



**Economic Prosperity, Environment and Highways Board  
8<sup>th</sup> December 2016**

**Community Infrastructure Levy Progress Report**

**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 and the outcomes to date.

**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 October 2016 some 46% of authorities (116) across the England and Wales have adopted CIL with a further 36% of authorities (94) still being at various stages of preparation and 18% of authorities (47) 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) 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 shortly following the recent Government Review of CIL.
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 the Administration pot is spent on the administration and monitoring of the CIL regime by the authority, and can include the repayment of costs associated with the actual setting up of the CIL regime.
12. With regard to the spending of the meaningful proportion of CIL the suggested government approach is shown in **Annexe 2**, 15% or 25% of the receipts going to the respective areas identified, dependent upon whether an area is parished and whether it has a neighbourhood plan.

#### **Implementation of CIL in Surrey**

13. Since April 2013 eight authorities have adopted the CIL regime, namely Elmbridge, Epsom & Ewell, Reigate & Banstead, Surrey Heath, Tandridge, Woking and Spelthorne, one authority, Mole Valley, anticipating commencement of the regime on 1<sup>st</sup> January 2017, the remaining authorities hoping to adopt at a later date dependent upon the progress in adoption of their Local Plans.
14. 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 delays in the introduction of CIL in the areas such as Runnymede, Waverley and Guildford.

15. Elmbridge were the first authority to both adopt and commence collection of CIL in April 2013.
16. The Elmbridge Local Committee currently prioritises the strategic County Council bids, strategic bids then being made annually to the Borough's Spending Board (made up of seven Borough Members), with recommendations from the Spending Board then being determined by the Borough's Cabinet.
17. Attached at **Annexe 3** is an overview of the governance of the CIL regime in the respective authority areas across Surrey.

### **Governance Overview**

18. Clearly there are a number of different models for the governance of CIL that could be introduced by each of the authorities but at present it is considered that the Woking model is one that appears to offer the most open and transparent collaborative process for deciding which schemes or projects the CIL receipts should be used to support.
19. It is hoped that the Joint Local Committee model now operating in Woking will allay some of the concerns and procedural difficulties expressed by some Boroughs as regards such a committee and it will be dependent on how this new joint committee model works in Woking as to whether other authorities consider the model to be something they would be willing to adopt in their areas in the future.
20. Spelthorne are intending to adopt the Joint Local Committee model very shortly and discussions are currently ongoing with a number of other authorities who are considering adopting the model.
21. Officer discussions will continue as regards the governance arrangements in those areas where the CIL regime has been, or is to be, adopted, and importantly, from a County Council standpoint, whether existing Local Committees or County Members will have a role in the respective CIL governance processes.
22. In the eight areas that have adopted the CIL regime to date the authorities concerned have different views as to their priorities as regards the use of CIL receipts, at the same time as limiting the ability to secure site specific s106 contributions within their Regulation 123 Lists, Lists which are required to be published by the authorities to confirm what CIL is intended to be allocated to in a particular area and where s106 contributions, now site specific, are still able to be sought.
23. What is becoming clear is that a number of authorities are considering CIL as additional financial support for projects which require Local Economic Partnership (LEP) funding, which are in the main strategic projects requiring £M's in funding, rather than the small or medium sized local highways schemes, generally in the hundreds of £K's, schemes which were previously promoted by Local Committees.

24. 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.
25. Some of the ongoing issues are summarised and explained below -
  - 25.1 In the areas that have yet to adopt CIL the opportunities to secure s106 funding are being severely hampered by the restrictions imposed by the Regulation 122 in relation to **pooling** which limit the number of s106 contributions that can be sought for a particular project to no more than five in any one instance;
  - 25.2 The **delays in adopting** CIL has led to periods of between eighteen and twenty four months before the local authority are in a position to actually allocate their CIL receipts;
  - 25.3 For all except the very large developments CIL **breaks the link** between the development and the mitigation of the development's specific impacts upon the locality which has led to some communities seeing little or no allocation of CIL in their area;
  - 25.4 In the West of the County the inclusion of **SANGS** (suitable alternative natural green spaces) as part of the CIL regime is reducing the monies available for other infrastructure due to the high cost of SANGS provision;
  - 25.5 The decisions on **allocation of CIL** funds are currently being made by local authority Members (Elmbridge and Tandridge) leading to uncertainty in relation to CIL bids;
  - 25.6 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;

### **CIL Pooling Restrictions**

26. The pooling restrictions are significantly impacting the ability of County Councils to fund infrastructure projects across the whole Country and as part of the recent Government Review of CIL strong representations were made seeking the abolition of the restrictions as part of the forthcoming review.
27. The difficulties in collecting s106 arise from the Regulation 122 which restricts 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.

28. 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.
29. 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.
30. However it is still possible to request planning obligations in relation to 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 not going to be allocated CIL receipts.
31. Once an authority have allowed five planning obligations to contribute to a particular education project in their area then no more planning obligations can be sought for that specific project.
32. The 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 the infrastructure requirements are site related and both material and reasonable.

### **Delays in the adoption of CIL**

33. Due to the restrictions imposed upon the seeking of s106 contributions any delays in the adoption and introduction of CIL allows new development to avoid payment of the previous level of developer contributions, in both s106 and PIC tariff terms, during the interim period before CIL is introduced.
34. Once CIL has been adopted, and any s106 requests are restricted in accordance with the requirements of the Regulation 123 List, there is a significant period, post adoption, when applications are approved but actual CIL receipts are not generated until the development is commenced, sometimes a period of between eighteen months and three years from the grant of a planning permission.
35. During that period it is unlikely that any strategic CIL receipts will be allocated until a meaningful number of developments have generated sufficient receipts to make the allocation process worthwhile in the charging authority's view, the current level of receipts being shown in **Annexe 3**.

### **Breaking the link to development sites**

36. Under the previous s106 regime you could only secure s106 contributions from a development if infrastructure to support that development in its locality was required to mitigate the impact of that development upon the local infrastructure.
37. As a result of the CIL regulations, and CIL being a development tax, the monies received in respect of a particular development do not have to be spent in the locality of that development and can be utilised in whatever area or upon a type of infrastructure that the authority considers to be its priority.
38. This has resulted in local areas that are being developed not receiving what are now historic s106 benefits because the CIL allocation priorities are perhaps directed towards a town centre or a particular piece of strategic infrastructure, resulting in the meaningful proportion or community receipts being the only receipt that a local area may receive as a result of development in their area.

### **Impact of SANGS**

39. For those authorities in the west of Surrey a large proportion of their strategic receipts is at risk of being directed towards SANGS (suitable alternative natural green space) mitigation, leaving significantly less CIL monies available for other forms of infrastructure.
40. In Surrey Heath this has led to the majority of its strategic CIL receipts being directed towards the provision of SANGS provision and Education being excluded from both CIL and s106, resulting in new residential development in Surrey Heath not being required to mitigate its impact on education infrastructure.

### **Allocation of CIL and bid outturns to date**

41. Whilst CIL is likely be allocated towards more strategic or major projects it is the smaller local or medium sized projects, which were previously funded in part by s106 and the PIC tariff, which will find it much more difficult to secure funding under a CIL regime.
42. To date the County have had CIL bids rejected by both Elmbridge and Tandridge, for both highways and transport and for education projects, even though officers in both authorities recommended that the projects be supported in the council reports introducing the bids.
43. To date the County Council have secured £3,213,395.00 from three annual bidding rounds in Elmbridge, £2,820,395.00 for nine education projects and £393,000.00 for one passenger transport project and six highways projects but no allocation from Tandridge in their first bidding round.

## **Implications for the delivery of Infrastructure**

44. Officers who previously negotiated developer contributions in connection with planning applications are no longer able to successfully secure site specific mitigation for the impact of new development upon local infrastructure due to the change in regime, which could, over time, inevitably lead to a cumulative deficit of infrastructure throughout Surrey.
45. In relation to major planning applications (10 or more 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, in areas where CIL has yet to be adopted, on an application by application basis, where it is both reasonable and compliant with the CIL statutory tests which state that any request must be –
  - 45.1 directly related to the development
  - 45.2 necessary to make the development acceptable in planning terms, and
  - 45.3 fairly and reasonably related in scale and kind to the developmentand where the particular planning authority concerned are supportive of the approach being taken.

### **Conclusions:**

46. There is still detailed technical work being undertaken by County Council officers 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 and commenced.
47. 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 where possible that the provision of the necessary infrastructure to support the development is able to be secured and provided at the required time, utilising CIL as one of the funding streams.
48. As the report highlights the authorities in Surrey are at different stages in both their preparations and adoption of CIL and as a result both 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 the necessary infrastructure within the required timeframes.

### **Recommendations:**

49. 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 through s106, 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 Joint Committee model is considered to offer the most open and transparent collaborative process for deciding which projects CIL monies should support.

<b>Next steps:</b>
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50. 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 where possible the involvement of County Members in the process, and
- Officers bring back regular 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:**

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 23<sup>rd</sup> January 2014

CIL Report - Environment & Transport Select Committee 15<sup>th</sup> December 2014

CIL Report - Environment & Transport Select Committee 23<sup>rd</sup> April 2015

CIL in Surrey Update – Economic Prosperity, Environment & Highways Board  
10<sup>th</sup> December 2015

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