

For Publication

Community Infrastructure Levy (CIL) – Interim Year Report (J010R)

Meeting:	Council Cabinet
Date:	23 February, 2017 21 February, 2017
Cabinet portfolio:	Deputy Leader
Report by:	Economic Growth Manager

For publication

1.0 Purpose of Report

- 1.1 To update Members on the introduction of the Community Infrastructure Levy (CIL) and the performance of the Levy during the first 9 months following its implementation, and to recommend the introduction of a CIL Payment in Kind policy.

2.0 Recommendations

That Cabinet recommends to Full Council

- 2.1 That Full Council notes the report on the performance of the Levy during the first 9 months since implementation.
- 2.2 That Full Council approves the introduction of a CIL 'Payment in Kind' policy as set out in the report.

3.0 Background

- 3.1 The Community Infrastructure Levy (CIL) offers a way of seeking contributions from developers towards providing essential infrastructure that is needed to support new development.
- 3.2 Following an extensive period of evidence preparation and consultation, the Council approved the introduction of a CIL Charging Schedule, Infrastructure List and Instalments Policy, and the Levy took effect on 1st April 2016.
- 3.3 The Chesterfield CIL Charging Schedule has the following key elements:
- CIL is only charged on **residential development** (use class C3) and **retail development** (use classes A1-A5). Other forms of development were not considered viable (i.e. they would not generate sufficient development value to justify CIL collection).
 - Chesterfield Borough has three **residential** CIL zones:
 - A high CIL zone (£80 per sq.m);
 - A medium CIL zone (£50 per sq.m); and
 - A low CIL zone (£20 per sq.m).The Staveley Corridor regeneration area is nil rated. These zones are broadly based on viability (i.e. land and property prices throughout the Borough) and follow ward boundaries. CIL is charged in pounds per square metre on net increase in gross internal floor area (GIA).
 - For all **retail** development over 100m², a Borough-wide charge of £80 per sq.m applies.
 - Affordable housing is exempt from the CIL regime and will continue to be funded through S.106 agreements. Exemptions are also available for self-build and charitable development.
 - Developers must pay CIL on commencement of development but payments can be phased.
 - The Council resolved to introduce an Exceptional Circumstances Policy from May 2016. This enables the Council to offer relief from CIL where individual sites with specific and exceptional cost burdens would not be viable due to the payment of the CIL charge. It is a mechanism to deliver development in

circumstances where CIL and S.106 conflict, although the exceptional circumstances where this policy will be applied are likely to be rare.

- There is a requirement to report on CIL monies received and expenditure, on an annual basis

4.0 CIL Performance

4.1 In terms of performance since the Levy took effect on 1st April, as of 31st December 2016:

- 25 CIL Liability Notices have been issued,
- 3 Commencement Notices have been received (2 relating to exempt schemes)
- 2 self-build exemptions have been granted
- 2 Demand Notices have been issued
- Potential CIL-liability is now approaching £900,000

A schedule of CIL-liable schemes is set out in detail in Appendix 3.

4.2 Developments become eligible for CIL when Full or Reserved Matters planning permission is granted, but it is paid upon commencement of development. The lead in times between the developer accepting CIL liability and payment can be significant and it will be some time before the Council is in a position to utilise CIL revenues. This provides an opportunity to agree with members and other stakeholders a CIL expenditure strategy.

4.3 Overall, the introduction of CIL has offered more certainty in planning decision, both for the Council and for developers in terms of the developer contributions that the Council is able to request for particular development proposals, and what developers will be required to provide.

Section 106 Agreements

4.4 The introduction of the CIL in Chesterfield has not completely replaced the system of planning obligations. S.106 agreements have continued to operate alongside CIL, but in a scaled down form. It is no longer possible for the Borough Council to request contributions through Section 106 agreements for infrastructure

items which are contained within the CIL Regulation 123 list since this would amount to 'double charging'. The list is attached at Appendix 1.

CIL Expenditure

- 4.5 Unlike developer contributions from S.106 agreements, CIL does not have to be spent on the site or in the area from which it is collected. CIL must, however, be spent on infrastructure items that are included in the Council's adopted infrastructure list (known as the Regulation 123 list - see Appendix 1.) The task now is to agree expenditure priorities, to ensure that CIL is able to support the agreed strategic growth strategy for the Borough.
- 4.6 The Regulation 123 list can be reviewed at any time. The Authority Monitoring Report could be expanded to identify progress on collecting and spending CIL and indicate the need for any review of the Regulation 123 list. When the Regulation 123 list is being revised, any changes will need to be clearly explained and subject to appropriate local consultation.

Neighbourhood element

- 4.7 CIL will help neighbourhoods to accommodate the impact of new development by sharing CIL revenues. A 15% share of the CIL revenues from development in their areas will be allocated to Town and Parish Councils to deliver the infrastructure that local communities want. In other areas of the Borough, the Council will retain the neighbourhood proportion and will engage with local communities where development has taken place and agree with them how best to spend the neighbourhood funding element. It should be noted that expenditure of the neighbourhood element is not constrained by the Regulation 123 list.

A Payment-in-kind policy

- 4.8 There may be circumstances where the Borough Council, as the CIL Charging Authority, and the person/developer liable for the CIL will wish land and/or infrastructure to be provided, instead of money, to satisfy a CIL charge. The CIL Regulations provide for such 'Payments in Kind', allowing CIL charging authorities to put in place procedures which would allow acceptance of full or part

payment of a CIL liability by way of a physical provision of land and / or infrastructure.

4.9 However, before accepting a payment in kind the Charging Authority must have made the possibility of such payments available in its area. To achieve this Council must:

- give notice that it is willing to accept either or both land payments and infrastructure payments;
- state the commencement date from which it is willing to accept them; and
- as regards an infrastructure payment, include a policy statement as to the infrastructure projects or types which it will consider accepting. The infrastructure to be provided should be a project or type listed on its Regulation 123 list.

4.10 Other features of a Payment-in-kind policy are:

- The policy may be revised or revoked subsequently but any revision must be publicised.
- The aim of the authority must be to ensure that infrastructure provided in this manner will be used to support the development of the area. (The authority can accept infrastructure which is situated outside the area if it considers that it will provide such support);
- Significantly, the charging authority must be satisfied that the infrastructure is not needed to make the relevant planning permission acceptable in planning terms (i.e. it would have otherwise been secured by conditions and/or section 106 agreement alongside normal CIL payments).
- In addition to the national requirements, it is possible to impose local eligibility criteria, where this is felt to be necessary and justified.
- Where any developer does offer to pay the levy as land or infrastructure , 15% of the cash value of levy receipts must be passed on to the relevant Town Council or community area in cash, in accordance with the requirements for the neighbourhood element.

4.11 A draft Payment in Kind policy is set out in Appendix 2. The draft Policy incorporates these issues and proposes that the Borough Council should consider accepting both land and infrastructure.

Next steps

4.12 In accordance with the issues highlighted in this report, the next steps for the Council will be to:

- Identify CIL expenditure priorities, as set out in paragraph 4.5
- Publish an annual CIL report for the financial year 2016/17 – post 31.3.17, as outlined in paragraph 3.3.

4.13 If Council is minded to approve the Payment in Kind Policy set out in Appendix 2, the Council must:

- issue a document which gives notice that it is willing to accept either or both land payments and infrastructure payments;
- state the commencement date from which it is willing to accept, them it will take effect from 1st April 2017; and
- as regards an infrastructure payment, include a policy statement as to the infrastructure projects or types which it will consider accepting possibly by reference to the reg. 123 list of infrastructure.
- Publish the policy on the Council's website and make it available for inspection at the Town Hall and any other appropriate places within the Borough.

4.14 Alongside its publication of the Housing White Paper on 7th February, the Government also published the report of the CIL Review Group which it commissioned in 2015. The report sets out the Group's findings and recommendations for a new approach to developer contributions. A further report will be presented to members in due course, setting out the implications for CIL and developer contributions.

5.0 Financial considerations

5.1 The financial ramifications of introducing a CIL were reported to Cabinet in December 2011 and in subsequent reports. Importantly, the CIL regulations permit charging authorities to finance initial set-up and ongoing administration costs from up to 5 per cent of CIL receipts. Therefore, over time, it should be possible to recover the costs of preparing the CIL evidence base and Charging Schedule (including examination costs) and other on-going administration or staffing costs. The introduction of a Payment in Kind Policy will offer a mechanism to allow acceptance of full or part payment of a CIL liability by way of a physical provision of land and / or infrastructure.

5.2 An index also now needs to be applied to CIL liability calculations. Government legislation specifies the index to be used, which can only be accessed at an estimated cost of £1,810 (+vat). This cost can be met through the 5% administrative element of CIL income which can be recovered by the Council referred to above.

6.0 **Legal and human rights implications**

6.1 The preparation of CIL has been in accordance with the statutory requirements of the Planning Act 2008 and CIL regulations 2010 (as amended).

7.0 **Consultation**

7.1 All public consultation has been in accordance with the statutory requirements of the Planning Act 2008 and CIL Regulations 2010 (as amended).

7.2 The CIL Regulations also set out the steps required to introduce the proposed Payments in Kind policy (paragraph 3.16.)

8.0 **Environmental sustainability and bio-diversity**

8.1 Local authorities have a duty to have regard to the conservation of biodiversity in exercising their functions in accordance with the Natural Environment and Rural Communities Act which came into force on 1 October 2006.

8.2 CIL will provide funds to protect, enhance and promote the Borough's existing green infrastructure assets.

9.0 **Risk Management**

9.1 The potential risks of introducing a CIL Charging Schedule were considered by Members in October 2015 and are shown below. The introduction of a Payment in Kind Policy, together with the approved Exceptional Circumstances Relief Policy, has been added to the original Risk assessment, together with proposed mitigating actions.

Description	Impac	Likelihood	Mitigating	Impac	Likelihood
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of the Risk	t		Action	t	d
Developers not assuming liability in timely manner	L	M	Set up robust monitoring including reminders to developers	L	L
Developers not notifying LPA of commencement	M	M	Set up robust monitoring including reminders to developers	L	L
CIL funds not received within specified time period	M	M	Set up robust enforcement procedures including reminders to developers	L	L
Introduction of Payment in Kind Policy					
Reduction in CIL funding from payments in kind	M	M	Robust application of policy to ensure only used where relevant	L	M
Development not coming forward due to difficulties making infrastructure provision on site	H	M	Adoption of Payment in Kind policy	L	L

10.0 Equalities

10.1 A preliminary Equalities Impact Assessment (EIA) has been undertaken and no negative impacts on protected groups have been identified (Considered by Members in October 2015). The Council's Policy & Equalities Team have confirmed that it is not

necessary to carry out a full EIA for the proposal for a supplementary Payment in Kind policy as set out in this report.

11.0 Alternative options and reasons for Rejection

11.1 The Community Infrastructure Levy scheme in Chesterfield does not currently give developers the option to offer payment in kind. It is considered that adding this payment option to the scheme would offer flexibility in particular circumstances, where the Council chooses to accept any such offer and where the terms of the policy can be met.

12.0 Recommendations

That Cabinet recommends to Full Council

12.1 That Full Council notes the report on the performance of the Levy during the first 9 months since implementation.

12.2 That Full Council approves the introduction of a CIL 'Payment in Kind' policy as set out in the report.

13.0 Reasons for recommendations

13.1 To allow the Council the discretion to offer Payment in Kind where where the Borough Council, and the person/developer liable for the CIL will wish land and/or infrastructure to be provided, instead of money, to satisfy a CIL charge.

Decision Information

Key decision number	707
Wards affected	All wards
Links to Council Priorities	To make Chesterfield a thriving Borough. To improve the quality of life for local people

Document information

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Background documents	
<p>Relevant background documents are set out on the Council's Community Infrastructure Levy webpage https://www.chesterfield.gov.uk/planning-and-building-control/planning-permission-and-development-control/community-infrastructure-levy.aspx</p>	
Appendices to the report	
Appendix 1	Community Infrastructure Levy: Regulation 123 List
Appendix 2:	Proposed Payment-in-kind policy
Appendix 3:	<p>Chesterfield Community Infrastructure Levy</p> <p>Schedule of CIL-Liable schemes at 31st December 2016</p>