

## **DELEGATED**

**AGENDA No.**

**REPORT TO PLANNING  
COMMITTEE**

**12 JANUARY 2011**

**REPORT OF THE CORPORATE  
DIRECTOR OF DEVELOPMENT  
AND NEIGHBOURHOOD  
SERVICES**

### **The Community Infrastructure Levy**

#### **Summary**

This report outlines the new proposed changes to the Community Infrastructure Levy. Originally a new planning charge it came into force under the previous Government on 6<sup>th</sup> April 2010 under the Community Infrastructure Levy Regulations 2010. It allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their area. The money can be used to fund a wide range of infrastructure that is needed as a result of development. This includes transport schemes, flood defences, schools, hospitals and other health and social care facilities, parks, green spaces and leisure centres. However it requires the setting of a levy which reflects the costs of the infrastructure, is proportionate, is sound and robust, and has been subject to consultation and testing by a specially appointed planning Inspector.

Planning obligations (private agreements between the local planning authority and the developer) will still continue to play an important role in helping to make individual developments acceptable to local planning authorities and communities. For example, new affordable housing will continue to be delivered through planning obligations rather than the levy. However, reforms have been introduced to restrict the use of planning obligations. Some of these have already come into effect and others will take effect from April 2014 (or as soon as a charging authority starts to charge the levy). Most importantly, after April 2014, planning obligations can no longer be used as the basis for a tariff to fund infrastructure. The levy will be used as the mechanism for pooling contributions from a variety of new developments to fund infrastructure.

This report therefore explains the procedure for setting the Community Infrastructure Levy charge, How the Community Infrastructure Levy will be applied and the relationship between the Community Infrastructure Levy and planning obligations

#### **Recommendation**

***That the report be noted.***

#### **What is the Community Infrastructure Levy**

The Community Infrastructure Levy (the levy) came into force in April 2010. It allows local authorities in England and Wales to raise funds from developers undertaking new building

projects in their area. The money can be used to fund a wide range of infrastructure that is needed as a result of development. This includes transport schemes, flood defences, schools, hospitals and other health and social care facilities, parks, green spaces and leisure centres. As a unitary authority this Council will be a Community Infrastructure Levy charging authority

The Government has decided that this tariff-based approach provides the best framework to fund new infrastructure to unlock land for growth. The Community Infrastructure Levy is intended to be fairer, faster and more certain and transparent than the existing system of planning obligations which is claimed causes delay as a result of lengthy negotiations. Levy rates will be set in consultation with local communities and developers and is intended to provide developers with much more certainty 'up front' about how much money they will be expected to contribute. Under the system of planning obligations the Government is concerned that only six per cent of all planning permissions brought any contribution to the cost of supporting infrastructure, when even small developments can create a need for new services. The levy is intended to create a fairer system, with all but the smallest building projects making a contribution towards additional infrastructure that is needed as a result of their development. The Community Infrastructure Levy also has far greater legal certainty. It provides the basis for a charge in a manner that the planning obligations system alone could not easily achieve; enabling, for example, the mitigation of cumulative impacts from development.

The Government considers that almost all development has some impact on the need for infrastructure, services and amenities - or benefits from it – so that it is only fair that such development pays a share of the cost. It is considered right that those who benefit financially when planning permission is given should share some of that gain with the community which granted it to help fund the infrastructure that is needed to make development acceptable and sustainable. However, the Government considers that developers should have more certainty as to what they will be expected to contribute, thus speeding up the development process, and that the money raised from developer contributions should be spent in a way that developers will feel worthwhile; namely, on infrastructure to support development and the creation of sustainable communities set out in the Local Development Framework.

The Government considers that the levy will make a significant contribution to infrastructure provision. The levy is intended to fill the funding gaps that remain once existing sources (to the extent that they are known) have been taken into account. Local authorities will be able to look across their full range of funding streams and decide how best to deliver their infrastructure priorities, including how to utilise revenue from the levy. This flexibility to mix funding sources at a local level is to enable local authorities to be more efficient in delivering the outcomes that local communities want.

### **How the Levy will be spent**

Local authorities are required to spend the levy's revenue on the infrastructure needed to support the development of their area and they will decide what infrastructure is needed. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development. The levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support development.

The Government will require charging authorities to allocate a meaningful proportion of levy revenues raised in each neighbourhood back to that neighbourhood. This will ensure that where a neighbourhood bears the brunt of a new development, it receives sufficient money to help it

manage those impacts. It complements the introduction of other powerful new incentives for local authorities that will ensure that local areas benefit from development they welcome.

Local authorities are advised to work closely with neighbourhoods to decide what infrastructure they require, and balance neighbourhood funding with wider infrastructure funding that supports growth. They will retain the ability to use the levy income to address the cumulative impact on infrastructure that may occur further away from the development.

Charging authorities will be able to use revenue from the levy to recover the costs of administering the levy, with the regulations permitting them to use up to 5 per cent of their total revenue on administrative expenses to ensure that the overwhelming majority of revenue from the levy is directed towards infrastructure provision.

### **What is infrastructure?**

The Planning Act 2008 provides a wide definition of the infrastructure which can be funded by the levy, including transport, flood defences, schools, hospitals, and other health and social care facilities. This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, district heating schemes and police stations and other community safety facilities. This is intended to give local communities flexibility to choose what infrastructure they need to deliver their development plan. The regulations rule out the application of the levy for providing affordable housing because the Government considers that planning obligations remain the best way of delivering affordable housing.

### **Infrastructure spending outside a charging area**

Charging authorities may pass money to bodies outside their area to deliver infrastructure which will benefit the development of their area, such as the Environment Agency for flood defence. Charging authorities will also be able to collaborate and pool their revenue from their respective levies to support the delivery of 'sub-regional infrastructure', for example, a larger transport project where they are satisfied that this would support the development of their own area.

### **Timely delivery of infrastructure**

The Government consider it is important that the infrastructure needed by local communities is delivered when the need arises. Therefore, the regulations allow authorities to use the levy to support the timely provision of infrastructure, for example, by using the levy to backfill early funding provided by another funding body. The regulations also include provision to enable the Secretary of State to direct that authorities may 'prudentially' borrow against future income from the levy, should the Government conclude that, subject to the overall fiscal position, there is scope for local authorities to use revenue from the levy to repay loans used to support infrastructure

### **Monitoring and reporting spending of the levy**

To ensure that the levy is open and transparent, charging authorities will be required to prepare short reports on the levy for the previous financial year which must be placed on their websites by 31 December each year. They may prepare a bespoke report or utilise an existing reporting mechanism, such as the Annual Monitoring Report which reports on their development plan.

These reports are to ensure accountability and enable the local community to see what infrastructure is being funded from the levy. Charging authorities must report how much revenue from the levy they received in the last financial year and how much revenue was unspent at the end of the financial year. They must also report total expenditure from the levy in the preceding

financial year, with summary details of what infrastructure the levy funded and how much of the levy was 'spent' on each item of infrastructure.

## **Setting the Community Infrastructure Levy charge**

### **Charging schedules**

Charging authorities should normally implement the levy on the basis of an up-to-date development plan. A charging authority may use a draft plan if they are planning a joint examination of their core strategy or Local Development Plan and their Community Infrastructure Levy charging schedule.

Charging authorities wishing to charge the levy must produce a charging schedule setting out the levy's rates in their area. Charging schedules will be a new type of document within the folder of documents making up the local authority's Local Development Framework in England but charging schedules will not be part of the statutory development plan.

### **Deciding the levy's rate**

Charging authorities wishing to introduce the levy are advised to propose a rate which does not put at serious risk the overall development of their area. They will need to draw on the infrastructure planning that underpins the development strategy for their area. Charging authorities will be required to produce evidence to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy upon the economic viability of development across their area.

In setting their proposed rates for the levy, charging authorities will identify the total infrastructure funding gap that the levy is intended to support, having taken account of the other sources of available funding. The use of the infrastructure planning information that underpinned their development plan will identify a selection of indicative infrastructure projects or types of infrastructure that are likely to be funded by the levy. If in the event that a charging authority considers that the infrastructure planning underpinning its development plan is weak, it may undertake some additional bespoke infrastructure planning to identify its infrastructure funding gap. In order to provide flexibility for charging authorities to respond to changing local circumstances over time, charging authorities may be allowed to spend their revenue from the levy on different projects from those identified during the rate setting process.

### **Evidence of economic viability**

Charging authorities are required to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the imposition of the levy upon the economic viability of development across their area. Charging authorities will have to prepare evidence about the effect of the levy on economic viability in their area to demonstrate to an independent examiner that their proposed rates, for the levy, strike an appropriate balance. In practice, charging authorities are advised they may need to sample a limited number of sites in their areas and they may want to build on work undertaken to inform their Strategic Housing Land Availability Assessments. Charging authorities that decide to set differential rates may need to undertake more fine-grained sampling to help them to estimate the boundaries for their differential rates.

### **Differential rates**

Charging schedules may include differential rates, where they can be justified either on the basis of the economic viability of development in different parts of the authority's area or by reference to the economic viability of different types of development within their area. The ability to set differential rates gives charging authorities more flexibility to deal with the varying circumstances

within their area, for example where an authority's land values vary between an urban and a rural area.

### **Procedure for setting the charge**

#### **Preparing the charging schedule**

The process for preparing a charging schedule is similar to that which applies to development plan documents in England and Local Development Plans in Wales. Charging authorities are also able to work together when preparing their charging schedules.

#### **Public consultation**

Charging authorities must consult local communities and stakeholders on their proposed rates for the levy in a preliminary draft of the charging schedule. Then, before being examined, a draft charging schedule must be formally published for representations for a period of at least four weeks. During this period any person may request to be heard by the examiner. If a charging authority makes any further changes to the draft charging schedule after it has been published for representations, any person may request to be heard by the examiner, but only on those changes, during a further four-week period.

#### **The examination of the charging schedule**

A charging schedule must be examined in public by an independent person appointed by the charging authority. Any person requesting to be heard before the examiner at the examination must be heard in public. The format for the levy's examination hearings will be similar to those for development plan documents and the independent examiner may determine the examination procedures and set time limits for those wishing to be heard to ensure that the examination is conducted in an efficient and effective manner.

#### **Outcome of the levy's examination**

The independent examiner will be able to recommend that the draft charging schedule should be approved, rejected, or approved with specified modifications and must give reasons for those recommendations. A charging schedule may be approved subject to modifications if the charging authority has complied with the legislative requirements, but for example, the proposed rate for the levy does not strike an appropriate balance given the evidence. The independent examiner should reject a charging schedule if the charging authority has not complied with an aspect of the legislation (and this cannot be addressed by modifications), or if it is not based on appropriate available evidence. The examiner's recommendations will be binding on the charging authority, which means that the charging authority must make any modifications recommended if they intend to adopt the charging schedule and cannot adopt a schedule if the examiner rejects it. However, a major difference of the new CIL scheme is that the charging authority is not under an obligation to adopt the final charging schedule, but can, if it prefers, submit a revised charging schedule to a fresh examination. Under the new provisions examiners will only be able to ensure councils do not set unreasonable charges. Councils will be required to correct charges that examiners consider to be unreasonable, but they will have more discretion on how this is done – for example, they could depart from the detail of the examiner's recommendations on the mix of charges to be applied to different classes of development or the rates to be applied in different parts of their area.

#### **Procedure after the levy's examination**

To ensure democratic accountability, the charging schedule must be formally approved by a resolution of the full council of the charging authority. In order to ensure that the correct rate for a levy is charged, certain errors in the charging schedule may be corrected for a period of up to six

months after the charging schedule has been approved. If the charging authority corrects errors it must republish the charging schedule.

### **How will the Community Infrastructure Levy be applied?**

#### **What development is liable to pay the levy?**

Most buildings that people normally use will be liable to pay the levy. But buildings into which people do not normally go and buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery, will not be liable to pay the levy. Structures which are not buildings, such as pylons and wind turbines, will not be liable to pay the levy. The levy will not be charged on changes of use that do not involve an increase in floorspace.

#### **How will the levy be charged?**

The levy is to be charged in pounds per square metre on the net additional increase in floorspace of any given development. This will ensure that charging the levy does not discourage the redevelopment of sites.

Any new build – that is a new building or an extension – is only liable to pay the levy if it has 100 square metres, or more, of gross internal floorspace or involves the creation of one dwelling even when that is below 100 square metres. While any new build over this size will be subject to the levy, the gross floorspace of any existing buildings on the site that have been recently in use and are going to be demolished will be deducted from the final liability. To ensure the levy is cost effective to collect, any final net charge less than £50 must not be pursued by the charging authority.

In calculating individual charges for the levy, charging authorities will be required to apply an annually updated index of inflation to keep the levy responsive to market conditions. The index will be the national All-In Tender Price Index of construction costs published by the Building Cost Information Service of The Royal Institution of Chartered Surveyors.

#### **How does the levy relate to planning permission?**

The levy will be charged on new builds permitted through some form of planning permission. Examples are planning permissions granted by a local planning authority or a consent granted by the Independent Planning Commission. However, some new builds rely on permitted development rights under the General Permitted Development Order 1995. There are also local planning orders that grant planning permission, for example Simplified Planning Zones and Local Development Orders. Finally, some Acts of Parliament grant planning permission for new builds: the Crossrail Act 2008 is one such Act. The levy will apply to all these types of planning consent.

#### **Who collects the levy?**

Collection of the levy will be carried out by the 'Community Infrastructure Levy collecting authority' which this Council would be one.

#### **How is the levy collected?**

The levy's charges will become due from the date that a chargeable development is commenced in accordance with the terms of the relevant planning permission. The definition of commencement of development for the levy's purposes is the same as that used in planning legislation, unless planning permission has been granted after commencement.

When planning permission is granted, the collecting authority will issue a liability notice setting out the amount of the levy that will be due for payment when the development is commenced, the

payment procedure and the possible consequences of not following this procedure. The payment procedure encourages someone to assume liability to pay the levy before development commences. Where liability has been assumed, and the collecting authority has been notified of commencement, parties liable to pay the levy will benefit from a 60 day window in which they can make payment.

Where the charge is over £10,000, the liable parties will be able to pay the levy within a series of instalment periods from the commencement date. The number of instalments will vary, depending on the size of the amount due. If the payment procedure is not followed, payment will become due in full. The Government will introduce changes to the Community Infrastructure Levy Regulations to free up payment arrangements. Local authorities will be able to decide their own levy payment deadlines and whether to offer the option of paying by instalments.

### **Who is liable to pay the levy?**

The responsibility to pay the levy runs with the ownership of land on which the liable development will be situated. This is in keeping with the principle that those who benefit financially when planning permission is given should share some of that gain with the community. That benefit is transferred when the land is sold with planning permission, which also runs with the land. The regulations define landowner as a person who owns a 'material interest' in the relevant land. 'Material interests' are owners of freeholds and leaseholds that run for more than seven years after the day on which the planning permission first permits development.

The regulations recognise that others involved in a development may wish to pay. To allow this, anyone can come forward and assume liability for the development. In order to benefit from payment windows and instalments, someone must assume liability in this way. Where no one has assumed liability to pay the levy, the liability will automatically default to the landowners of the relevant land and payment becomes due immediately upon commencement of development. Liability to pay the levy can also default to the landowners where the collecting authority, despite making all reasonable efforts, has been unable to recover the levy from the party that assumed liability for the levy.

### **Charity and Social Housing Relief**

The regulations give relief from the levy in two specific instances. First, a charity landowner will benefit from full relief from their portion of the liability where the chargeable development will be used wholly, or mainly, for charitable purposes. A charging authority can also choose to offer discretionary relief to a charity landowner where the greater part of the chargeable development will be held as an investment, from which the profits are applied for charitable purposes. The charging authority must publish its policy for giving relief in such circumstances. Secondly, the regulations provide 100% relief from the levy on those parts of a chargeable development which are intended to be used as social housing.

To ensure that relief from the levy is not used to avoid proper liability for the levy, the regulations require that any relief must be repaid, a process known as 'claw back', if the development no longer qualifies for the relief granted within a period of seven years from commencement of the chargeable development.

### **Exceptional circumstances**

Given the importance of ensuring that the levy does not prevent otherwise desirable development, the regulations provide that charging authorities have the option to offer a process for giving relief from the levy in exceptional circumstances where a specific scheme cannot afford to pay the levy. A charging authority wishing to offer exceptional circumstances relief in its area

must first give notice publicly of its intention to do so. A charging authority can then consider claims for relief on chargeable developments from landowners on a case by case basis, provided the following conditions are met. Firstly, a section 106 agreement must exist on the planning permission permitting the chargeable development. Secondly, the charging authority must consider that the cost of complying with the section 106 agreement is greater than the levy's charge on the development and that paying the full charge would have an unacceptable impact on the development's economic viability. Finally, relief must not constitute a notifiable state aid.

### **In-kind payments**

There may be circumstances where it will be more desirable for a charging authority to receive land instead of monies to satisfy a charge arising from the levy, for example where the most suitable land for infrastructure is within the ownership of the party liable for payment of the levy. Therefore, the regulations provide for charging authorities to accept transfers of land as a payment 'in kind' for the whole or a part of a the levy, but only if this is done with the intention of using the land to provide, or facilitate the provision of, infrastructure to support the development of the charging authority's area.

To ensure that 'in-kind' payments are used appropriately, such payments may only be accepted where the amount of the levy payable is over £50,000 and where an agreement to make the in-kind payment has been entered into before commencement of development. Land that is to be paid 'in kind' may contain existing buildings and structures and must be valued by an independent valuer who will ascertain its 'open market value', which will determine how much liability the 'in-kind' payment will off-set. Payments in kind must be provided to the same timescales as cash payments

The Government propose to introduce changes to the Community Infrastructure Levy Regulations to remove the £50,000 minimum threshold so authorities can accept a payment in-kind for any level of contribution.

### **How will payment of the levy be enforced?**

Where there are problems in collecting the levy, it is important that collecting authorities have the means to penalise late payment and deter future non-compliance. To ensure payment, the regulations provide for a range of proportionate enforcement measures, such as surcharges on late payments.

In most cases, these measures should be sufficient. However, in cases of persistent non-compliance, the regulations also enable collecting authorities to take more direct action to recover the amount due. One such measure is the Community Infrastructure Levy Stop Notice, which prohibits development from continuing until payment is made. Another is the ability to seek a court's consent to seize and sell assets of the liable party. In the very small number of cases where a collecting authority can demonstrate that recovery measures have been unsuccessful, a court may be asked to commit the liable party to a short prison sentence.

### **The relationship between the Community Infrastructure Levy and planning obligations**

The levy is intended to provide infrastructure to support the development of an area rather than to make individual planning applications acceptable in planning terms. As a result, there may still be some site specific impact mitigation requirements without which a development should not be granted planning permission. Some of these needs may be provided for through the levy but others may not, particularly if they are very local in their impact. Therefore, the Government considers there is still a legitimate role for development specific planning obligations to enable a



local planning authority to be confident that the specific consequences of development can be mitigated.

However, in order to ensure that planning obligations and the levy can operate in a complementary way and the purposes of the two instruments are clarified, the regulations scale back the way planning obligations operate. Limitations are placed on the use of planning obligations in three respects:

I. Putting the Government's policy tests on the use of planning obligations set out in Circular 5/05 on a statutory basis for developments which are capable of being charged the Levy

II. Ensuring the local use of the levy and planning obligations does not overlap; and

III. Limiting pooled contributions from planning obligations towards infrastructure which may be funded by the levy.

### **Making the Circular 5/05 tests statutory for development capable of being charged the levy**

The regulations place into law for the first time the Government's policy tests on the use of planning obligations. The statutory tests are intended to clarify the purpose of planning obligations in light of the levy and provide a stronger basis to dispute planning obligations policies, or practice, that breach these criteria. This seeks to reinforce the purpose of planning obligations in seeking only essential contributions to allow the granting of planning permission, rather than more general contributions which are better suited to use of the levy.

From 6 April 2010 it has been unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, that is capable of being charged the levy, whether there is a local levy in operation or not, if the obligation does not meet all of the following tests:

(a) Necessary to make the development acceptable in planning terms

(b) Directly related to the development; and

(c) Fairly and reasonably related in scale and kind to the development

For all other developments (i.e. those not capable of being charged the levy), the policy in Circular 5/05 will continue to apply until the new policy document on planning obligations is adopted.

### **Ensuring the local use of the levy and planning obligations does not overlap**

On the local adoption of the levy, the regulations restrict the local use of planning obligations to ensure that individual developments are not charged for the same items through both planning obligations and the levy. Where a charging authority sets out that it intends to fund an item of infrastructure via the levy then that authority cannot seek a planning obligation contribution towards the same item of infrastructure

A charging authority will be required to set out its intentions for how revenue raised from the levy will be spent on its website. If a charging authority does not set out its intentions for use of the levy's revenue then this would be taken to mean that the authority was intending to use the levy's revenue for any type of infrastructure capable of being funded by the levy, and consequently that authority could not seek a planning obligation contribution towards any such infrastructure.

## **Limiting pooled s106 contributions towards infrastructure capable of being funded by the levy**

On the local adoption of the levy or nationally after a transitional period of four years (6 April 2014), the regulations restrict the local use of planning obligations for pooled contributions towards items that may be funded via the levy. The levy is the government's preferred vehicle for the collection of pooled contributions.

However, where an item of infrastructure is not locally intended to be funded by the levy, pooled planning obligation contributions may be sought from no more than five developments to maintain the flexibility of planning obligations to mitigate the cumulative impacts of a small number of developments.

For provision that is not capable of being funded by the levy, such as affordable housing or maintenance payments, local planning authorities are not restricted in terms of the numbers of obligations that may be pooled, but they must have regard to the wider policies set out in Circular 5/05.

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### **FINANCIAL AND LEGAL IMPLICATIONS**

#### **Financial**

#### **RISK ASSESSMENT**

#### **COMMUNITY STRATEGY IMPLICATIONS**

Planning policy is part of the framework which enables the Community Strategy to be implemented and development services the physical manner in which it is delivered. Economic Regeneration Objective 6 'Ensure good and sustainable design in regeneration schemes and new developments-Meet government targets in determining planning applications' is relevant to this report.

#### **COMMUNITY SAFETY**

The proposal has no direct impact upon community safety.

#### **EQUALITIES IMPACT ASSESSMENT**

This report is not subject to an Equality Impact Assessment because it is a procedure which is universally applied regarding processes within Planning Services.

#### **WARD AND WARD COUNCILLORS: ALL**