether to permit levy receipts to be used to provide affordable housing. This is made possible by the Planning Act 2008 but currently the levy regulations provide that receipts may not be spent on affordable housing.

The provision of affordable housing is a priority for the Government. The consultation on the National Planning Policy Framework (DNPPF) proposes that where local authorities have identified that affordable housing is required they should:

“...set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified...an the agreed approach contributes to the objective of creating mixed and balanced communities...”.

Planning obligations already provide local authorities with an appropriate mechanism to deliver affordable housing. This is well established practice, provides certainty for on-site delivery and supports the Government's important policy objective to deliver mixed communities. However, the Government recognise that there are circumstances where on-site provision may not be the most effective or efficient means to deliver local policies for affordable housing.

Therefore, the Government welcomes views on providing local authorities with an option to use the CIL to deliver affordable housing where there is robust evidence that doing so would demonstrably better support its provision and offer better value for money. The purpose of the consultation is to consider whether allowing local authorities this flexibility would allow for more efficient provision of affordable housing and better support delivery of local policies, including any off-site provision.

The Government also invites views on the appropriate balance, or combination, between the CIL and Section 106 planning obligations to best support the delivery of affordable housing. For example, permitting a combination of the mechanisms to be used whereby local authorities set out where they would wish to collect affordable housing contributions from planning obligations, such as key sites where on-site delivery is viable and essential. For the remainder of their area, affordable housing could be funded with levy contributions. Local authorities could then be clear on their intended approach and ensure this is reflected in their charge setting process.

If local authorities are to be extended the choice to use levy receipts to fund and deliver affordable housing, the Government need to also consider how best to ensure that communities and developers are absolutely clear about the choices being made, and have the opportunity to help inform those choices. The Government welcome views on requiring local authorities, as a matter of national policy, to set out clearly in local plans the approach they will take to collecting contributions for affordable housing under the levy and/or planning obligations, and the anticipated level of contributions and delivery through each.

Pooling of Planning Obligations

Planning obligations (made under Section 106 of the Town and Country Planning Act 1990) are currently the main delivery mechanism for affordable housing. If affordable housing becomes capable of being funded by the CIL, then the existing regulations which place a limit on the pooling of Section 106 contributions will apply to Section 106 affordable housing contributions.

This would mean that on the local adoption of the levy, or in all local authorities after 6 April 2014, local authorities may only enter up to five separate planning obligations to contribute to a single affordable housing project or to a general affordable housing fund.

The limit on pooling Section 106 contributions was created because the levy offers a fairer, more transparent and certain arrangement for pooling. However, the Government is aware that the limit on pooling contributions was put in place when affordable housing was not within the scope of the levy.

The Government does not want the rules on limits of pooled contributions to have a detrimental effect of the provision of affordable housing, and would welcome views on whether affordable housing should be excluded from the regulation and limits to pooling of obligations, or whether the same limits that apply to other parts of planning obligations should apply.

Chapter 3 – Mayoral Development Corporations (MDC)

The Localism Bill includes a general power for the designation of Mayoral development areas to drive regeneration. A MDC is able to take on full planning powers for its area. This includes the ability to impose a levy charge.

The ability to set a levy charge effectively requires changes to regulations to ensure that a MDC can operate effectively, and that London boroughs are not unfairly disadvantaged in areas where they are losing planning powers. The Government intends to make three key changes to regulations to :

1. allow the Mayor, in advance of a MDC being set up, to carry out the necessary preparation work for a levy charge to enable the MDC to function properly as a charging authority as soon as practical after it takes those powers;
2. ensure that London boroughs who have granted planning permission for a development are still able to collect any levy liability due if the actual work starts after the MDC has taken on plan making powers in the area; and
3. require a MDC, where it is winding down or giving up its plan making powers to be clear about the arrangements for the collection of outstanding levy liabilities.

Chapter 4 – Other regulatory matters

Increasing transparency

The levy reporting requirements are set out within the existing levy regulations which require charging authorities to report annually on levy receipts and expenditure in relation to the previous financial year. However, the Government consider that the existing provisions do not ensure full transparency and accountability to communities.

The Government want charging authorities to be required to make information on levy receipts and expenditure available to communities in ‘real time’. The Government are consulting on this proposal through the draft Local Planning regulations. Authorities will be required to publish up to date information they have collected in levy income and expenditure as soon as reasonably practicable in their AMRs.

Neighbourhood Development Orders (NDO) and Community Right to Build Orders (CRBO)

The Localism Bill introduces new provisions to allow for planning permission to be granted through NDO’s – including CRBO. These types of planning permission will be possible under powers to be inserted into the Town and Country Planning Act 1990 after Section 61D and only currently apply to England.

Draft regulation 4 will allow the levy to be charged on development commenced under the new NDO’s, including CRBOs. This will ensure fairness, as these types of development will have an impact on infrastructure and removes potential distortions. As with other general consents, the Government propose that these orders will not be liable until 2013.