

<b>MEETING</b>	<b>JOINT PLANNING POLICY COMMITTEE</b>
<b>DATE</b>	<b>21 SEPTEMBER 2018</b>
<b>SUBJECT</b>	<b>COMMUNITY INFRASTRUCTURE LEVY (CIL)</b>
<b>RECOMMENDATION</b>	<b>POSTPONE THE PROCESS OF PREPARING THE CIL UNTIL WE RECEIVE CLEAR GUIDANCE ON THE FUTURE OF CIL IN WALES</b>
<b>AUTHOR</b>	<b>PLANNING POLICY MANAGER, JOINT PLANNING POLICY UNIT</b>

## **1. Purpose of the report**

- 1.1 This report provides an update about the Community Infrastructure Levy. In doing so, it also provides an update of the situation in Wales under the devolved procedure and its future in the national context. The report outlines possible changes in the pipeline and the subsequent implications.

## **2 Background of CIL**

- 2.1 The CIL is a planning charge, introduced under the Planning Act 2008 as a tool for local authorities in Wales and England to help to deliver infrastructure to support development in their areas. It came into force on 6 April 2010 under the Community Infrastructure Levy Regulations 2010. These Regulations stipulate how local authorities may introduce the CIL and it changes the way in which planning obligations may be used through section 106 agreements. It should be noted that CIL legislation was part of the Department of Communities and Local Government's remit at the time and had not been devolved to the Welsh Government.
- 2.2 Should CIL be adopted, various developments would make financial contributions under a 'Charging Schedule', which would identify the level of CIL to apply to each development. Should the CIL be introduced, the payment would be mandatory and would be charged against all new developments that meet the qualifying criteria. The money collected from the CIL would be used to fund a wide range of infrastructure that is needed to support growth in the area.
- 2.3 It should be noted that local authorities do not have to introduce the CIL charge and it is not intended to replace planning obligations made through section 106 agreements. However, the scope and capacity to collect planning obligations has been curtailed as a consequence of the Community Infrastructure Levy Regulations 2010, even if the CIL is not introduced. This is due to the 'pooling restriction' created by regulation 123 and the formalisation of the tests for a valid planning obligation, which can be taken into account in reaching decisions (that had previously only been set out in policy). The capacity to introduce CIL depends on having robust evidence to demonstrate that it is viable to impose it, and has to be the subject of a public consultation and public examination.
- 2.4 While the Councils do not have a CIL schedule in place, they can seek planning obligations under s106. However, the pooling restriction means that no more than five obligations that relate to either (a) a type of infrastructure, or (b) a specific infrastructure project, can be entered into after 6 April 2010. This means that obligations have to be as specific as possible to try to preserve the maximum scope for future obligations to be sought. The ability to seek such contributions may become more constrained over time as more qualifying obligations use up the pooling capacity.

### **3 The Process for preparing CIL under the current system**

3.1 The key steps outlined in the following table must be carried out in order to establish CIL in the Plan Area.

<b>ACTIONS</b>
<b>A) Gathering evidence</b>
i. Assess infrastructure capacity across the Plan Area <sup>1</sup>
ii. After assessing infrastructure capacity, establish the costs of providing the infrastructure and identify any funding gaps
iii. Undertake a viability assessment and consider the findings
iv. Address any evidence gaps
v. The Joint Planning Policy Committee to consider a report on the evidence base and authorise consultation on a Preliminary Draft Charging Schedule
<b>B) Preliminary Draft Charging Schedule</b>
i. Informal consultation on the Viability Study
ii. Prepare Preliminary Draft Charging Schedule
iii. Public Consultation (six weeks) on the Preliminary Draft Charging Schedule and the evidence on infrastructure and viability
<b>C) Draft Charging Schedule</b>
i. Report to the Joint Planning Policy Committee - respond to the Preliminary Draft Charging Schedule and authorise a public consultation on the Draft Charging Schedule and to submit the responses and the Schedule for public examination.
ii. Prepare and publish the Draft Charging Schedule
iii. Public consultation (six weeks)
<b>CH) Submit the Charging Schedule to the Planning Inspectorate</b>
<b>D) Public Examination</b>
<b>Dd) Approve and publish the Charging Schedule</b>

Table 1: Steps to prepare the CIL

3.2 It is emphasised that information and costs to support CIL must be sound enough to be examined in a formal independent examination (similar to the one held for the Joint LDP). All of this (especially the work involved in steps A - B) will require significant investment in terms of officers' time and will involve work for several services within the Councils.

3.3 Although the Conwy Council and Denbigh Council have adopted their local development plans some years ago and are by now in the process of preparing revised plans, for various reasons, neither of the two went past stage A in the process described above.

#### **4 The future of CIL - Relevant matters to consider**

##### **CIL Review undertaken by DCLG - "A New Approach to Developer Contributions"**

4.1 In November 2015, Westminster Government commissioned an independent national review of CIL to:

---

<sup>1</sup> Assess infrastructure capacity - some work has already been carried out on this as background to the Local Development Plan and as part of the work to gather evidence on the impact of Wylfa Newydd - the evidence would need to be updated.

*'Assess the extent to which CIL does or can provide an effective mechanism for funding infrastructure, and to recommend changes that would improve its operation in support of the government's wider housing and growth objectives.'*

- 4.2 The review looked at how much revenue CIL generated, the types of developments that pay CIL, impacts on viability and how the neighbourhood portion of the CIL is implemented. The independent review group published its report in October 2016 and it was published in February 2017. The report is called "A New Approach to Developer Contributions to Ministers". <https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government>
- 4.3 To summarise, the report's general conclusion was:
- (i) that CIL in its current form does not deliver the original intention of providing a quicker, fairer and simpler, more specific and more transparent way of ensuring that every development contributes something towards the necessary accumulative infrastructure, and that it has also
  - (ii) impacted upon and complicated section 106 agreements which, although it has received considerable criticism, in fact works reasonable well for many sites.
- 4.4 In identifying the way forward, the report recommends that the Government should consider a twin-track approach, which allows local authorities to take advantage of the best elements of CIL and section 106. It recommends that the Government creates a hybrid method, namely a low level Local Infrastructure Tariff and section 106 for larger developments. The report also identifies a series of further recommendations on the way forward. Legislative change would be required to facilitate this to remove the pooling restriction, which would substantially limit the ability to effectively pursue this course.

### **Devolving CIL Powers**

- 4.5 As part of the Wales Act 2017, CIL became a devolved matter and powers were transferred to Welsh Government in April 2018. To this end, a Transfer of Functions Order is required to enable Welsh Ministers to amend existing secondary legislation. Following this, should Welsh Ministers consider it appropriate to rewrite the CIL Regulations, then it is possible that further legislation will be needed to allow this to happen. However, this has not been confirmed thus far.
- 4.6 Given the above, it is currently unclear as to how Welsh Government will wish to deal with CIL, and specifically will it continue with CIL Regulations in their current form, or will it develop specific amendments or give it up completely.

## **5 Conclusion**

- 5.1 Given that it is not clear yet what form the CIL will take (if it still exists) or whether there will be something else in its place, it is recommended that the work of preparing CIL for the Plan Area is postponed until there is greater clarity on its future in Wales. This recommendation reflects not only the uncertainty in relation to the form of CIL in future, but also the commitments and the implications in terms of financial costs and officers' time that would be required to get the CIL in place. The financial investment and officers' time could be in vain should it be decided to do away with the CIL or amend it or to replace it with an alternative.

- 5.2 Current requirements in relation to section 106 and developer contributions will still apply. These requirements will continue to be implemented to ensure that policies within the Joint LDP are complied with (Policy PS 2 and Policy ISA 1) and that developers, the community and the public continue to be clear in terms of what would be considered appropriate contributions from relevant developments. The requirements of the relevant part of CIL Regulations will be used to manage when to ask for contributions, including the need to keep monitor the effect of the pooling.
- 5.3 As soon as clear guidance is published on the future of CIL in Wales, it is intended to submit another report in future to the Joint Planning Policy Committee with an update.

## **6 Recommendation**

- 6.1 To postpone the process of preparing the CIL until we receive clear guidance on the future of CIL in Wales