

DCLG CIL Review – November 2015

Please provide the following general background:

- a. Brief description of your interest and involvement in CIL.
Local authority – Havant Borough Council (collecting authority).
- b. If a local authority, the precise stage you have reached in the CIL process.
Havant Borough Council (HBC) has been collecting CIL since August 2013.
- c. If a developer/consultant, some indication of the number of different CIL processes you have been involved in, in relation to both: 1. the setting of CIL rates, and 2. payment of CIL for specific developments including details of the land use and the scale and type of development.
N/A

On Infrastructure:

- i. To what extent is CIL contributing, or will it contribute, to infrastructure to support development and is that infrastructure being delivered?
To date, no CIL income has been spent. A CIL spending protocol has been adopted to allow spending decisions to be reviewed annually. Large scale infrastructure projects have been identified in the borough and the council is keen to ensure that ad hoc, small scale spending does not jeopardise the delivery of these projects in the future.

Notwithstanding this, two key projects have had funds set aside for future spending on feasibility work. This amounts to £50,000 in total.

- ii. Has the role of the Planning Authority changed with the introduction of CIL and if so where has this worked most effectively?
Under S106, HBC collected a number of developer contributions on behalf of Hampshire County Council (HCC). They would then be passed to the county to fund infrastructure such as roads and schools. As the CIL collecting authority, HBC is now collecting CIL but without the need to pass these funds on to the county. However, HBC recognise the continued role of HCC as a major infrastructure provider and as such, continues to work closely with the county to identify future infrastructure requirements in the borough. A commitment to work together has been made through a Memorandum of Understanding between the county and the Hampshire Districts.

Notwithstanding this, recent planning applications have shown potential discrepancies, where for example, education contributions are required to support development yet cannot be guaranteed through CIL (as spending decisions are yet to be made) and cannot be sought through S106 because education is on the Regulation 123 List for areas of the borough where viability is an issue. With no requirement for the borough to provide CIL for education and with no obvious alternatives for funding from HCC, should development be going ahead without the appropriate infrastructure to support it?

- iii. How are large items of essential infrastructure critical for key sites or growth locations being secured in the CIL and s.106 system?
HBC has been collecting CIL since August 2013 and has so far collected £1,181,940.45. From the outset, it was made clear that CIL would make a contribution towards infrastructure funding but not fund it all. With the introduction of CIL and the restrictions on the use of S106, it is becoming increasingly difficult to guarantee funding for essential infrastructure (see education example above). Local authorities are having to become more and more creative in the way in which S106 agreements are drafted and Regulation 123 Lists written; all of which is resource intensive and open to challenge. This goes against the premise of CIL which was to make the system more open and transparent. However, without this approach, it will be impossible to provide essential infrastructure to support development, which given the relatively small amount collected by CIL so far in the borough, will necessarily still fall to S106 to provide.

- iv. What role are CIL and s.106 playing alongside other sources of infrastructure funding and could changes to CIL (e.g. the ability to borrow against it or in kind contributions) allow it to be more effective?

So far, opportunities for alternative sources of funding have been limited and infrastructure providers are still looking to S106 and CIL. There needs to be a greater awareness of alternatives and a greater promotion of these. Opportunities from the LEP are not always well publicised and/or these do not appear to be being utilised. S106 and CIL are still being viewed as the main source of funding by many infrastructure providers, which is not always realistic. In councils, where there is pressure on limited resources, there are not always the skills or the resources to maximise funding opportunities and this is an area which would benefit from support and improvement.

The ability to borrow against CIL may provide short term opportunities but given that it will ultimately have to be paid back, it does not necessarily increase the funding pot. One area in which it may help is with match funding opportunities. But any funds raised in this way will only be beneficial if they are used directly for infrastructure rather than to pay back earlier loans.

- v. What has been the impact of pooling restrictions? Is there a difference between authorities which have adopted CIL and authorities which have not adopted CIL?

There may have been a difference before April 2015, as those authorities without an adopted CIL could continue to pool S106. However, since April 2015, the pooling restrictions have affected all authorities and severely limited the extent to which S106 can be used to fund infrastructure. While CIL has ensured even small development makes a contribution towards infrastructure, the restrictions on S106 mean that the ability to provide essential, large scale infrastructure to support large scale development, is limited. HBC has secured just over £1 million through CIL since August 2013. While this is a sizeable amount, which can be spent in a far more flexible way than S106, it is just a fraction of the amount previously secured on a single large development through S106. There is possibly a need to free up the pooling restrictions in relation to large scale development/strategic sites, to avoid a serious shortfall in the infrastructure funding associated with these sites.

- vi. What impact do exemptions and reliefs have on delivering infrastructure?

Exemptions and relief have been extended since the introduction of CIL, meaning that the number of schemes which are contributing to infrastructure is diminishing. A recent example in the borough of a 100% affordable housing scheme, means that no CIL is payable, yet the development which will create around 100 family homes, will put significant pressure on school places. The removal of a link between need and funding of provision has significant long term implications. As the CIL rates are linked to viability, not need, these exemptions are not allowed for when setting the rates.

- vii. How are local authorities who have not adopted CIL making provision for infrastructure and how effective are these approaches?

N/A

On Viability

- viii. Has a lack of viability resulted in a failure to develop a CIL?

Not in Havant Borough

- ix. Have viability concerns resulted in a low CIL level and has this had an adverse impact on the delivery of infrastructure to support development?

The fact that CIL is non-negotiable has actually had a positive effect. Whereas previously under S106, viability could be used as an argument for non-payment, this has not been possible through CIL. Rates were set in Havant based on a 2012 viability assessment and have not been challenged and development has continued to come forward in the borough, indicating that rates have not been set too high. This could however be a sign that rates have been set too low and that infrastructure funding is not being maximised through CIL. The council is aware that a review of CIL will be required in the future to ensure the rates remain appropriate.

- x. Are there appropriate tools available for establishing viability? Would standardisation using just one methodology be helpful or feasible?

Havant Borough Councils was one of the first councils to implement CIL and at the time, there was little guidance or council expertise regarding viability assessments. As a council, we were guided by consultants to provide viability assessments. A standardised methodology would be helpful and ensure that CIL rates are set appropriately and consistently across the country.

- xi. Do you have specific examples where non-viability on account of CIL has prevented development?
It is possible that some single dwellings were stalled, prior to the self build exemption, but this has now been resolved through the exemption. There is anecdotal evidence that single (non self build) dwellings are not viable because of CIL.

- xii. Is CIL impacting on affordable housing provision?

Although there is not yet clear evidence, there is a view that affordable housing provision has been negatively affected since the introduction of CIL. As CIL isn't negotiable it then leaves affordable housing as the only moveable requirement should viability be an issue on schemes. The council has seen more schemes that have a reduced or zero affordable housing provision since CIL has been introduced.

Under the old S106 system, the council could consider where the greatest need lay had there been viability issues and make decisions accordingly. Now, as CIL is a definite, affordable housing is automatically towards the bottom the of list.

At the moment this is an officer view and isn't supported by affordable housing completion rate, However, there is always a lag time between permissions and completions so the impact CIL has had on affordable housing in overall percentage terms is unlikely to start showing up in the statistics until 2016/2017.

- xiii. In setting a CIL Charging Schedule has the development community played their part and been properly consulted on issues of local viability?
As Havant Borough Council was one of the first councils to implement CIL, the involvement of the development community was perhaps more limited than in subsequent years. Notwithstanding this, the council had detailed discussions with a consortium of three house builders and took on board their comments when developing the charging schedule. Any review of the charging schedule is likely to involve increased consultation, as the development community has become more aware of CIL.

On Charge-setting:

- xiv. Is the EIP process suitably robust?
Yes, particularly having introduced the requirement for a Regulation 123 List to be considered as part of the examination.
- xv. Should there be a requirement to review charging schedules at set times, if so when and why?
It should be for the collecting authority to undertake reviews as and when appropriate. This could be determined by a review of the Local Plan or a change in market conditions and should not be set to simply coincide with arbitrary timescales.
- xvi. Should partial reviews (eg. types of use or location) be possible?
Yes. There are times when it becomes evident that just one aspect of the charging schedule should be reviewed and it should be possible to do this without the expense and resource requirements of a full review.

On CIL Regulations and Guidance:

- xvii. Are the CIL regulations and guidance easy to use and understand?
There have been so many changes to the guidance and regulations that it is easy to lose track of the current situation. The legislation needs consolidating.
- xviii. Are there improvements that could be made to the arrangements for collecting and spending CIL?
Collecting CIL is subject to a series of regulatory requirements, with significant resource implications for the collecting authority and onerous requirements for the liable party. This could be simplified.

The fact that the way in which CIL can be spent is largely for the local authority to decide is a positive feature of CIL, allowing flexibility.

On Neighbourhood issues:

- xix. How have the requirements for the Neighbourhood proportion of CIL been implemented?
Havant Borough Council does not contain parishes and as such, has collected the neighbourhood portion on behalf of communities. A political decision has been made to incorporate this element into the main funds. So far, none of this money has been spent.
- xx. Is this encouraging communities' to support development?
The links are more apparent in areas with parishes.

Finally, on the overall system

- xxi. Has the introduction of CIL made the system for securing developer contributions and delivering infrastructure simpler, fairer, more predictable, transparent and efficient?
In theory, yes. However, the detailed legislation, administrative requirements on all parties and nuances in payment mean that in reality, CIL is incredibly complicated. It is resource intensive and has severely restricted the ability to attract large contributions from large developments – which should be able to pay for the infrastructure required to support that development.
- xxii. Is the relationship between CIL and s.106 fit for purpose and how is this working in practice?
The ability to expand the opportunities to use S106 for large/strategic developments should be explored. The current restrictions mean that the ability to obtain essential infrastructure is diminished.
- xxiii. Is there a better way?
Please see xxii above.

In addition, the level of administration on large developments has significantly increased due to the fact that there is now CIL and S106, which has complicated, not simplified, the process. This needs to be considered as CIL was not intended to be an increased burden

Finally, some types of infrastructure, such as play space provision, are unlikely to ever receive funding from CIL. With limitations on S106, it means that the provision of these important but not necessarily essential facilities, will be lost, to the detriment of local communities.