
Motion - Scrutiny of Community Infrastructure Levy Payments

Committee considering report:	Executive on 25 March 2021
Portfolio Member:	Councillor Hilary Cole
Date Portfolio Member agreed report:	16 February 2021
Report Author:	Bryan Lyttle
Forward Plan Ref:	EX4004

1 To Provide a response to the motion 18 (b) for the Executive

- 1.1 At the 3rd December 2020 Council the following motion 18 (b) was submitted in the name of Councillor Jeff Brooks:

We call upon the Council to urgently engage external expertise to undertake an independent review of the management of CIL payments from local developers. This is in light of two cases – that Members are aware of – where the sums paid by the applicants have been contested as they maintain they have been penalised by many thousands of pounds for incorrect paperwork submissions. These were able to be corrected rapidly when pointed out to the Applicant, but the Council pressed on in charging the applicant based on the original assessment.

Therefore:

The Council resolves to engage with an independent scrutineer – potentially from an adjacent Local Authority – to undertake an external review of its method of handling CIL payments from developers – including the processing of them, the interface with developers on the amounts due and the paperwork being submitted accurately.

- 1.2 The Chairman informed the Council that, in accordance with Procedural Rule 4.9.8 the motion if seconded, would be referred to the Executive for consideration.

2 Recommendation

- 2.1 The Executive resolves to reject the Motion contained in 1.1 above. The Community Infrastructure Levy (CIL) Regulations clearly set out the procedures that can be taken to dispute a CIL charge by the Charging Authority. The complaints relating to the two cases referred to in the motion were not upheld by the Local Government Ombudsman. Furthermore the cases date back to 2015 and 2017, since then changes have been made to both the Regulations and the Council's CIL processes. In addition, the CIL team have been audited twice and found to be Satisfactory.

3 Implications and Impact Assessment

Implication	Commentary			
Financial:	There will be cost involved in commissioning an external audit estimated to be in the region of £7,000 to £20,000.			
Human Resource:	None			
Legal:	The way CIL operates is governed by the Community Infrastructure Levy Regulations 2010 (as amended). The CIL is a levy required by new development to pay for the infrastructure to support it. It is therefore Core Business.			
Risk Management:	Further details to be incorporated under paragraph 5 below - Supporting Information.			
Property:	None			
Policy:	<p>National Policy</p> <p>Community Infrastructure Regulations (2010) (As amended) - if the CIL Charging Authority (CA) has not been notified in advance, then the CIL regulations are clear that once work commences the CA have no lawful basis (under the CIL legislation) to retrospectively grant exemption, and any CIL arising becomes payable in full.</p> <p>Local Policy</p> <p>WBDC CIL Charging Schedule (Adopted 2014)</p>			
	Positive	Neutral	Negative	Commentary
Equalities Impact:				

A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		X		
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		X		
Environmental Impact:				None
Health Impact:				None
ICT Impact:				None
Digital Services Impact:				None
Council Strategy Priorities:				None
Core Business:				None
Data Impact:				None
Consultation and Engagement:	Sarah Ball – CIL team Sarah Clarke, Sharon Armour & Shiraz Sheikh – Legal Julie Gillhespey - Audit			

4 Executive Summary

4.1 The Community Infrastructure Levy (CIL) is a statutory charge payable in respect of certain types of planning applications (once approved) to assist in the delivery of infrastructure needed to support the local community following the removal of the ability to use a formulaic approach to Section 106 contributions.

- 4.2 Local Planning Authorities can choose to introduce a CIL requirement or not, however if they do not introduce CIL then much needed local infrastructure required to support new development would not be funded by the developer. West Berkshire Council was one of the first in the country to choose to introduce the levy in 2015, so that infrastructure projects in West Berkshire would continue to be funded.
- 4.3 Regulations specify the various forms and notifications required in the administration of the CIL. Whilst the Council must acknowledge notifications received, the onus is placed on the person who has accepted liability to ensure they comply with the CIL Regulations. Failure to do so may incur surcharges and penalties, or removal of entitlements to relief e.g. an instalment scheme is in place for where the sum payable exceeds £15,000, but a breach of Regulations can lead to forfeiture and the full sum becoming due immediately.
- 4.4 Since the introduction of CIL by West Berkshire Council in 2015, there have been over 2,374 CIL liable developments in West Berkshire and the Council has only been informed by the Local Government Ombudsman of just four complaints against it relating to CIL. In all cases the LGO found in favour of the Council.
- 4.5 The Council's CIL processes have also been internally audited twice, once in 2018/19 and again in July 2020.
- 4.6 The CIL legislation is constantly changing and as a result the processes and procedures and service improvements recommended by internal audit have been implemented. Therefore, the officer recommendation is that another audit is not necessary and the motion should be rejected.

5 Supporting Information

Introduction

- 5.1 At the 3rd December 2020 Council the following motion 18 (b) was submitted in the name of Councillor Jeff Brooks:

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Therefore:

The Council resolves to engage with an independent scrutineer – potentially from an adjacent Local Authority – to undertake an external review of its method of handling CIL payments from developers – including the processing of them, the interface with developers on the amounts due and the paperwork being submitted accurately.

Background

- 5.2 The Community Infrastructure Levy (CIL) is a statutory charge payable in respect of certain types of planning applications to assist in the delivery of infrastructure needed to support the local community following the removal of the ability to use a formulaic approach to Section 106 contributions. This should be paid once approved and prior to implementation, if not paid prior to implementation there are a range a sanctions that legislation imposes for example the withdrawal of from the charge.
- 5.3 Regulations specify the various forms and notifications required in the administration of the CIL. Whilst the Council must acknowledge notifications received, the onus is placed on the person who has accepted liability to ensure they comply with the CIL Regulations. Failure to do so may incur surcharges and penalties, or removal of entitlements to relief e.g. an instalment scheme is in place where the sum payable exceeds £15,000, but a breach of Regulations can lead to forfeiture and the full sum becoming due immediately.
- 5.4 Since the 1st April 2015 there have been over 2,374 CIL liable developments in West Berkshire with less than 50 appeals and 25 complaints. Where an independent party has investigated and found against the Council has occurred in only 8 out of these 2,374 CIL liable developments or simply 0.3%.
- 5.5 In May 2018 an information item on CIL was taken to Operations Board, this report in section 7 highlighted the fact that if the regulations where not followed a “disqualifying event” may occur resulting in the withdrawal of any exemption granted prior to the commencement and a fine being levied in addition to the original liability.

CIL cases to Ombudsman

- 5.6 The Local Government Ombudsman (LGO) has only asked the Council to respond to four CIL cases in which complaints had been made against the Council and how it operated CIL.
- 5.7 In a case the LGO responded to in September 2017 in the final decision the Ombudsman states:
- Mrs X accepts that her agent made a mistake and did not apply for a CIL exemption. However, she believes her application was invalid without it. She said the Council should have told her this information was missing and should not have decided her application without it.
- 5.8 In the analysis of the case the LGO states

We will not investigate the complaint as there is insufficient evidence of fault by the Council.

There is no requirement nationally or locally for an applicant to provide an exemption claim form with a planning application to make it valid. So it seems that Mrs X’s application – made on her behalf by her agent – was valid. There was no reason, therefore, why the Council should not have decide it. Both the PAAIR form and the Council’s later letter advised Mrs X’s agent that an exemption claim should be made and decided before development started. It is unfortunate that Mrs X’s agent did not apply for a CIL exemption. But it did not happen because of anything the Council failed to do.

5.9 In another case the charge made against the Council to the LGO was;

“Mr P complains about a Community Infrastructure Levy charge he had to pay to the Council. He says the Council failed to explain or assist him.”

5.10 In its final decision the Ombudsman states;

“There is a possible fault by the Council regarding its email of 14th March to Mr X. This was sent to an incorrect email address. It is unclear whether this was an error on the part of Mr X or the Council. However, it did not result in an injustice to Mr P because the Council subsequently told him that a CIL charge was payable several times in 2018 along with comments in the planning officer’s report in 2017 noting that a charge was payable.”

5.11 In addition to the Councils’ CIL processes being scrutinised by the Local Government Ombudsman the team has been audited twice.

5.12 The first audit was for the period 2018/19 and the final report was issued in February 2020. In the opinion of the auditors the controls and procedures reviewed were found to be satisfactory. However, 11 weaknesses were identified; 6 moderate and 5 minor and an action plan to remediate these was recommended and implemented.

5.13 At the end of July 2020, the Executive Director Place requested that a further Internal Audit carried out a more focused review regarding exemptions and reminders being issued. As a result of concerns being raised by Members regarding consistency in these issues.

5.14 The conclusion of the second audit was

- The Council’s website publishes comprehensive and clear guidance covering the CIL process and there are links to all forms required to be completed by an applicant/their agent.
- The CIL Team also offers guidance to each applicant at each of the key stages of the CIL process, by stating what the next stage is, and what forms may be relevant for the applicant at that stage.
- From our sample checks of 40 applications where an exemption had been approved we did not find any cases where there were inconsistencies in how the application had been processed regarding the issuing of reminders where an exemption may apply. As stated earlier, the CIL team do not have a process whereby they chase/remind applicants where there is the possibility an exemption may apply given that it is the applicant’s/agent’s responsibility to ensure forms are completed correctly and in a timely manner.
- All through the process the website and email correspondence clearly state that it is the applicant’s/liable party’s responsibility to ensure that the forms are completed correctly and submitted on time in accordance with the regulations.

5.17 From the detailed internal audit in 2020, changes to the web site that have been made as the legislation has been revised, that provides clear and comprehensive information to assist both agents and applicants through each stage of the CIL process, do not seek out to “trap” people into paying large amounts of money for CIL. Further the random sample of cases did not find any cases of inconsistencies in approach by the CIL team.

6 Other options considered

- 6.1 Option A - The motion requests that the Council invites another Charging Authority in to check its processes so such issues do not arise in the future.
- 6.2 All the Berkshire authorities charge CIL and follow the same processes as West Berkshire Council, in line with the latest regulations. The only differences between the authorities is the amount charged and the type of development that incurs the charge. If an external audit team was to be appointed it could cost between £7,000 and £20,000 based on a 15 day process.
- 6.3 Option B – The Council is a member of the Planning Advisory Service CIL and Section 106 advisory group which also includes representatives from the Ministry of Housing Communities and Local Government. PAS do offer an advisory service which could be retained to check Council processes, however there would still be a fee associated with undertaking this review.
- 6.4 Option C – Reject the motion.

7 Conclusion

- 7.1 With less than 0.3% of CIL decisions going against the Council when investigated by the Valuations Office, Planning Inspectorate or Local Government Ombudsman and two internal audit reviews that have found the service satisfactory the need for another review so soon after the last is not necessary. The officer recommendation is therefore Option C.

Appendices - None