Introduction to Community Infrastructure Levy (CIL)

What is the Community Infrastructure Levy?

The Community Infrastructure Levy is a tool for local authorities to help deliver infrastructure to support the development of the area. Local authorities set a levy and then collect the charge from new developments. Levy rates are charged in £ per square metre. Different rates can be set for different types, scales and locations of development. The funds can then be spent on infrastructure.

What evidence is required to set a CIL?

In order to set a levy rate, the local authority must essentially have two forms of evidence. Firstly it must establish that there is an infrastructure ‘funding gap’ based on the infrastructure needed to support the development in the Local Plan. Secondly, viability evidence is required to inform the rates that are set and ensure they do not put the future development of the area at risk. The rates must strike an appropriate balance between the need to fund infrastructure and the potential implications for the economic viability of development.

What types of development pay CIL?

Where evidence indicates that it is viable, CIL rates can be set for the development of all new homes and all non-residential development greater than 100 square metres. For BDBC, CIL is only viable on housing, out of town retail and budget hotels. CIL is not payable on affordable housing, self-build homes and buildings that people do not normally go into.

How is CIL different to Section 106 planning obligations?

CIL and Section 106 are different, but they can both be used to fund infrastructure. The level of a CIL charge on a development is calculated by multiplying the charge rate by the development’s gross internal floor area. Once the CIL rates are set, this charge is non-negotiable. The level of a Section 106 planning obligation depends on what is required to mitigate the scheme or make it acceptable in planning terms and S106 is negotiable.

Why introduce CIL and not carry on with the existing approach of using S106 to secure infrastructure?

There are two reasons why it is not possible to continue securing S106 planning obligations in the same way we have done in the past.

Firstly, the CIL regulations restrict the use of pooled S106 contributions towards items that may be funded through the levy. This limits the council’s ability to pool funds through S106 contributions towards provision of one large piece of infrastructure and the only way round this is to implement CIL.

Secondly, the National Planning Policy Framework (paragraph 204) sets out strict rules about when a local planning authority can seek S106 planning obligations. They “should only be sought where they meet all of the following tests:

- 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.”
Will some developments have to pay CIL and S106 contributions?

Yes. The majority of developments will be expected to pay CIL (unless a nil rate is set) but some sites will also still have planning obligations attached to them, where they meet the three tests above, in order to make the development acceptable.

What can the levy be spent on?

The levy can be used to fund a wide range of infrastructure, including transport, flood defences, parks, play areas, schools, sports facilities, and community and healthcare facilities. It can be used to increase the capacity of existing infrastructure or to repair infrastructure if it is necessary to support development. The council should set out what it intends to spend its CIL income on in a Regulation 123 list.

Will CIL funds make up the entire infrastructure funding gap?

No. The levy delivers additional funding to carry out a wide range of infrastructure projects that support growth and benefit the local community. It cannot be expected to pay for all of the infrastructure required, but it is expected to make a contribution.

Will the local community receive a portion of CIL?

The Borough Council has a duty to pass to the Parish Council a proportion of any CIL receipts collected from chargeable development built within that parish. This is called the ‘neighbourhood fund.’ The amount that the parish will receive depends on whether it has a neighbourhood plan in place or not. If a neighbourhood plan is in place, the parish will receive 25% of all the CIL receipts. If there is not a neighbourhood plan in place, the parish can expect to receive 15% of the CIL receipts, but this is capped each year at a maximum of £100 per existing dwelling in the parish. In areas where there is a zero CIL rate, the Parish Council will not receive CIL receipts. There is a body of work to be done around the implementation of CIL and this includes looking at the mechanism for providing the funds to parish councils.

What can Parish Councils spend the neighbourhood fund on?

The neighbourhood fund can be spent on a wider range of things than the rest of the levy, provided that it meets the requirement to ‘support the development of the local area’ (see Regulation 59C for details). The wider definition means that the neighbourhood fund can be spent on things other than infrastructure. For example, the pot could be used to fund affordable housing where it would address the demands that development places on the area.

If a parish council does not spend its levy share within five years of receipt, or does not spend it on initiatives that support the development of the local area, the charging authority may require it to repay some or all of those funds.

What is double dipping and how will it be avoided?

Double dipping occurs when a local authority seeks CIL and S106 contributions for the same piece of infrastructure. This is not permitted by the CIL regulations. In order to avoid this situation, the Council has set out a list of infrastructure that it intends to fund through CIL income, known as a Regulation 123 list. Section 106 planning obligations cannot be used to provide things on the Regulation 123 list.