

CIL GOVERNANCE

Local Planning and Environment Advisory Committee – 23 October 2014

Report of Chief Planning Officer

Status: For Consideration

Also considered by: Cabinet - 13 November 2014

Key Decision: No

Executive Summary:

Local Planning and Environment Advisory Committee previously agreed to the arrangement of a CIL workshop to ensure that the development of governance arrangements by the committee is a Member-led process and to enable Members to debate the issues that the Council will need to consider in greater detail. This workshop is still to be held. It is recommended that, in the meantime, the Council sets out a non-exclusive list of the types of infrastructure that will be funded through CIL and those that will be secured/funded through planning obligations. The Council will not be able to use planning obligations to secure/fund something that it is funded through CIL.

Portfolio Holder Cllr. Robert Piper

Contact Officer(s) Steve Craddock Ext. 7315

Recommendation To Cabinet:

That the 'Regulation 123 List: Types of Infrastructure to be funded by CIL' is adopted.

Reason for recommendation:

To ensure that the Council is able to continue to seek provision or secure funding for site specific infrastructure through planning obligations.

Introduction and background

- 1 The Council adopted the CIL Charging Schedule on 18 February 2014 and qualifying developments permitted since 4 August 2014 are now liable to pay CIL.
- 2 As part of the process of adopting the CIL Charging Schedule, Cabinet tasked Local Planning and Environment Advisory Committee with developing the CIL governance arrangements. In March 2014, the Local Planning and Environment Advisory Committee resolved that a member/officer workshop should be set up in Summer 2014 to begin to consider CIL governance issues. It was proposed that, following this workshop, LPEAC would formally debate different CIL governance

models and make a recommendation to Cabinet. Due to other Planning Policy work priorities, the CIL workshop is still to be organised.

- 3 In order to prepare the CIL Charging Schedule, the Council was required to prepare a Draft CIL Infrastructure Plan (Background Document) to identify the scale of the funding gap for delivering infrastructure necessary to support development. This Draft Plan may provide a useful indication of the infrastructure required and the priorities of partner organisations (including town and parish councils). However, the document is largely based on information provided approximately 2 years ago and will need to be refreshed. The Draft Infrastructure Plan does indicate how important and challenging it will be for the Council to prioritise the allocation of funding to infrastructure projects. Whilst it is estimated that between 2014 and 2026 the delivery of the Core Strategy housing targets would lead to the Council receiving approximately £5-6 million, the costed projects previously identified sum to approximately £33,000,000. Approximately, £4-5 million would remain in the Council's control after town and parish councils have been transferred their share of the CIL receipts (under currently agreed proposals).

Infrastructure that can be funded through CIL

- 4 The share of CIL that SDC will control must be spent on infrastructure to support the development of the District. It is important to note that, unlike Section 106 agreements, there is no need for the use of CIL to be directly linked to the development that pays it.
- 5 There is no definitive list of infrastructure that can be funded through CIL. However, the Planning Act 2008 provides the following indicative definition:

“Infrastructure” includes-

- (a) *road and other transport facilities,*
- (b) *flood defences,*
- (c) *schools and other educational facilities,*
- (d) *medical facilities,*
- (e) *sporting and recreational facilities,*
- (f) *open spaces.*

Government guidance on the use of s106 agreements suggested that other mechanisms exist to ensure that developers and utility companies provide sufficient connections to new properties and so this would not need to be provided through s106 agreements. The same could be said to apply to CIL.

- 6 It should be remembered that CIL is intended to largely replace s106 agreements as the mechanism that local planning authorities use to secure funding for infrastructure. Therefore, whilst the provision of new school places, greater library capacity, improved GP surgeries or improved bus services have previously been secured through s106 agreements, these types of projects will in the future need to be funded through CIL, instead, if no other funding exists and if the Council considers the schemes to be sufficient important.

- 7 The Council submitted a list of the types of projects to be funded through CIL and those to be funded/provided through s106 agreements to the CIL examination (referred to as a regulation 123 list). This list follows Government regulations on the use of s106 agreements, which suggests that they should be used to secure site-specific infrastructure, whilst CIL should be used for strategic projects. Given that this list formed part of the basis for the Charging Schedule being found sound, following a recent change in Government guidance, there is little scope for the Council to fundamentally change this without reviewing the Charging Schedule (appendix A). What flexibility does exist allows for more projects to be funded through CIL, rather than increasing the burdens placed on developers through s106 agreements.
- 8 It is suggested that three amendments are made to the regulation 123 list from the draft version submitted with the draft Charging Schedule for examination. These are included in the proposed list (appendix A) but are summarised below:
1. To confirm that the Council will not treat the list of infrastructure to be funded through CIL as exclusive and may use CIL to fund other types of infrastructure. However the Council will not use CIL to fund site specific infrastructure to be secured through an s106 agreement. This would be contrary to legislation and national policy.
 2. Where required to accord with national or local policy, the Council will also use planning obligations to secure the re-provision of any infrastructure that is permitted to be lost through a planning permission granted for redevelopment of that site.
 3. To add communications infrastructure, beyond that directly secured by agreement between the developer, to the list of infrastructure that CIL may be used to fund.
- 9 It is recommended that this list (appendix A) is adopted now (following LPEAC and Cabinet) to ensure that the Council is able to continue to use planning obligations in the ways set out in the list, which it will not be able to do if such a list is not published. Should the process for developing CIL governance arrangements indicate the need to amend this list then these changes can be made through a new resolution of Cabinet.

Payments to town and parish councils

- 10 The Council resolved when it adopted the Charging Schedule that town and parish councils will receive an equal amount when a CIL-paying residential development occurs in their areas. As such, town and parish councils will receive £18.75 per sq m (15% of £125 per sq m) of the CIL payment if they do not have an adopted Neighbourhood Plan at the time the development is permitted to spend on infrastructure or £31.25 per sq m (25% of £125 per sq m) if they do have an adopted Neighbourhood Plan. As the charge for supermarkets, superstores and retail warehouses is a standard £125 per sq m across the District, town and parish councils will receive 15% or 25% of the same sum if a development of one of these types happens in their area. This does not preclude additional funds being passed to town or parish councils if the projects proposed are given

sufficiently high priority under the governance arrangements that will be developed.

- 11 Anecdotal evidence across the country suggests that a desire to secure greater control over CIL funding has been a deciding factor in town and parish councils preparing neighbourhood plans. Whilst neighbourhood plans are a positive tool for town and parish councils and local residents to shape the future of their areas, they can prove to be expensive for both town and parish councils (who are responsible for preparing the plans) and local authorities (who are responsible for supporting the preparation of plans and defending them at examination and paying for referenda), despite grants from Government. Giving town and parish councils control over the 25% of CIL that they would be entitled to if they had a neighbourhood plan would remove the financial incentive for them to prepare one. It would be hoped that this would result in neighbourhood plans coming forward only in areas where the town and parish council and/or the local community has a strong desire to make a positive contribution to the plan for the area. This may also help to prevent a situation whereby less well resourced town and parish councils that consider themselves unable to bring forward a neighbourhood plan are not penalised by being given less control over the development of infrastructure.
- 12 If Sevenoaks District Council were to adopt this approach and combine it with the agreement that payments should be equalised across the District, all town and parish councils would receive £31.25 per sq m of development. This would leave the District Council in control of £43.75 per sq m or £93.75 per sq m, depending on the charging area. Therefore, it would have less funding available to allocate to its own projects or those of partners, such as KCC Education, KCC Highways or the NHS. There would, however, be nothing to prevent town and parish councils passing funding to these organisations where improvements in their infrastructure was considered to be the local priority.
- 13 Subject to town and parish councils identifying an appropriate scheme(s) in advance that they would wish to fund through the CIL that is additional to what they are automatically entitled to, the Council is also able to adopt this approach under the current legislation. It is suggested that this should be discussed through the CIL workshop and formal debates at LPEAC and Cabinet.

CIL Governance Issues for SDC to consider

- 14 The report to LPEAC in March 2014 raised a number of issues that would need to be considered through the CIL workshop and debates at LPEAC and Cabinet. These were:
 - What types of Infrastructure should be given highest priority?
 - Whether the Council wishes to identify different funding pots (e.g. local and strategic).
 - How to balance planning infrastructure delivery proactively and reacting to windfall developments?

- Whether agreements should be made with other authorities to transfer a certain amount or proportion of CIL receipts to pay for infrastructure that it funds up front.
- Who should have the power to make the final decision?
- How often should allocations of CIL funding be made?

15 Given that the proposal was to arrange a separate workshop to discuss these issues, little debate was had on them. However, an initial consensus seemed to be that a CIL spending board should be established to consider funding bids.

Instalment Policies

16 In most circumstances, a developer must pay CIL in full 60 days after commencement, unless the Council adopts an instalments policy. This would apply regardless of the size of the development, which could lead to a developer having to pay a substantial CIL before it has had the chance to sell any of the dwellings. It is recommended that the Council adopts an instalment policy to help maintain the viability of these developments. It is recommended that this is also debated through the governance workshop.

17 The CIL regulations provide that each phase of a development has a separate charge associated with it. Therefore, only once the developer commences a particular phase does the 60 day payment period (or instalment policy) begin. This effectively provides an instalments policy for larger developments (over 100 dwellings, for example), which are unlikely to be built out in one phase.

Flexibility to make further changes to Governance Arrangements

18 Governance arrangements for CIL do not need to be published for consultation or independent examination (unless changes to a regulation 123 list are proposed, when consultation is required). As the Council appears to be something of a ‘front-runner’ in this area, there may be opportunities to learn from experiences elsewhere. It is recommended that arrangements should be set up on the basis that they will be reviewed after 1-2 years. This will provide the opportunity to reflect on any lessons learnt, either from the Council’s experience or the experience of other authorities. If, however, it is found that there is a fundamental problem with the arrangements put in place then the Council can review them at any stage.

Other Options Considered and/or Rejected

Cabinet could not agree to the adoption of the proposed regulation 123 list. This option is not recommended by Officers on the basis that it would limit the Council’s ability to secure s106 agreements for anything other than affordable housing.

Key Implications

Financial

There are no financial implications of this recommendation.

Legal Implications and Risk Assessment Statement.

Governance arrangements that are consistent with the CIL regulations must be agreed. If they are not then the Council runs the risk of challenges from developers over the use of CIL to the Ombudsmen being upheld.

Equality Impacts

Consideration of impacts under the Public Sector Equality Duty:		
Question	Answer	Explanation / Evidence
a. Does the decision being made or recommended through this paper have potential to disadvantage or discriminate against different groups in the community?	No	The recommendation relates to how the Council should determine through which mechanisms infrastructure improvements should be secured not what infrastructure should be prioritised. As such, the decision will have no impact on these equality factors.
b. Does the decision being made or recommended through this paper have the potential to promote equality of opportunity?	No	
c. What steps can be taken to mitigate, reduce, avoid or minimise the impacts identified above?		n/a

Conclusions

It is recommended that the arrangement of a CIL workshop would ensure that the development of governance arrangements by the committee is a Member-led process and would enable Members to debate the issues that the Council will need to consider in greater detail. This should be arranged, as per the previous LPEAC resolution. However, in the interim, the Council should adopt a regulation 123 list to ensure that it is not unduly limited from using planning obligations.

Appendices

Appendix A – List of infrastructure types to be funded through CIL and S106 Agreements

Background Papers:

[Draft CIL Infrastructure Plan](#) (July 2013).

Richard Morris
Chief Planning Officer