

COVID 19 – Community Infrastructure Levy (CIL) and Section 106 Legal Agreements (S106)

Report of the Planning Portfolio Holder

Recommended:

1. That the CIL Instalment Policy be amended to defer payments by six months as set out in Annex 2 to the report.
2. That a second round of bidding under the adopted Spending Protocol be approved to be run between 1st September and 30th November 2020 as set out in Option 2.
3. That the current situation surrounding S106 be noted.

SUMMARY:

- The report sets out a summary of the Governments approach to CIL and S106 during the pandemic and to outline potential actions

1 Introduction

- 1.1 On the 13th May the Government issued new guidance which gives developers the ability to defer their Section 106 (S106) and Community Infrastructure Levy (CIL) obligations. This amended guidance is intended to support the economy through the current pandemic and in particular small and medium sized developers. This report outlines the guidance and the issues that may arise for the Council.

2 Background

- 2.1 The CIL Spending Protocol and scoring methodology was adopted by Council on the 8th November 2017.
- 2.2 The following paragraphs outline the government advice and how this may affect CIL, S106 and Test Valley Borough Council's (TVBC) adopted CIL Spending Protocol.
- 2.3 The CIL Instalment Policy was adopted alongside the Charging Schedule in August 2016.
- 2.4 The existing CIL Instalment Policy is attached as Annex 1 and the proposed Instalment Policy as Annex 2.

3 Community Infrastructure Levy

- 3.1 The CIL regulations provide only limited flexibility to local authorities to defer payments. The Government will be introducing amendments intended to help small and medium sized (SME) developers with an annual turnover of less than £45 million. No time frame is given for the introduction of these amendments.
- 3.2 The amendments would enable charging authorities:-
- to defer payments from developers,
 - to temporarily disapply late payment interest, and
 - to provide a discretion to return interest already charged where they consider it appropriate to do so.
- 3.3 The Government does not intend for these flexibilities to be open-ended and they will be removed when the economic situation has recovered. Whilst not open ended there is no way of knowing the length of period that these flexibilities will be in place.
- 3.4 The Government is also keen to encourage Councils to take a 'positive approach' to engaging with developers so as not to cause undue burden and to "use their enforcement powers with discretion and provide some comfort to developers that, where appropriate, they will not be charged extra for matters that were outside of their control".
- 3.5 Authorities are also encouraged to use or amend their existing instalment policy.
- 3.6 TVBC has a CIL instalment policy. The instalment thresholds contained within the policy are discretionary. If the Council does decide to amend the instalment policy thresholds this could be for a temporary period which is subject to review after 12 months. Each threshold could be extended by a certain period. Annex 1 contains the current instalment policy and annex 2 the proposed policy showing a deferment of 6 months for each of the instalments. A view could be taken to allow a longer threshold (9-12 months) but this would have a larger impact on CIL receipt timescales, the delivery of infrastructure through the Spending Protocol and the passing of receipts to Parish and Town Councils.
- 3.7 It is not proposed to amend the CIL charging rates at this time. To do so would require a fresh viability study. This work was planned to be undertaken as part of the local plan review, however there may be merit in bringing that work forward, although recognising the uncertainties with the market will make any advice difficult to provide. This will be kept under review.
- 3.8 Existing CIL legislation also allows Councils to introduce an Exceptional Circumstances Relief Policy where the Council would be able to grant relief for all or in part of the CIL liability. The Council does not have such a policy and it is not proposed to bring one forward at this stage. It is a complicated process as opposed to the simpler and quicker task of amending the instalment policy Officers will continue to review whether to introduce such a relief policy.

- 3.9 Should a revised instalment policy be introduced it could be applied to all affected developments via the issue of a revised Demand Notice that reflects the updated instalment policy. These Demand Notices will be issued 28 days after the adoption of an amended policy to ensure compliance with regulation 69B. The proposed instalment policy will be adopted on the 1st August and new Demand Notices issued on the 29th August.

4 Section 106 Agreements

- 4.1 The Government has indicated that where the delivery of a planning obligation (works or financial contribution) is triggered during the current period, local authorities are encouraged to consider whether it would be appropriate to allow the developer to defer delivery. Deferral periods could be time-limited, or linked to the government's wider legislative approach and the lifting of CIL easements.
- 4.2 It is increasingly likely that developers will seek delays to their obligations. Whilst the guidance is not explicit it is assumed that this approach is for developers of all scales and not just SME developers (who are supported by the changes to the CIL guidance).
- 4.3 Due to the introduction of CIL the actual number of S106 is relatively small. Even with a relatively small number of S106s, if there is a spike in request for Deeds of Variations there will be a resource impact on a number of Services.
- 4.4 The sites which do have S106 are predominantly our residential strategic sites. Any delay in the delivery of affordable homes and/or infrastructure would have the greatest impact to residents, wider communities and meeting corporate aspirations. Developers may also seek to reduce the scale of their obligation, either through negotiation reduced contributions/ work specification or through seeking to reduce the number and/or type of affordable home previously agreed.
- 4.5 At this stage it is difficult to second guess which sites will look to renegotiate obligations and which of the obligations would be identified for deferment. There is no reference in the guidance to developers not providing that infrastructure already secured in the S106. The Council would need to consider its approach on a site by site basis and weigh up which obligation could be deferred and for how long. It would be for the developer to put forward their case.
- 4.6 Amending S106 via Deeds of Variation to include deferral periods will be a pragmatic approach to demonstrating the Council positive approach in the current situation and to facilitate the continued supply of house building. In considering any deferral period it is recommended that these are time limited, and restrict occupations beyond a certain point, rather than following the more open ended approach of the CIL easement and linking it to economic recovery.

5 CIL Spending Protocol – bidding process

- 5.1 The Council's bidding process for the release of CIL funds runs from 1st April to 30th June. As many of the bids we receive are from parish councils and community groups it has been difficult for them to compile a robust bid at this current time for them to be able to satisfy (or at least score highly) that would justify releasing CIL funds for their project against the standard of previous bids. This is especially the case where the organisations have to include evidence of engagement and consultation.
- 5.2 The current scoring system for bids is to ensure that bids achieve a high level of social and financial return on investment. Easing these requirements for one round would seem to discriminate against those who have been working on their bids prior to the pandemic. However abandoning the 2020 CIL bidding process is overly harsh given the work that groups have undertaken and that officers are aware of. A potential solution could be extending the current bidding round. The issue is for how long and whether any extension would overcome the issues that the groups currently face.
- 5.3 An alternative is that we introduce a second round of bids later in 2020. The current deadline was set to give sufficient time for bids to be assessed, reported to Cabinet in November and summarised as part of the annual budget setting process. When the spending protocol was established it was highlighted that there were opportunities for submitting and agreeing a bid for any urgent schemes which come forward outside of the bidding window however managing bids submitted in an ad hoc fashion will make the process difficult to organise. The repeating of the bidding process will increase the workload of those officers assessing the bids. However, given the current exceptional circumstances, establishing a second bid window, with a period that fits with the Finance reporting process, seems the most pragmatic approach.
- 5.4 A second round of bids could be run between 1st September and 30th November to be reported to Cabinet in January 2021. This would allow bidders additional time to conduct alternative methods of community engagement and consultation.

6 Consultations/Communications

- 6.1 There has been no external consultation.

7 Options

- 7.1 **Option 1** – The introduction of an amended CIL Instalment Policy as set out in Annex 2 with minor amendments to be delegated to the Head of Planning Policy in conjunction with the Planning Portfolio Holder.

To run a second CIL bidding round between 1st September and 30th November 2020

- 7.2 **Option 2** – Keep the current CIL Instalment Policy and the current deadline of 30th June for CIL bids with no second round

8 Option Appraisal

Option 1

- 8.1 The recommendations are an effort to support developers affected by site closure during lockdown and to allow extra time to those community groups looking to deliver new infrastructure to their residents.
- 8.2 The amended Instalment Policy is a direct response to Government guidance and meets the aims of a proactive approach to the current pandemic and ensuring that local authorities address the needs of small and medium sized developers.
- 8.3 The additional bidding round is another proactive approach to ensure that new infrastructure continues to be delivered to mitigate the impact of development within the borough.

Option 2

- 8.4 Leaving the current instalment policy and bidding round in place may mean taking enforcement action against developers due to late payment which would seem to go against the Government's current guidance. This would also mean a 12 month wait for those seeking to secure infrastructure improvements in their communities as opposed to the proposed 6 month wait.

9 Risk Management

- 9.1 An evaluation of the risks associated with the matters in this report indicate that further risk assessment is not needed because the changes/issues covered do not represent significant risks or have previously been considered by Councillors.

10 Resource Implications

- 10.1 No resource implications

11 Legal Implications (Note: Of the chosen option)

- 11.1 No legal implications for Options 1 or 2

12 Equality Issues

- 12.1 An EQIA screening has been completed in accordance with the Council's EQIA methodology and no potential for unlawful discrimination and/or low level or minor negative impact have been identified, therefore a full EQIA has not been carried out.

13 Other Issues

- 13.1 Wards/Communities Affected – Potentially all as option 1 will create a delay in the transfer of the Neighbourhood Portion of CIL receipt.

14 Conclusion

- 14.1 Approval is sought to amend the CIL Instalment Policy and run a second round of bidding for CIL funds between 1st September and 30th November 2020. These changes show a proactive approach to recent Government guidance.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
Current CIL Instalment Policy			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	2	File Ref:	N/A
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