

## REPORT TO CABINET

Title: **COMMUNITY INFRASTRUCTURE LEVY REGULATIONS (CIL) – (Proposals to replace S106 Planning Agreements) – UPDATE FOLLOWING GOVERNMENT CONSULTATION**

Date: 27<sup>th</sup> May 2010

Member Reporting: Councillor Alison Knight – Lead Member for Planning and Development

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Wards affected: All

### 1. SUMMARY

#### **What has Cabinet previously considered about the Community Infrastructure Levy (CIL)?**

- 1.1 CIL will be a new charge which local authorities will be able to charge on most types of development in their area. It is designed to help fund needed infrastructure identified in the Local Development Framework, and its implementation will be dependant on a local authority having an adopted Core Strategy. The new CIL Regulations are due to come into effect on 6 April 2010.
- 1.2 Under the existing system, developer contributions can be sought under S106 of the Town and Country Planning Act 1990 to mitigate the impact of a proposed new development on local infrastructure and services. Developer contributions are negotiated as part of the planning application process, and are secured by a legal agreement (also known as ‘Section 106 agreements’ or ‘planning obligations’).
- 1.3 Last year, the Governments Department of Communities and Local Government (DCLG) published the consultation document ‘Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy’. The consultation also covered changes to the process of securing developer contributions using Section 106 agreements.
- 1.4 Cabinet considered the Council’s response to the consultation at its meeting on 22 October 2009. The agreed response was submitted within the Governments deadline.
- 1.5 In summary, whilst the Council agreed there was some support for CIL based on transparency and certainty within the development process, including ease of collection of the Levy; it was concerned over:
  - possible diversion of the (finitely) available pool of contributions from local to sub regional projects;

- the complexity and costs of setting up the process;
- insufficient timescale for implementing the system ahead of the Governments' planned reduction in the scale and use of the existing S106 agreement system.
- concerns over some of the details of the proposed legislation.

### **Governments response to the CIL Regulations consultation**

- 1.6 The Government has amended the Regulations to take account of issues raised in the consultation process. The Regulations appear in full at: [http://www.opsi.gov.uk/si/si2010/draft/pdf/ukdsi\\_9780111492390\\_en.pdf](http://www.opsi.gov.uk/si/si2010/draft/pdf/ukdsi_9780111492390_en.pdf) with an Explanatory Memorandum at: [http://www.opsi.gov.uk/si/si2010/draft/em/ukdsiem\\_9780111492390\\_en.pdf](http://www.opsi.gov.uk/si/si2010/draft/em/ukdsiem_9780111492390_en.pdf)
- 1.7 The Community Infrastructure Levy Regulations 2010 were laid before the House of Commons on 10 February 2010 and have been approved by MPs, to come into force on 6 April 2010. Notwithstanding this, given the election, the views of any new Government on the new Regulations make their future uncertain.
- 1.8 Due to this uncertainty of CIL it is recommended that Officers do not make any changes to the existing S106 SPD and management systems and Officers keep a watching brief on the introduction of CIL Regulations, including supporting policies and emerging guidance, with a view to reporting significant developments on CIL to a future meeting of the Cabinet, given that CIL does affect the S106 Management System.

### **2. RECOMMENDATION That:**

- a) No changes to our existing S106 Supplementary Planning Document process at the current time.**
- b) A watching brief on the introduction of the CIL Regulations, reporting significant developments in CIL to a future meeting of the Cabinet.**

What will be different for residents as a result of this decision?
No direct difference. However, by maintaining a watching brief on the emerging legislation, and responding as necessary, the Borough will be ensuring that developers continue to contribute to infrastructure and services that are needed as a result of new development in our Borough.

### **3. SUPPORTING INFORMATION**

#### **3.1 Background**

##### **CIL Regulations and implications for the Royal Borough**

- 3.1.1 As a result of the consultation, the Government has made changes to the final CIL Regulations. The main features and implications are those in the previous report to Cabinet (22 October 2009). These are outlined below:

- a) There has to be an **up-to-date development plan (the Core Strategy)** in place before CIL can be charged in an area. This should be supported by a list of infrastructure needed as a result of new development over the next 10 years (the Infrastructure Plan) and a draft CIL charging schedule. Both these documents are to be subject to rigorous testing by an 'independent person' (likely to be drawn from the Planning Inspectorate). **Officer concern:** Drawing up and testing the draft CIL charging schedule will have significant resource and timing implications for the Borough.
- b) **Increase the standard payment period to 60 days**, compared with the 28 days proposed in the consultation, to ease cash flow for developers; with a new provision for payment by instalments once liabilities exceed a threshold, providing up to 240 days to pay in the case of the largest liabilities. **Officer Concern:** Under the existing S106 process, in the case of most schemes, developers contributions are payable on commencement of development. Payment in instalments will affect the Council's cash flow and administrative resources.
- c) **CIL is to be levied on the net additional increase in floor space** as a result of a development, whereas the consultation had proposed that CIL be levied on the gross floor space of the new development. **Officers consider this reasonable except in relation to Education.** Officers in Children's Services remain concerned that insufficient local and/or national data exists on pupil yields per square metre of residential floor space (as opposed to pupil yield per bedroom) to enable a robust justification for education contributions to be put forward.
- d) **Allow payments of CIL in-kind in the form of land**, where the authority agrees, and provided that land is transferred with the intention of providing infrastructure on it and to the same timescales as cash would otherwise be paid. **Officers consider reasonable**
- e) **Allow up to 100% CIL relief to be offered in very exceptional circumstances** to certain developments which would otherwise not proceed, provided that the authority agrees, and subject to certain thresholds, an independent assessment of development viability, and compliance with EU state aid rules. **Officers consider reasonable subject to only applying in exceptional circumstances.**
- f) **Enable the Secretary of State to direct that authorities may 'prudentially' borrow against future CIL income** should the Government conclude that, subject to the overall fiscal position, there is scope for local authorities to borrow against CIL revenues. This would allow infrastructure provision to be unlocked earlier in development – for example by providing short term bridging finance for infrastructure which is then repaid by a development's CIL receipts. **Officers consider reasonable**
- g) **Provide additional reliefs for developing charities** beyond those announced in the consultation. **Officers consider reasonable**
- h) **Provide full 100% exemption from CIL for most types of affordable**

**housing**, subject to the same conditions as the proposed charities relief. **Officer concern:** The new Regulations provide full 100% exemption from CIL for all types of affordable housing, not just the homes provided by registered charities. This Borough considers that residents living in affordable housing place a similar burden on the Council's facilities and infrastructure as residents living in open market housing. Accordingly, S106 contributions are collected from developers of affordable housing schemes. This income would be lost if CIL was to be introduced locally.

- i) **Enable authorities to draw the administrative costs of CIL from CIL receipts**, subject to a 5% cap to protect infrastructure funding. **Officers consider reasonable.**

### **Main changes to existing S106 Developers Contribution process**

3.1.2 The new Regulations will also change the existing process for collecting developer's contributions under S106 of the Town and Country Planning Act. The main changes are as follows:

- a) **Place into Law for the first time the Government's policy on use of planning obligations.** From 6 April 2010 it will be unlawful for a planning obligation to be taken into account in a planning decision on a development which is capable of being charged CIL *if the obligation is not (amongst other things) directly relevant to and reasonably related in scale and kind to the development.* To support this change the Government have recently consulted on a new policy statement on the appropriate usage of planning obligations (including to cover development which is not capable of being charged CIL). **Officers are currently evaluating the response to this consultation, however Officers are concerned over any proposals at this stage to limit S106 before the effects and workings of CIL are known.**
- b) **Double the length of the proposed transitional period after which S106 designed to collect pooled contributions ('tariffs') may not be used to fund infrastructure which could be funded from CIL.** The Government's consultation document had originally proposed to completely turn off tariff-style planning obligations from 6 April 2012. The transitional period has now been extended to 4 years and will now end nationally on 6 April 2014 (or earlier if CIL adopted by an Authority). **Officer concern:** This timeframe imposes an end to the S106 system as currently adopted at RBWM and goes to the heart of the second recommendation. There will be a need for CIL to be introduced by 2014 unless:
  - the Regulations around use of S106 are repealed OR
  - there is a change to CIL arrangements.
- c) **Once CIL is adopted or after April 2014 only allow pooling of S106 contributions from up to five developments for any one piece of infrastructure.** The Government's consultation document proposed to completely turn off tariff-style planning obligations. The Government will now allow contributions to be sought from up to five developments; beyond five

developments the Government considers that such arrangements amount to a tariff and should be implemented through CIL. **Officer concern as presently S106 contributions from many developments are pooled toward providing larger infrastructure projects e.g. Cox Green Community Centre**

3.1.3 Further work is planned by the Government. This will include:

- **a new policy on planning obligations** to reflect the introduction of CIL and deliver the Government's Planning White Paper (2006) commitment to streamline planning policy; this policy will form an Annex to the new Development Management Planning Policy Statement on which the Government launched a consultation in December 2009;
- **new guidance and support for local authorities considering introducing CIL**; discussions with the Local Government Association and others will establish what tools are needed;
- **preparations for charging and collection systems**, for example to design and publish the legal forms required by the Regulations, adjust application forms and establish systems for appeals to the Valuation Office Agency and the Planning Inspectorate.

## 4 OPTIONS AVAILABLE AND RISK ASSESSMENT

### 4.1 Options

	Option	Comments	Financial Implications
1.	<b>Do nothing at all.</b>	The Boroughs Members and officers will be unaware of how the introduction of the CIL Regulations is progressing, and unable to assess future implications for the Boroughs residents.	Revenue – None  Capital – not known at this stage.
2.	<b>Move to implement CIL in a short time frame</b>	This will require significant extra work and progress with the Core Strategy toward Public Examination	There will be costs associated with getting ready for CIL including a likely Capital cost for use of consultancy expertise in relation to site viability studies and drawing up a charging schedule
3.	<b>Accept the Recommendations in this report to do nothing now but watch carefully future progress</b>	The recommendation set out in this report will enable officers to keep a watching brief on the emerging legislation, and respond as necessary to ensure that the existing s106 system is protected to best effect and that	Revenue – Negligible Capital – not known at this stage. (£2.3 million S106 contributions collected in 2008/9)

	Option	Comments	Financial Implications
		sufficient funds are provided to support new development in the area through the Councils capital programme. <b>This is the recommended action.</b>	

## 4.2 Risk assessment

- 4.2.1 The Borough fails to keep a watching brief on emerging CIL legislation and practice. This may lead to insufficient funds being provided to support new development in the area. **Mitigation** Officers keep a watching brief on emerging legislation and report back to Cabinet so the Borough is in the best position to ensure sufficient funds are provided to support development in the area.
- 4.2.2 The risks associated with the recommendation are that S106 will be under increasing scrutiny from the development industry and Planning Inspectorate who determine appeals. Any loss of S106 income will undermine the Council's capital programme which is used to provide additional infrastructure within the Royal Borough. **Mitigation** By using the timeframes to best effect and keeping the S106 Supplementary Planning document up to date with a robust evidence base, we will be best placed to continue with the existing system, and maintain the current level of support to mitigate the impact and support the Councils Capital Programme.
- 4.2.3 Expectation from residents and other interested parties that the necessary infrastructure as a result of new development in their area will not be provided. **Mitigation** Expectations will be managed through communication and explanation of the part this Authority has played in monitoring the effects of emerging CIL legislation, and its possible implications for the Borough.

## 5 CONSULTATIONS CARRIED OUT

In-house consultations carried out include the S106 Project Board (comprising representatives of the Service Areas across the Borough currently benefitting from S106 developers contributions) and Planning Policy Officers.

## 6 COMMENTS FROM THE OVERVIEW AND SCRUTINY PANEL

Comment from Corporate Overview and Scrutiny Panel on 10<sup>th</sup> May 2010 to be reported.

## 7 IMPLICATIONS

The following implications have been addressed where indicated below.

Financial	Legal	Human Rights Act	Planning	Sustainable Development	Diversity & Equality
✓	✓	✓	✓	✓	✓

### Background Papers:

The Community Infrastructure Levy Regulations 2010: Department of Communities and Local Government Explanatory memorandum to The Community Infrastructure Levy Regulations 2010: Department of Communities and Local Government Report on Consultation on Draft CIL Regulations presented to Cabinet on 22 October 2009.