

Executive

16 June 2022

Report of Corporate Director of Place
Portfolio of the Executive Member for Finance and Major Projects

Introduction of Community Infrastructure Levy

Summary

1. Since 2010, authorities in England and Wales have also been empowered to establish a Community Infrastructure Levy (CIL) to help pay for infrastructure to support development such as schools, green infrastructure and sustainable transport. This report seeks agreement to introduce a CIL in York to support the implementation of the Local Plan (“the Plan”). It will help ensure infrastructure to support development envisaged is delivered in the right time and in the right place. Subject to views of Executive, a CIL Draft Charging Schedule setting out the proposed charges for consultation can be prepared for approval and then formal consultation in Autumn 2022.

Recommendations

2. The Executive is asked to:

- 1) Agree to move forward with the preparation of a Community Infrastructure Levy (CIL) for York.

Reason: To enable collection of funding from landowners/developers to help support delivery and mitigate infrastructure impacts of the development envisaged in the emerging Local Plan.

- 2) To note that a Draft CIL Charging Schedule setting out proposed rates will be presented to Executive for agreement prior to formal consultation later in 2022.

Reason: Before CIL can be published and charged, a Draft Charging Schedule must be formally consulted on in line with the CIL Regulations 2010 (as amended 2019).

Background

3. As York moves a step closer to its first adopted Plan, there is an opportunity to consider how the Council can use other planning tools and processes to support its implementation, from Supplementary Planning Documents to support policy implementation to *targeted* and evidence led use of Article 4 Directions to ensure Plan delivery. The Council's approach to securing developer contributions presents a particular opportunity to enable delivery of Plan policies.
4. Planning obligations (frequently referred to as 'Section 106 agreements' or S106) are negotiated between the Council and landowners/developers to mitigate the impact of a development or to secure certain requirements/obligations as part of a development. They are currently the only mechanism used in York to secure landowner/developer financial contributions. They can include:
 - Requirements for parts of a development to be used in certain ways, for example, for a percentage of home to be affordable housing;
 - Requirements for certain works to be undertaken or for other requirements and/or restrictions on the form of the development, for example requiring certain works to the highway;
 - Financial contributions to address the impacts of development – usually limited to those cases where it is not feasible to meet policy requirements on site and/or to mitigate specific development impacts, such as the provision of open space.
5. S106 can only be used where the legal tests set out in the CIL Regulations 2010 (as amended) are met. That is S106 must be:
 - Necessary to make the development acceptable in planning terms;
 - Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the development.
6. Since 2010, authorities in England and Wales have been empowered to establish a Community Infrastructure Levy (CIL) to help pay for infrastructure to support development. This charge on the development can operate alongside S106, which can continue to be used for affordable housing and other on-site infrastructure.

7. CIL is a fixed, non-negotiable, charge per square metres on most development of 100 square metres or more, or a new dwelling of any size. It is calculated using standard formulae set out in the CIL Regulations. There are exceptions and reliefs from payment of CIL provided for in the Regulations, and available by application; this applies to affordable housing, most charitable developments, self-build homes and residential annexes.
8. CIL rates must be set out in a CIL Charging Schedule by the charging authority – that is the Council. The level at which CIL rates are set must strike an appropriate balance between collecting money to fund the infrastructure needed to support development *and* the ability of developments in its areas to afford the charge – that is the viability of development. Accordingly, CIL Draft Charging Schedules are supported by evidence of infrastructure needs and costs and viability impacts – with the latter having a central role in defining the CIL charge. These are all then subject to public consultation before going forward to an examination in public by an ‘Independent Person’, such as an Inspector from the Planning Inspectorate.
9. Once the CIL Charging Schedule takes effect, payment of CIL becomes due from commencement of the development – this is either 60 days as specified in regulations or as defined in an Instalment Policy published by the Council. The CIL monies collected can then be applied to fund a wide range of infrastructure subject to the limits defined in section 216(2) of the Planning Act 2008, and regulation 59, as amended by the 2012 and 2013 Regulations). This can include transport infrastructure, flood defences, schools, hospitals, and other health and social care facilities, open spaces, cultural and sports facilities, district heating schemes and other community safety facilities.
10. A portion of CIL must be allocated to neighbourhoods. Where there is a Neighbourhood Plan in place 25% of CIL is applied to neighbourhood priorities, and is passed to the relevant Parish Council. Where there is no Neighbourhood Plan made and adopted, this is reduced to 15% of receipts up to certain cap defined in the CIL Regulations 2010 (as amended). This neighbourhood element can be spent more widely than on infrastructure – but must be used to address the demands that development places on the area.
11. Communities without a parish or town council still benefit from the neighbourhood portion. The Council will engage with the communities where development has taken place and agree with them how best to

spend the neighbourhood funding, including priorities set out formally in neighbourhood plans. The approach to engagement and decision making for the neighbourhood portion of CIL will be published once CIL is operational. Further information on the policy approach to this will be outlined alongside the Draft Charging Schedule report. The final policy will be subject of decision by Executive, who will review this from time to time.

12. The Regulations allow for up to 5% of CIL receipts to be used to recover the costs of administering the levy.
13. It is worth noting that combined authorities with planning powers can charge a strategic infrastructure tariff in addition to a local CIL. The Mayor of London can also charge a CIL for strategic transport projects. A CIL for York and North Yorkshire has not been part of discussions to date.
14. The Government has signalled its intention to reform both CIL and S106. The most detailed statement published at the time of writing, was as set out in the Planning for the Future White Paper, August 2020. This set out proposals to replace Section 106 and CIL with a new 'National Infrastructure Levy'. It identifies that this would be "a nationally-set value based flat rate charge", with either single or varied rate could be set by central Government. It also suggests that it would be charged on the final value of a development and at the point of occupation. There would be a minimum threshold below which it would not be charged. It was proposed this National Infrastructure Levy could be spent with the same or even greater flexibilities than CIL with the neighbourhood element retained.

Consultation

15. The work programme attached to the Economy and Place Policy and Scrutiny Committee, March 2019 identifies CIL as a future area of policy development. However, to date limited consultation has taken place other than that associated with the Local Plan and the production of a viability assessment which included some engagement with developers on the assumptions used.
16. The CIL Regulations 2010 (as amended) set out a clear requirement for consultation on the Draft CIL Charging Schedule in addition to a public independent examination of the proposed charges. This Draft Charging Schedule, setting out proposed rates, would be subject to approval by

Executive and consultation with the Local Plan working group ahead of formal consultation.

Options

17. The Council can maintain the status quo and continue with planning obligations approach, but introduction of CIL allows greater flexibility than S106 for the Council to choose the infrastructure that is to be funded to deliver the Local Plan – whether through mitigating or unlocking development. It also provides for a ‘neighbourhood pot’ for communities most directly impacted by development. Should progress on the emerging Local Plan stall, this remains the default position, until such time as the proposed Government replacement mechanism comes into effect.
18. The Council could wait for the introduction of CIL’s replacement mechanism, the ‘Infrastructure Levy’ proposed by Government. However, the timescale for introduction is unclear, the legislation will take several months or even years to enact legislation and the Government has described the introduction of this new levy as a ‘test and learn’ approach suggesting a staggered rather than immediate roll out. Furthermore, the Government’s statements on the proposed CIL, consistently indicate a levy type approach (an evolution of CIL rather than a fundamental change of direction). In this context, moving forward with CIL may enable an easier transition to the proposed ‘Infrastructure Levy’ intended to replace CIL and S106.

Analysis

19. Viability studies associated with the development of the Local Plan include a 2018 study and updated sensitivity testing in 2022 (see ‘Background papers’). CIL rates can also be varied by the use and scale of development as well as by area – but the variations must be based on viability. These initial viability studies indicate that a CIL could be charge for residential development and potentially certain other categories of development. The 2018 assessment suggested charges from zero to £150 per square metre depending on use, with £130 per square metres for most residential uses (schemes of less than 10 units outside the city centre where viability may be more challenging). However, further analysis and consultation with developers is needed to determine the appropriate level of charge in York. If the decision to move forward with CIL is taken, this work will be undertaken in over the summer.

20. CIL and Section 106 can be used alongside each other where the legal requirements set out in the Regulations are met. In very broad terms, CIL has a particular role in meeting the cumulative demand arising from development overall, including smaller scale development, but there will still be a role for Section 106 in the context. The initial results of these viability studies suggest that where there are very significant section 106 costs associated with on-site infrastructure requirements (typically associated with the largest strategic sites - over 1,000 homes), a lower or even zero CIL *may* be appropriate. It is not uncommon for this to be the case with many CIL Charging Schedules across England adopting lower/zero rates very large-scale development/ new settlements in light of the significantly higher on-site Section 106 requirements. This does not mean that the developments of a larger scale are paying less – it means that of the total developer contributions sought the larger proportion comes from S106 rather than CIL. Again, this will need to be assessed as part of further viability work associated with the introduction of a CIL. As outlined above, the introduction of CIL will have the advantage of providing a new funding stream that can be strategically applied to projects to enable delivery of the Council's first Local Plan. It has a number of advantages compared to continuing with Section 106 alone. These include:

- Reducing time taken in negotiation Section 106 agreements as the non- site-specific infrastructure costs will be set out up front in a Charging Schedule, providing certainty for developers and infrastructure providers (and CIL is non-negotiable).
- Capturing financial contributions from smaller developments from one or more units which cumulatively can give rise to infrastructure; infrastructure impacts of this size category of development are not effectively mitigated as S106 is typically limited to major developments. Development of less than 10 units has comprised a fifth of developments in York over the last 10 years.
- Allowing more flexible allocation of spend than the narrowly ringfenced contributions secured through Section 106 agreements, enabling more effective response to changes in capacity in infrastructure across the City, such as in response to deficits or surpluses in education or primary health care infrastructure.
- Providing a funding stream to support neighbourhood priorities – which is particularly valuable given the high take up of neighbourhood planning in York.
- Laying the foundation for a transition to a levy approach in readiness for the Infrastructure Levy as proposed by central Government.

21. Further analysis on CIL impacts and implications will be set out in a future report to Executive in Autumn 2022 alongside proposed rates. This analysis will extend to estimates of likely receipts any implications of the limitations on borrowing against CIL and will form part of any report to executive on the proposed draft Charging Schedule ahead of formal consultation. This analysis will be supplemented advice on when Section 106 clarifying how used in tandem with the Community Infrastructure Levy and ensuring that this meets the 'tests' for the use of Section 106 identified in paragraph 5 above.
22. CIL **must** be spent on infrastructure to support development within the area. Accordingly, a CIL spend strategy taking into account development impacts, will be used to guide any future spend in York after a period of accrual of CIL funding. This strategy will need to be evidence-led and will be critical to ensure that the right range of infrastructure is delivered in the right place and at the right time – including for education uses where there are particular challenges in projecting demand in the medium to longer term.
23. The CIL spend strategy along with data on the actual spend of CIL receipts will be reported the Council's Infrastructure Funding Statement, annual publication, which is requirement of the CIL Regulations 2010 (as amended). The Council already publishes a report in connection with Section 106 receipts and expenditure as required by these regulations.

Council Plan

24. As well as supporting delivery of the emerging Local Plan, introduction of a CIL for York will contribute to the attainment of 'Creating homes and world-class infrastructure' outcome, as set out in the Council Plan 2019-2023 (Making History, Building Communities) and indirectly support other objectives.

Implications

Financial

25. The Community Infrastructure Levy will allow the council to raise significant sums towards the costs of major infrastructure that will be required to deal with the impact of new developments. The levy provides greater certainty to the values that can be raised to fund key

infrastructure projects to support the growing city. The Regulations allow the authority to charge a fee to cover administrative expenses of both setting up and operating the CIL. This fee covers actual expenses but cannot exceed 5% of the value of the CIL collected in any one financial year.

26. This report recommends the development of the strategy and that further details over the scale of the infrastructure needs and level of fees will be brought back to Executive in the Autumn. This development work can be contained within existing budgets.

Legal

27. The power to charge by way of the Community Infrastructure Levy was introduced by Part 11 (Sections 205-225) of the Planning Act 2008. The Community Infrastructure Levy Regulations 2010 (as amended) deal with the detailed implementation of CIL and cover matters such as the procedure for setting CIL, the charging and collecting of the levy and liability for payment. A charging authority cannot adopt CIL unless it has first produced a charging schedule based on appropriate available evidence, which has informed the preparation of the charging schedule.
28. Setting and reviewing the Community Infrastructure Levy must follow a statutory process, as defined in the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended). In addition, there is considerable Government Planning Policy Guidance dealing with the approach to be adopted in setting and reviewing rates within the Charging Schedule.
29. The statutory process requires demonstrable evidence of how the Council has derived the Charging Schedule and liable development, and consultation of that evidence. There is also a requirement to consider the outcome of that consultation prior to setting or reviewing a rate, which includes external validation by an independent examiner with the Charging Schedule being subject to any modifications recommended by the examiner.
30. A charging authority can think strategically in their use of CIL to ensure that key infrastructure priorities in their Local Plan are delivered to facilitate growth and the economic benefits of their area. Subject to meeting the 3 tests set out in CIL regulation 122 (as set out in para 5 above), charging authorities can use funds from both CIL and section 106 planning obligations to pay for the same piece of infrastructure

regardless of how many planning obligations have already contributed towards an item of infrastructure.

31. There are no known risks associated with the introduction of CIL noting the mitigating factors presented in connection under 'Options' above. However, a more complete analysis will be presented in connection with a report later this year in connection with proposed charges.

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All

For further information please contact the author of the report

Background Papers:

[City of York Local Plan Viability Update Addendum, March 2022 \(updated May 2022\)](#)

[Porter Planning Economics Viability Assessment Update Study, April 2018](#)

The Community Infrastructure Levy Regulations 2010
<http://www.legislation.gov.uk/uksi/2010/948/contents/made>

The Community Infrastructure levy (Amendment) Regulations 2011
<http://www.legislation.gov.uk/uksi/2011/987/made>

Annexes

N/A

List of Abbreviations Used in this Report

CIL – Community Infrastructure Levy