	Luton & South Bedfordshire Joint Committee ***23 October 2009*** ***Agenda Item No. 10***
AUTHOR	**Kevin Owen – Team Leader Regional Planning**
SUBJECT	**Community Infrastructure Levy (CIL)**
PURPOSE	**To inform the Committee about current consultation on CIL draft regulations and suggest responses to key issues.**
RECOMMENDATIONS	**That the Joint Committee responds to the Government expressing support for the Levy, but requests that consideration be given to matters set out in this report.**
REASON FOR RECOMMENDATIONS	**To help ensure that there is a sound basis for the future funding of infrastructure from this source.**

1. INTRODUCTION

1.1 The Government consider that the Community Infrastructure Levy (CIL) is the right long term instrument, for providing new infrastructure, to support desperately needed new homes. CIL is expected to raise hundreds of millions of pounds of extra funding per year, towards the infrastructure that local communities need. The Planning Act of 2008 made provision for the Levy, but left much detail to be contained in regulations. Detailed proposals and regulations have now been published for consultation. This report sets out details about the Levy and suggests possible responses to the main issues, subject to Committee agreement.

2. LEVY DESCRIPTION

Type of Charge

2.1 CIL will be a charge on development which local planning authorities can choose to set and which is designed to help fund needed infrastructure identified in development plans. It will be paid primarily by owners or developers of land which is developed.

2.2 The Levy is to provide funding for infrastructure that is additional to existing funding streams, filling funding gaps that remain once existing sources have been taken into account. It is considered a fairer, clearer and a more legitimate way of seeking contributions from developers towards the costs of local infrastructure compared with the existing system of developer contributions. A stated key benefit is that it should be more predictable, and can more easily fund sub-regional infrastructure.

CIL Implementation

2.3 To implement CIL involves the following considerations:

- "Charging authorities" (which include unitary authorities) decide whether or not to implement the Levy, with final regulations coming into force on 6 April 2010;

- there will have to be an up to date development plan, supported by infrastructure planning (as required by PPS12-Local Spatial Planning), identifying likely costs;

- taking other sources into account, the charging authority identify funding to arrive at an amount to be raised from CIL;

- a draft charging schedule is prepared - this will allocate the proposed amount to be raised from CIL to each main class of development envisaged by the development plan – expressed as a cost per square metre of floor space, and is part of the LDF;

- assessments will need to ensure that development is not rendered unviable by the charge, differential rates can be set by area or type of development;

- CIL is levied on buildings, for non-residential development there will be a threshold of 100 square metres below which CIL will not be payable, householder development by homeowners will not be liable;

- the number of 'chargeable units' are calculated via planning permission – so liability is simply chargeable units times the rate per square metre set out in the schedule, there is an index for inflation;

- developers are advised of their liability when planning permission is granted, but payment is not due until the commencement of development (payable within 28 days);

- exemptions apply to charities and there may be a discount for affordable housing development;

- the charging schedule is subject to public consultation and examination at public inquiry, with a binding report from an Inspector (alternatively a schedule can be withdrawn and re-examined);

- there are various enforcement measures;

- planning obligations will remain, but limited to the specific impacts of a development. Obligations will continue to be used to secure affordable housing; and

- CIL will secure contributions which hitherto have been secured through 'tariff' schemes, the latter will 'migrate' to CIL – with a minimum transfer period of 2 years.

2.4 Whilst CIL take-up is stated to be voluntary, the financial ‘penalty’ of restricted planning obligations will probably ‘force the hand’ of many local authorities. The consultation documents comprise 161 pages and 95 regulations, and so Appendix 1 attempts to summarise key details related to the above outline points. The consultation includes joint committees being invited to make representations about assuming certain powers (Appendix 1 – (d)), but since this aspect has already been considered, it is not further pursued in this report.

3. ISSUES

3.1 The Government welcomes views on all aspects of the proposals set out in the consultation, there are a range of detailed questions (54) associated with each section of the main report. The approach here is to highlight four fundamental points which the Committee may care to consider, regarding the likely success of this Levy.

Infrastructure Planning

3.2 In terms of development plans , PPS 12 requires an understanding of the infrastructure needs of an area, and how this will be funded - but this allows some very approximate assumptions. Government advice to authorities, on infrastructure costing with CIL, takes a similarly broad approach, for example, best estimates can be based on past needs and expenditure. However, further clarity about the relationship between planning requirements and development viability may be needed. There would need to be an assessment of land values in an area to inform different charging bands. Viability assessments may require developers and landowners to agree to accept lower levels of returns compared with the ‘boom’ years. An issue therefore arises about just how fine-grained analyses should be, particularly given the possibly contentious nature of this subject at an inquiry.

The Role of CIL and Mainstream Funding

3.3 The consultation text states that CIL is unlikely to be the sole, or even the main source of funding for infrastructure, and that core public spending will continue to bear the main burden. It was recently reported that a study undertaken in Hertfordshire, showed that setting CIL at a viable level produced a significant funding gap. Consultants Colin Buchanan stated: “We are dealing with a huge shortfall in existing infrastructure provision before we start to deal with envisaged growth.” The theory of CIL plugging gaps will need to be reconciled with the reality of public sector investment being cut to the bone, perhaps for another decade.

Viability and an Exceptions Policy

3.4 The Levy will need to reflect market conditions, but potential viability problems could be envisaged for, say, important contaminated ‘brownfield’ sites. Also, other types of development bringing significant benefits, may also be rendered unviable by a charge. Government are now considering an exceptional circumstances procedure. The Local Government Association support this, recently stating: “Councils should be able to consider the strategic value of projects that might only be viable through a reduced charge.” It would appear beneficial for local authorities to support the concept of being able to exempt or modify charges where justified.

Planning Obligations and Affordable Housing

3.5 CIL is considered by Government, to be a major improvement on the existing system of collecting pooled contributions for infrastructure, based on planning obligations. Developers will be able to plan ahead knowing what they will be charged, with planning obligations scaled back to the sole role of facilitating the granting of planning permission. This dual arrangement appears pragmatic.

3.6 However, a particular issue concerns affordable housing. Whilst the Planning Act of 2008 lists affordable housing as "infrastructure" (hence warranting CIL support), draft Regulation 41 removes this status, requiring affordable housing to be negotiated through planning obligations. Government have stated, that they do not expect any reduction in the level of contributions secured from developers, but the planning press is reporting various examples of local authorities having to waive or delay section 106 payments. The consultation refers to the development of a toolkit, to predict the number of affordable housing units that can be supported by planning obligations, across a local authority or housing market area. This is awaited with interest, but in current circumstances, there must be a question mark over the Government assumption. CIL support may be needed.

4. CONCLUSION

4.1 The purpose of CIL is to ensure that the right amount of funding is raised fairly, for necessary infrastructure. This is a worthy objective. Informed infrastructure costing and development viability, lie at the heart of making this a success. Preparing charging schedules will entail careful judgement - too high a charge will make development unviable, while too low a figure means that infrastructure funding will be restricted. There is also the interplay with section 106 agreements. The suggested main areas of concern, to raise with Government, relate to; the degree of sophistication of infrastructure calculations; the desirability of an exceptions policy; concern over affordable housing investment; and the role of CIL relative to mainstream funding. This last point might be the most crucial.

5. EQUALITIES IMPLICATIONS

5.1 This report is for information and has no specific recommendations that have equality implications.

6. FINANCIAL IMPLICATIONS

6.1 There are no financial implications at this draft information/consultation stage, but if a decision is ultimately taken to implement CIL, then clearly the implications of this Levy will be fully costed.

7. LEGAL IMPLICATIONS

7.1 There are no legal implications at this stage.

Appendix 1 - Background and Details about CIL

(a) **Overview** – The Community Infrastructure Levy (CIL) will be discretionary for authorities in terms of implementing it. It constitutes a fixed charge based on published rates to finance infrastructure. The intent is to fill any funding gap taking into account other sources. It is levied (£ per square metre) on the building elements of planning permissions. There can be different rates according to geographical areas or types of development. Such rates are set out in a charging schedule. This schedule is subject to full public participation and public examination. The charge is calculated at the time of planning permission, but only becomes payable once development has commenced. Luton Borough Council qualifies as a 'charging authority' i.e. has the power to implement the charge. Current draft regulations do not vest any powers in a Joint Committee, but responses are invited about possible powers.

(b) **Legislative Background** – The Housing Green Paper of July 2007 set out a number of options for developer contributions, the Planning-Gain Supplement was deferred, Government then legislated for the Community Infrastructure Levy – via the Planning Act 2008, with much detail being left to regulations (and now consulted upon), final regulations will need to be affirmed by the House of Commons.

(c) **Infrastructure** – The Planning Act 2008 specifies that CIL receipts can only be used to fund infrastructure. Section 216 of the Act sets out a basic list of 'mainstream' items such as transport/flood defences/ educational, medical, recreational and sporting facilities/ affordable housing (but see (n) below). However, there is additional flexibility to choose what infrastructure is needed to deliver a development plan. The term could include local renewables or district heating, the repair of existing facilities, social care facilities, also sub-regional investment perhaps via the Environment Agency and Highways Agency.

(d) **The Charging Authority** – The Planning Act confers the power to charge CIL on charging authorities. This will be the local planning authority for the area, and therefore includes Unitary Authorities. Where they decide to levy CIL, a charging authority will issue the charging schedule (see below) which will set out the rates of CIL, spend (or distribute to other bodies) the CIL revenue received on infrastructure, and report to the local community the amount of CIL revenue collected, spent and retained each year. Joint committees are not charging authorities, but Government will consider regulations to allow them to exercise certain functions – namely, to prepare and consult on a draft CIL charging schedule, arrange an examination, bring into effect the schedule, be consulted on how to apply CIL revenue to infrastructure, and provide reports to local communities.

(e) **The Charging Schedule** – This sets out the CIL charges, it is not formally part of the development plan but it is part of the Local Development Framework. The rate of CIL must have regard to (i) the total cost of infrastructure requiring CIL funding (ii) other sources of funding (iii) the effects of CIL upon economic viability of the development of the area. The schedule is to be supported by evidence including an up to date development plan (a draft or adopted core strategy) and infrastructure planning. The latter needs to comply with advice in PPS 12 (i.e. consideration of infrastructure needs and costs, the phasing of development, identified funding sources and responsibilities for delivery). A total target amount of funding to be raised from CIL would be identified.

(f) **Viability** - CIL charges should not be set at the very limit of viability so that they can respond to regular market variation without necessitating a formal revision of the charging schedule. The objective is to determine an optimal CIL rate (or rates) to support the development of an area. There would need to be an assessment of land values in the area. Differential rates of CIL may be sought in one of two ways – (i) according to different sub-areas identified on an Ordnance Survey map (ii) according to the intended use of development e.g. residential/commercial development, with different charging bands. For example – if an authority expected to raise £250,000 from CIL through office development, wth 50,000 sq m

gross office space expected, the charge would be expressed as £5.00/sq m. The charging schedule will express the charge as pounds per square metre of gross internal floorspace for which planning permission has been granted.

(g) **Consultation and Examination** – A draft plan would provide a suitable base for a proposed CIL where a charging authority submitted its draft charging schedule alongside its proposed core strategy for integrated examination. Consultation with residents and businesses could be on a single proposal or a range of options, for a minimum of 6 weeks. Certain specified bodies must be consulted. A draft schedule would then be drawn up and representations invited (minimum 4 weeks). The authority would appoint an Examiner e.g. from the Planning Inspectorate - and submit (a) the draft schedule (b) statement of representations (c) copies of representations (d) evidence. The inquiry could take the form of a round table discussion/ informal hearing/ formal inquiry or written representations. It could be a stand alone examination or held jointly with a Development Plan Document. The authority must make any modifications recommended, or alternatively withdraw and resubmit the schedule.

(h) **Planning Permission** – The collection process starts when planning permission is granted. There are 3 categories of consideration (i) a grant of planning permission (ii) a general consent (e.g. Local Development Order) (iii) permitted development rights- General Permitted Development Order. Below a threshold of 100 square metres of gross internal floorspace, buildings and extensions will not be CIL liable (however this does not apply to new dwellings). Most permitted development will be CIL exempt due to the threshold, and all householder development by resident home owners will be exempt except for new dwellings and change of use. The amount of liability for CIL is calculated by reference to full planning permission (not outline permission), permission for change of use or reserved matters. For general consents and permitted development – a 'Notification of Chargeable Development' notice triggers the assessment. There will also be an entry on the local land charge register. A possibility is that the above may lead to increased use of outline permission and an increase in reserved matters applications in order to 'phase' payments.

(i) **Payment** – With planning permission a liability notice is sent to the applicant and land owners, stating the amount due should development commence. The response requires an assumption of liability notice and commencement notice which is served when development commences, the authority then write to the liable party setting out the payment period of 28 days, copied to owners of the land. The authority will also register a local land charge. 'Development' relates to buildings – so a golf course as such would not be liable, but a club house would. The liability date is that of the planning permission. Regulations do not make provision for instalments. Payments are increased by an index increasing the payment between the year of the schedule and year of permission (not the point when development commences). There are appeal provisions.

(j) **Relief** – There is an exemption where development is for charitable purposes (e.g. hostel used by a homelessness charity). This includes charities providing affordable housing.

(k) **Enforcement** – Landowners can be required to identify their interests, surcharges can be imposed, a CIL Stop Notice implies a criminal offence if contravened. There are also court injunction powers, and distraint on goods (including land).

(l) **Monitoring** - The lawful use of monies will be assessed by auditors. A duty to report must be fulfilled by 1st October for the preceding year. The authority is to report CIL receipts, expenditure on infrastructure, and sums retained.

(m) **Planning Obligations** – Government policy is set out in Circular 5/05 Planning Obligations. These are underpinned legally by section 106 of the Town and Country Planning Act 1990. The Killian Pretty Review of March 2009 stated that Government should restrict the use of planning obligations following the introduction of CIL. Accordingly, the Government proposes to scale back the use of obligations through new legal criteria (the Circular 5/05 tests will be

made statutory-with a further criterion that any obligation has the object of mitigating impact caused solely by development) to those matters necessary to facilitate the granting of planning permission. The scale back of obligations will apply to those secured by agreement and to unilateral undertakings be developers. However, developer contributions towards affordable housing will continue to be made through planning obligations (this is further considered below). Planning obligation contributions will not be discounted from CIL liabilities. Circular 5/05 encouraged the use of pooled contributions and standard charges, but the Circular made it clear this was a temporary measure. The changes will not affect any current obligation. Existing tariff schemes would over time be migrated to CIL (at least 2 years from commencement of regulations), and the ability to establish new tariffs prevented.

(n) **Affordable Housing** – The main driver for obligations in recent years has been to secure affordable housing (half the total of obligations). The reason that the provision of affordable housing will continue to be negotiated through planning obligations is because the Government considers its provision necessary to render a development acceptable in planning terms, and to secure mixed communities. There is some ambiguity in that Section 216 of the Act does include affordable housing as infrastructure, permitting CIL revenue to 'top-up' any shortfall. However, draft Regulation 41 does not include affordable housing within the definition of infrastructure. This is deliberate - so that there is no reduction in the level of affordable housing contributions secured from developers as a result of the introduction of CIL. There is the possibility of a reduced rate of CIL for affordable housing alongside the charitable exemption for charitable providers.