



**Economic Prosperity, Environment & Highways Board
10 December 2015**

**The Community Infrastructure Levy in Surrey –
Update**

Purpose of the report: Policy Development and Review

This report provides an update and overview of the implementation of the Community Infrastructure Levy (CIL) across the eleven planning authorities in Surrey.

Introduction:

1. The Community Infrastructure Levy (CIL) is the Government's preferred policy approach to the collection of developer contributions to fund the provision of infrastructure in support of new development in each planning authority area.
2. CIL was introduced in 2010 with the intention that from April 2014 (extended to April 2015) the majority of planning authorities would have adopted the Levy.
3. As at April 2015 some 16% of authorities (57) across the country have adopted CIL with a further 40% of authorities (140) anticipate adopting CIL by April 2016, 26% of authorities (93) still being in the early stages of preparation and 18% of authorities (62) having decided not to pursue the adoption of CIL.
4. CIL is effectively a tax on new development which is levied and collected by planning authorities in respect of the majority of new floorspace granted planning permission once the CIL regime has been adopted; it being an important additional funding stream which it is intended will help provide new and improved infrastructure required to support the growth identified in the respective Local Plans.
5. The definition of "Infrastructure" for the purpose of the CIL Regulations includes, so the list is not meant to be exhaustive, roads and other transport facilities, flood defences, schools and other education facilities, medical facilities, sporting and recreational facilities and open spaces.

6. The Regulations (Reg 59) also state that a charging authority must apply CIL to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area.
7. CIL and its collection and spending is controlled and managed by the planning authorities in accordance with the government's CIL regulations, which have become very complex as a result of the range of changes introduced by the government since 2010; a fifth raft of regulatory changes anticipated very shortly.
8. When the introduction of CIL was being considered a figure of over £20M was suggested as the potential annual CIL income for the planning authorities in Surrey, but there were perceived risks that the authorities would not adopt CIL (it not being mandatory) and CIL monies might not be released for projects promoted by the County Council.
9. The current situation in relation to the adoption of CIL in Surrey is shown in the table at **Annexe 1**.
10. CIL receipts are effectively split into three pots by the planning authorities before consideration is given as to how the respective pots are to be allocated, the pots being made up of Strategic Infrastructure (up to 70%), Local Community, also known as the 'meaningful proportion' (up to 25%) and Administration (5%).
11. Strategic receipts can be spent anywhere across the local planning authority's area and Administration is spent on the administration and monitoring of the CIL regime by the authority, including the repaying of costs associated with the actual setting up of the CIL regime.

Implementation of CIL in Surrey

12. Since April 2013 six authorities have adopted the CIL regime, namely Elmbridge, Epsom & Ewell, Surrey Heath, Tandridge, Woking and Spelthorne, two authorities anticipate adopting by April 2016, namely Mole Valley and Reigate & Banstead, the remaining authorities hoping to adopt at a later date dependent upon the progress in adoption of their Local Plans.
13. Clearly the adoption and introduction of the CIL regime are very much dependent upon whether a particular planning authority has an up to date and adopted Local Plan as CIL is unlikely to be introduced unless such a plan is in place, hence the likely extensive delay in the introduction of CIL in the areas such as Runnymede, Waverley and Guildford.

Impact of the CIL regime in Surrey

14. The current CIL regime in Surrey is highlighting a number of issues which have consequences for the planning and provision of infrastructure provided by the County Council, (predominantly transportation, highways and education), whether in relation to the provision of mitigation for new

development or addressing the cumulative impact of the growth across Surrey.

15. Some of these issues can be summarised as follows -
 - 15.1 In local authority areas that have yet to adopt CIL there will be limited opportunities for securing s106 funding until such time as CIL is adopted, from when it is likely to be a further twelve to eighteen months before the local authority are in a position to actually allocate the CIL receipts;
 - 15.2 For all except very large developments CIL removes the link between the development and the mitigation of the development's specific impacts upon the locality;
 - 15.3 In the West of the County the inclusion of SANGS (suitable alternative natural green spaces) as part of the CIL regime reduces the monies available for other infrastructure due to the high cost of SANGS provision;
 - 15.4 The decisions on allocation of CIL funds will be made in the main by local authority committees (excepting Woking where decisions will be made by the Joint Local Committee);
 - 15.5 CIL places the onus for delivery of infrastructure on the collecting authority (the local planning authority), who are not, in the main, the delivery authority;
 - 15.6 There will now be little scope for County officers to negotiate mitigation for medium-sized developments, as has been the case until recently through the s106 regime, when a developer is paying CIL through the application process; and
 - 15.7 In areas where CIL has not been adopted s106 will no longer be sought to mitigate its specific impact upon local infrastructure (unless the application is a major application where on-site s106 mitigation can still be sought), the situation continuing until CIL is adopted by the local authority when CIL will then be sought for area wide infrastructure projects.
16. The difficulties in collecting s106 result from the CIL Regulations (Reg 122) which restrict the number of s106 obligations to no more than five for a particular project or scheme which has previously secured s106 or tariff contributions, the number of obligations being counted back to April 2010.

17. As a result a planning obligation cannot provide for the funding or provision of an infrastructure project or type of infrastructure, by pooled contributions, if five or more separate planning obligations relating to planning permissions granted for development within the charging authority's area have been entered into on or after 6th April 2010 and which already provide for the provision or funding of such infrastructure project or type of infrastructure.
18. It means that if five planning obligations providing for a type of infrastructure have been entered into since 6th April 2010 then no more can be secured as the limit has been reached.
19. However it is still possible to impose planning obligations in relation to a specific infrastructure projects, within that type of infrastructure, provided that the separate limit in relation to the specific project has not been breached and the project does not appear on the authority's Regulation 123 list, meaning it is to be allocated CIL receipts.
20. To take a simple example if since 6th April 2010 an authority has imposed five planning obligations to contribute to the provision of education in the area then no more education planning obligations can be imposed, but this does not preclude the authority from seeking contributions to a specific project relating to education even though no more can be sought with regard to the general type of education infrastructure.
21. Once the authority have imposed five planning obligations to contribute to a particular education project in the area then no more planning obligations can be imposed for that specific project.
22. Whilst this will be detrimental to the majority of authority areas it is proving particularly challenging in the areas where the Surrey Planning Infrastructure Contribution tariff (PIC) has been collected since 2008 ie, Waverley, Surrey Heath, Runnymede, Elmbridge, Epsom & Ewell, Mole Valley and Reigate & Banstead, as a result of the historic number of obligations secured from the new development in those areas.
23. The planning authorities' historic success in securing pooled infrastructure contributions on behalf of the County Council is now counting against the County Council as a result of the restrictions in the CIL regime.
24. This change in regime has also made the task harder for teams such as Transport Development Planning when seeking to secure wider highways and transportation mitigation, previously negotiated under s106, which now has to be negotiated as part of the s278 process as far as is material.
25. Trying to off-set the loss of contributions, which would have been secured or negotiated through PIC and s106, by securing as much of the wider mitigation measures as is reasonably possible through the s278 process, is proving to be both time consuming and challenging for the

officers concerned, as a result of the evidence base, justification and the s278 constraints also restricting the ability to negotiate with developers.

26. In addition as a result of the allocation of a 'meaningful proportion' of CIL receipts, these having to be spent in the local community, it leaves approximately 70% of the CIL receipts to be distributed for strategic infrastructure; those local planning authorities in the west of Surrey being likely to allocate a large proportion of their strategic receipts for SANGS mitigation (suitable alternative natural green space), leaving significantly less CIL monies available for other necessary infrastructure, each authority also taking 5% of the receipts for their CIL administration costs.
27. Whilst CIL will be able to be utilised for more strategic or major projects it is the smaller local or medium sized projects that were previously funded in part by s106 and PIC, which will find it much more difficult to secure funding under a CIL regime where the majority of receipts are likely to be utilised for major infrastructure schemes.
28. As a result officers who previously negotiated developer contributions in connection with planning applications will no longer be able to successfully mitigate the impact of new development upon local infrastructure due to the change in regime, which will, over time, inevitably lead to a cumulative deficit of infrastructure throughout Surrey.
29. In relation to major planning applications (more than 10 new residential units) officers will continue to work with their local planning authority colleagues in an effort to secure infrastructure, or funding for infrastructure through s106, on an application by application basis where it is both reasonable and compliant with the CIL statutory tests, which state that the request must be –
 - 29.1 directly related to the development
 - 29.2 necessary to make the development acceptable in planning terms, and
 - 29.3 fairly and reasonably related in scale and kind to the developmentand where the planning authority are supportive of the approach being taken.

Conclusions:

30. There is still a large amount of detailed technical work to be undertaken by County Council colleagues with each of the authorities who are still to adopt Local Plans, Infrastructure Delivery Plans, CIL Charging Schedules and Regulation 123 Lists, the documentation that generally needs to be in place before CIL can be adopted.
31. The Levy is very much a planning authority regime and as such a high level of collaborative working is required at both officer and more importantly at a political level, to ensure that the provision of strategic infrastructure to support the development in each of the areas is able to be secured and provided at the required time, utilising CIL as one of the funding streams.

32. As the report highlights the authorities in Surrey are at different stages in both their preparations and adoption of CIL and as a result the adoption and collection of CIL will be subject to a variety of timescales and could, as a result, affect the ability of the County Council to support development in different areas by securing and providing infrastructure within the required timeframes.

Recommendations:

33. It is recommended that the Board endorse:
- a) officers continued collaboration with Borough and District colleagues in their preparation of Local Plan policies, Infrastructure Delivery Plans, CIL Charging Schedules and Regulation 123 Lists to ensure, where possible, the County Council is able to support development in each of the areas by securing and providing strategic infrastructure at the required time,
 - b) officers continuing to seek mitigation of infrastructure impacts from developers, on an application by application basis, in those LPA areas where CIL has not been adopted, unless restricted by the up to 5 obligation restriction,
 - c) officers continuing to seek agreement as to how the governance regime for CIL will operate in each of the areas, including the involvement of County Members in the process where possible, and
 - d) the further work required to secure a reasonable and suitable governance regime in each of the areas, in the light of the possible different models for governance, given that the Woking model is one that appears to offer the most open and transparent collaborative process for deciding which projects CIL monies should support.

Next steps:

34. The next steps are:
- Officers continue to monitor the progress of CIL adoption across Surrey
 - The County Council continues to collaborate with Borough and Districts as regards the preparation of their CIL documentation, including any necessary agreements as to how the CIL governance and allocation process will work in each of the areas, and
 - Officers to regularly bring back progress reports to this Board on the outcomes, particularly the success or otherwise of securing CIL monies towards necessary infrastructure.

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Consultees:

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Cllr John Furey – Cabinet Member for Highways, Transport & Flooding
Cllr Mike Goodman – Cabinet Member for Environment & Planning
Cllr Linda Kemeny – Cabinet Member for Schools & Learning

Sources/background papers:

Community Infrastructure Regulations 2010 (as amended)

CIL Members Update – April 2013

CIL Report - Environment & Transport Select Committee – 23rd January 2014

CIL Report - Environment & Transport Select Committee – 15th December 2014

CIL Report - Environment & Transport Select Committee - 23rd April 2015

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