

## CIL Detailed Proposals and Draft Regulations For Reform (CLG)

### Executive Summary

The Government launched a consultation on detailed proposals and draft regulations to reform the Community Infrastructure Levy in October 2011. The main issues for consultation are the proportion of funds secured through CIL that should be paid to the town and parish council in which the development occurs and whether contributions for affordable housing should be secured through CIL. The draft response supports funds being paid to town and parish councils and suggests a level that is considered to offer opportunities for them to develop local infrastructure without prejudicing the ability of other infrastructure providers to develop their necessary infrastructure. The draft response also supports the principle of offering authorities the flexibility to choose whether to secure affordable housing contributions through planning obligations or CIL.

### Recommendation

It is recommended that the draft response is sent to the Government as the Council's representations on this consultation.

### Background

The powers to introduce the Community Infrastructure Levy (CIL) were set out in the Planning Act 2008. Detailed regulations relating to the operation of the scheme were published in 2010 and 2011. Subject to a number of limitations in primary legislation and regulation, the levy allows Charging Authorities, such as Sevenoaks District Council, to charge a standard fee per sq m of new development, once they have adopted sound Charging Schedules. SDC propose to start preparing a Charging Schedule in early 2012 and expect to be able to submit it for Examination in early 2013.

The following are the matters in the current consultation that are relevant to Sevenoaks District:

- 1) implementation of payments to neighbourhoods;
- 2) allowing receipts to be used for affordable housing;
- 3) requiring authorities to report more openly and regularly on receipts and expenditure; and
- 4) adding Development Orders to the list of developments liable to the charge.

### Summary of Proposals and Draft Response

#### 1. Neighbourhood Funds

The proposals allow for a 'meaningful proportion' of the CIL charge to be paid to the local elected council for the area where the development will take place, i.e. the town or parish council. The Government consider this a key part of delivering its objective to strengthen the role and financial autonomy of neighbourhoods and to encourage a more positive attitude to development. Funds will be able to be

used for the ongoing costs of infrastructure. Town and parish councils will need to show how this infrastructure funding is related to development. The money can not be used as an alternative funding source to maintain existing infrastructure and can not be used to resolve existing deficiencies, except to the extent that they are aggravated by new development.

The current consultation seeks views on what proportion of receipts should be passed to parish or town councils. It is stated that the objective of giving communities a meaningful proportion must be balanced with the central purpose of providing the infrastructure necessary to support development. The Government do not propose a figure in the consultation document. It should be noted that funds paid to town and parish councils can be passed to other authorities to contribute to the infrastructure that they are providing (to KCC for schools, for example), if that is considered to be the local priority.

Our draft response suggests that, given the types of services that different town and parish councils provide in Sevenoaks District, for example open space, a 'meaningful proportion' contribution of approximately 15-20% could be appropriate if affordable housing is not included in the CIL charge. However, in Sevenoaks District, it is estimated that securing financial contributions for affordable housing through CIL could increase the CIL charge for an average dwelling by as much as 10 times. In this circumstance, the 'meaningful proportion' of CIL to be paid to a town or parish council should be set at around 1-2% in order to achieve the same contribution as 15-20% without affordable housing. It is noted that this funding can be supplemented by other CIL receipts paid to the Charging Authority, where this can be justified by the requirement for a particular scheme. In any event, this may be an illustrative amount that would be defined during local CIL preparation.

The consultation document also proposes that a per household cap is placed on the amount of money to be passed to a parish or town council each year. It is suggested that this is intended to prevent a situation where substantial amounts of money are passed to one authority as a result of development that falls within one parish, despite the fact that a number of the services for the site are located in another town or parish (i.e. the West Kent Cold Store development is in Dunton Green Parish but likely to be served by many services in Sevenoaks Town). Comments are sought on what level this cap should be set at.

The draft response suggests that any appropriately set cap that is intended to apply nationwide is unlikely to lead to payments to town and parish councils in Sevenoaks District being restricted, as a result of the relatively limited development proposed in the District compared to Growth Areas. As a result, the draft response does not offer a view on the level that the cap should be set at. It does, however, suggest that the cap is only applied to the 'meaningful proportion' that town and parish councils are automatically entitled to. The cap should not stop the Charging Authority from transferring additional funds to the town or parish council where this is considered necessary to deliver local infrastructure.

In order to prevent developers being charged for the same infrastructure through CIL and a planning obligation, regulations do not allow local authorities to seek

obligations for infrastructure that could be funded through CIL. Charging authorities are able to differentiate between what will be funded through these two mechanisms by producing a list of the infrastructure that will be funded by CIL (reg 123). They are then only prevented from seeking planning obligations for this infrastructure, rather than the other forms of infrastructure identified in the Planning Act 2008 definition. Where no list is produced, obligations would not be able to be sought for all forms of infrastructure that could usually be funded through CIL. It is proposed by the Government that a similar requirement is not placed on parish councils. The consultation document states that 'this will allow charging authorities to secure planning obligations secured by Section 106 agreements without being constrained by parish or community council's spending decisions, and will also allow parish or community councils maximum flexibility to spend as they see fit in accordance with the levy's purpose'.

The draft response notes that the proposal will produce welcome flexibility for town and parish councils and will ensure that the burdens of operating a CIL are reduced for them and the charging authority. However, it is possible that this proposal could lead to developers being charged twice for infrastructure. It may also lead to developers arguing that elements of a s106 package sought by a local authority do not meet the statutory tests for the use of the planning obligations because the town or parish council could use its CIL funds to deliver the infrastructure. To remove these uncertainties, it is suggested that guidance or regulation could require that contributions to infrastructure secured through planning obligations are returned to the developer if any CIL funds paid to town or parish councils are spent on the same infrastructure over a set period of time. The proposed statutory CIL reports of town and parish councils would enable developers to establish whether or not this has been the case.

The consultation document proposes to remove an existing cap on how much of the levy funds can be used to cover the administrative costs of operating CIL.

## 2. Affordable Housing

The Government is consulting on whether allowing local authorities the option to use CIL to deliver affordable housing would 'demonstrably better support its provision and offer better value for money'. It is suggested that local authorities may also be given the option to use both CIL and planning obligations, depending on whether the provision sought is on-site or a financial contribution towards off-site schemes.

The critical issue for Sevenoaks District Council in responding to this proposal is the ability to continue to seek on-site provision of affordable housing on larger sites (more than 5 units) and financial contributions from smaller sites (less than 5 units), consistent with the Core Strategy policy. Options that jeopardise the ability of the Council to seek on-site affordable housing should be resisted, as the Council would find it difficult to allocate sufficient alternative sites within urban areas on which affordable housing could be developed. In addition, the delivery of on-site affordable housing provision is a key area in which planning can help to deliver the Council's balanced communities objectives.

The Government's proposals would have some advantages. For example, the payment of CIL can only be waived in exceptional circumstances (non-viability is not considered to be a sufficient justification) and so would lead to greater certainty over the funds that could be secured. Continuing to seek affordable housing provision or financial contributions through planning obligations would mean that it would be seen as the negotiable element of the full package of contributions that developers will be expected to pay. If this were to be the case, the Council would need to ensure that the CIL charge is set at a level which would not lead to developers arguing that a large number of developments would be non-viable as a result of CIL payments and affordable housing provision or contributions.

Despite the increased certainty that including affordable housing in a CIL charge would have, there would also be a number of potential problems with the implementation of this proposal. In particular, as CIL is supposed to be a standard charge that would apply to all developments, it would usually be expected that CIL would be used to secure financial contributions for affordable housing on small and large sites. This would reduce the Council's opportunities to seek on-site provision. The Government proposes that charging authorities could set out in advance which specific sites they will still expect developers to make on-site provision on through planning obligations in advance. However, to continue to apply the SDC Core Strategy Policy, the Council would need to either identify all sites of more than 5 units or rely on the mechanism in the CIL regulations that allows land of equal value to the CIL charge to be provided by developers, although not required. Securing land transfers through CIL would be hugely time consuming if it were to be carried out for all sites of 5 or more units.

Identifying sites where the Council expects on-site provision to be secured through developer contributions would prove very challenging for SDC, because of the low threshold for on-site provision, and offers little flexibility to secure on site affordable housing on windfall sites. A better approach would be to identify the thresholds of sites, based on number of units, where local authorities would use planning obligations and where they would use CIL, as in Core Strategy Policy SP4. However, this is not currently proposed as an option by the Government. The CIL collection process would also need to be changed to be flexible enough to ensure that different amounts could be charged depending on whether on-site provision of affordable housing has been made or not. To do otherwise would lead to developers of larger sites being required to pay a substantial financial contribution through CIL and provide land through a planning obligation.

The draft response supports the principle of local authorities being given the flexibility to choose whether to use CIL or planning obligations to secure affordable housing. However, it raises the issues previously discussed as matters that would need to be overcome in order to ensure that seeking affordable housing through CIL is a realistic and workable option.

### **3) Increasing Transparency**

Charging Authorities would be required to 'publish up to date information they have collected on levy income and expenditure as soon as reasonably practical in

their Authority Monitoring Reports'. There are no consultation questions on this issue but the proposal appears to be reasonable.

#### **4) Development Orders**

This proposal would allow the levy to be charged on development commenced under the new Neighbourhood Development Orders, including Community Right to Build Order'. There are no consultation questions on this issue but the proposal is supported to ensure that sufficient levy funds for infrastructure are secured.

## SDC Draft Response to the CLG 'Community Infrastructure Levy: Detailed Proposals and Draft Regulations for Reform: Consultation'

Sevenoaks District Council welcomes the opportunity to comment on these draft proposals to amend the Community Infrastructure Levy regulations. In particular, the Council welcomes the opportunity to influence emerging Government policy on the meaningful proportion to be paid to organisations representing the local community (e.g. town and parish councils) and the proposal to seek affordable housing contributions through CIL.

Sevenoaks District Council is fully parished and seeks to involve town and parish councils in the plan making process. The recently adopted Sevenoaks District LDF Core Strategy supports the preparation of Parish Plans and their adoption as Supplementary Planning Documents.

The District is also an area with a relatively high need for affordable housing. This is reflected in a Core Strategy policy that seeks an affordable housing contribution from all developments that result in a net increase in housing. The Council's threshold for seeking affordable housing on-site is also relatively low at 5 units. Securing on-site affordable housing is important in the District as a result of the limited development sites in the urban areas and the need to protect Green Belt and AONB areas outside of the existing settlements.

### Consultation Questions

*1. Should the duty to pass on a meaningful proportion of levy receipts only apply where there is a parish or community council for the area where those receipts were raised.*

No comment. This is not an issue in Sevenoaks District.

*2. Do you agree that, for areas not covered by a parish or community council, statutory guidance should be set out that charging authorities should engage with their residents and businesses in determining how to spend a meaningful proportion of the funds?*

No comment. This is not an issue in Sevenoaks District.

*3. What proportion of receipts should be passed to parish or community councils?*

The objective of giving local communities greater autonomy over how CIL monies are spent is supported. However, it is also important to ensure that sufficient CIL receipts reach those services and infrastructure providers that will face the greatest burdens of new development. If it is possible to approach a nationwide consensus on this issue then SDC supports the principle of establishing a nationally set percentage to be paid to town and parish councils, in order to reduce the work and resources needed to produce CIL Charging Schedules at the local level. However, if no consensus can be reached, possibly as a result of different levels of devolved responsibilities to town and parish councils, then the Government should consider allowing local authorities to establish their own 'meaningful proportions'.

Given the types of services that different town and parish councils provide in Sevenoaks District, for example open space, SDC suggests that a figure of approximately 15-20% would be appropriate if affordable housing is not included in the CIL charge. This funding can be supplemented by other CIL receipts paid to the Charging Authority, where this can be justified by the requirement for a particular scheme. The funding to town and parish councils can also be transferred by them to other organisations to deliver infrastructure, where this is considered to be required to deliver a local priority scheme.

In areas like Sevenoaks District, it is estimated that securing financial contributions for affordable housing through CIL could increase the CIL charge for an average dwelling by as much as 10 times. In this circumstance, the meaningful proportion of CIL to be paid to a town or parish council should be set at around 1-2%, in order to achieve the same contribution as 15-20% without affordable housing.

#### *4. At what level should the cap be set, per council tax dwelling?*

In circumstances where very large developments are proposed on the edge of towns that fall within a different town or parish council area, the proposal of a cap in the total CIL receipts that can be paid to the town or parish council where the development occurs is supported. This will ensure that the Charging Authority is able to redirect funds towards those areas where other forms of infrastructure that will be put under strain by the development are located.

In Sevenoaks District, it may be expected that any annual peak in housing development in one town or parish council area would be substantially lower than in growth area authorities, where the types of situation that this proposal is intended to prevent are more likely to occur. As a result, any appropriately set cap that is intended to apply nationwide is unlikely to lead to payments to town and parish councils in Sevenoaks District being restricted. Given the lack of very large developments currently planned in the District, it is considered appropriate that the cap would be unlikely to affect its town and parish councils. SDC do not, therefore, have any comments to make on the level at which a cap should be set, except to say that it should be set carefully with its intended purpose clearly in mind.

SDC would suggest that the cap is only applied to the 'meaningful proportion' that town and parish councils are automatically entitled to. The cap should not stop the charging authority from transferring additional funds to the town or parish council where this is considered necessary to deliver local infrastructure.

#### *5. Do you agree that the proposed reporting requirements on parish or community councils strike the right balance between transparency and administrative burden?*

Town and parish councils will be expected to report annually on total receipts, total expenditure, infrastructure funded and receipts retained. This seems an appropriate level of reporting and will provide transparency for the public and developers to see how money secured through CIL is being spent.

*6. Draft regulation 19 (new regulation 62A(3)(a)) requires that the report is to be published on the councils website, however we recognise that not all parish or community councils will have a website and we would welcome views on appropriate alternatives.*

A potential alternative could be for the Charging Authority, e.g. the District Council, to host these reports. However, the statutory requirement to make sure that these reports are made available at a specified date in a format suitable for publication should rest with the town or parish council.

*7. Do you agree with our proposals to exclude parish or community councils' expenditure from limiting the matters that may be funded through planning obligations?*

This proposal will produce welcome flexibility for town and parish councils and will ensure that the burdens of operating a CIL are reduced for them and the charging authority. However, it is possible that this proposal could lead to developers being charged twice for infrastructure. It may also lead to developers arguing that elements of a s106 package sought by a local authority do not meet the tests for the use of the planning obligations because the town or parish council could use its CIL funds to deliver the infrastructure. To remove these uncertainties, guidance or regulation could require that contributions to infrastructure secured through planning obligations are returned to the developer if any CIL funds paid to town or parish councils are spent on the same infrastructure over a set period of time. The CIL reports of town and parish councils would enable developers to establish whether or not this has been the case.

*8. Do you agree with our proposals to remove the cap on the amount of levy funding that charging authorities may apply to administrative expenses?*

The proposal to remove the cap is supported, as it is important that charging authorities are able to make CIL administration as self-funding as possible.

*9. Do you consider that local authorities should be given the choice to be able if they wish to use levy receipts for affordable housing?*

SDC support local authorities having the choice but consider that the potential issues need to be fully appraised to ensure that there are not problems in implementation. It is critical that local authorities are provided the flexibility to use CIL or planning obligations effectively, depending on whether on or off site contributions are being sought.

The use of CIL receipts for affordable housing would need to be factored into the process of setting the charge through the Charging Schedule, given that the affordable housing contribution is likely to represent a substantial proportion of the overall charge. As CIL payments can only be waived in exceptional circumstances, the use of CIL for collecting financial contributions for off site provision would have the advantage, over the use of planning obligations, of providing certainty to local authorities over the receipts that developments would generate.



*10. Do you consider that local authorities should be given the choice to be able if they wish to use both the levy and planning obligations to deliver local affordable housing priorities?*

It would be essential that local authorities are able to use CIL or planning obligations depending on whether on site or off-site provision is being sought, depending on the number of units proposed on the site.

However, offering the choice to use CIL or planning obligations, depending on whether on or off site provision is sought, would not be without its problems. To implement CIL, authorities will need to set a charge per sq m of residential development, which will then apply to all developments of that type. Contributions to affordable housing would be a significant element of the CIL charge, if it were to be included. Under the current CIL regime, the set charge would need to apply regardless of whether or not on-site affordable housing provision is secured through a planning obligation. This would mean that on sites where on-site provision is sought, developers would be required to pay a substantial financial contribution through CIL and provide land through a planning obligation. The ability to set different CIL rates, depending on whether or not on-site provision is being made, would be essential to ensure that the proposal to use CIL to secure affordable housing operates effectively.

If local authorities were only able to use CIL to seek affordable housing contributions, the only way of securing land for on-site provision from developers would be to accept it, rather than require it, as a payment in kind under CIL Regulation 73. This is a less flexible arrangement than that available through the planning obligations mechanisms. If a single charge is applied across a district, it is also likely to lead to more land being secured in areas where land values are lower, as more land would need to be provided in these areas to off-set the CIL charge. This would lead to more affordable housing being built in areas with lower land values, which would not be consistent with the stated national objective of creating mixed and balanced communities (para 111 of the NPPF) and could reduce opportunities to tackle affordable housing problems in those towns and cities that are the least affordable.

*11. If local authorities are permitted to use both instruments, what should they be required to do to ensure that the choices being made are transparent and fair?*

Local authorities would need to be able to set out, the approach that they will take to using planning obligations or CIL by thresholds of number of units proposed on site, which will determine whether on or off site provision is sought. Identifying actual sites where planning obligations would be used to secure on site provision in advance will prove very challenging for local authorities with low thresholds for on-site provision, for example less than 5 units. Identifying sites would also not provide sufficient flexibility for local authorities to secure on site provision on windfall applications.

Local authorities would also need to be able to set different CIL levy charges depending on whether affordable housing is provided on site or not. To do otherwise would, as discussed in the Council's response to question 10, lead to

developers being required to pay a substantial financial contribution through CIL and provide land through a planning obligation on sites where on-site provision is sought.

*12. If the levy can be used for affordable housing, should affordable housing be excluded from the regulation that limits pooling of planning obligations, or should the same limits apply?*

Under the current CIL regulations, financial contributions from more than 5 planning obligations can not be pooled to fund an infrastructure project if that infrastructure could have been funded through CIL. This restriction will apply from the date at which a CIL Charging Schedule for the area is adopted or April 2014, whichever comes first. Currently, this restriction would not apply to affordable housing as it is currently specifically excluded from the infrastructure that can be funded through CIL.

If local authorities are to be offered full flexibility on whether or not they use CIL or planning obligations to seek financial contributions for affordable housing then it will be essential that the restrictions on the pooling of contributions from planning obligations do not apply. Local authorities choosing to use planning obligations to secure financial contributions and seeking contributions on schemes of 1 unit are unlikely to be able to deliver cost effective affordable housing schemes with contributions pooled from less than 6 developments.