

**Report to:** **Strategic Planning Committee**

**Date of Meeting:** Tuesday 29 January

**Public Document:** Yes

**Exemption:** None

**Review date for release** None



**Agenda item:** **10**

**Subject:** **Government consultation on Developer contributions reform: technical consultation**

**Purpose of report:** The Government are seeking views on draft legislation to amend the Community Infrastructure Levy Regulations 2010 (as amended). This report provides an overview of this technical consultation on the reform of development contributions, and sets out a proposed responses to the consultation questions.

**Recommendation:** **That Members endorse submission of the proposed response to the Government consultation on Developer contributions reform: technical consultation**

**Reason for recommendation:** To ensure that this Council play an active part in influencing Government regulations on developer contributions

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**Financial implications:** Although there are no direct financial implication from the recommendation, to obtain the right level of developer contributions is essential to allow the appropriate provision of infrastructure and assets within the District. Insufficient developer contributions from CIL to provide the necessary funding is highlighted as Strategic Risk for this Council.

**Legal implications:** It is important that the Council takes an active role in developing future legislation by providing considered responses to Government consultations. There are no legal implications from this consultation response

**Equalities impact:** Low Impact

**Risk:** Low Risk

The consultation proposals on developer contributions reform are considered to be low risk.

**Links to background information:**

- [Reforming developer contributions – technical consultation on draft regulations, MHCLG, December 2018](#)
- [Agenda for Strategic Planning Committee, 27 November 2018, item 11](#)

**Link to Council Plan:** Encouraging communities to be outstanding; Developing an outstanding local economy; Delivering and promoting our outstanding environment; Continuously improving to be an outstanding council

## Report in full

### 1. Introduction

- 1.1 Members will recall at the last Strategic Planning Committee (27 November 2018) a report outlining the Government response to consultation on reforms to the system of developer contributions, including proposals that sought to:
  - Ensure that consultation on preparing a charging schedule is proportionate
  - Remove the section 106 pooling restriction
  - Improve transparency and increase accountability
- 1.2 Several other proposals were identified to help support housing delivery through developer contributions.
- 1.3 The Government stated that legislation would be required to implement many of the proposed changes; and have now published a technical consultation on draft Community Infrastructure Levy (CIL) regulations, setting out the detail as to how Government proposals will be implemented. Therefore, the consultation and proposed council response are limited to technical matters.
- 1.4 The consultation period runs from 20 December until 31 January. The consultation document includes 11 questions on which the Government is seeking comments.
- 1.5 The purpose of this report is to summarise the key points included in the draft regulations, and set out the council's response to the consultation questions.

### 2. Summary of proposals and responses to questions in the consultation document

#### Ensuring the consultation is proportionate

- 2.1 As previously announced, draft regulation 3 removes the requirement for two rounds of consultation on proposed CIL rates in a charging schedule. Instead, only one round of consultation, on a draft charging schedule, will be required as a minimum. Local authorities can decide to undertake two rounds of consultation if they wish. This approach is supported, subject to the following response.

*Question 1: Are there any elements in regulation 3 which will prevent the Government achieving the policy intent?*

EDDC response: "Given that a statutory requirement for consultation on a draft charging schedule will be retained, the regulations should prescribe the length of this consultation period. The proposal to omit regulation 17(3) will mean the consultation period will not be prescribed in the regulations, which will harm the policy intent to retain the requirement to consult on a draft charging schedule."

#### Removing the 'pooling restriction'

- 2.2 Again, as already proposed, the Government has decided to lift the pooling restriction that prevented local authorities from using more than five section 106 obligations for a single infrastructure project. The pooling restriction will be lifted in all circumstances. This will allow local authorities to use both CIL and section 106 to fund the same item of infrastructure, providing greater funding flexibility.

*Question 2: Are there any elements in regulations 4 and 12 which will prevent the Government achieving the policy intent?*

EDDC response: "Clarity is needed over the timeframe that the lifting of the pooling restrictions applies to. Does this apply to all planning obligations regardless of when they

were signed or just new obligations following the change in the regulations. There are no draft transitional arrangements addressing this issue and so there could be some confusion on this point.”

### **A more proportionate approach to administering exemptions**

- 2.3 Certain development is exempt from paying CIL, such as residential extensions, custom/self-build housing, charitable development and social housing. This exemption is only confirmed if the developer submits a Commencement Notice prior to the start of works, otherwise the full CIL liability becomes due immediately. Draft regulation 7 reduces the penalty for not submitting a Commencement Notice for these developments to a surcharge equal to 20% of the notional chargeable amount or £2,500, whichever is the lower; rather than the full liability. Also, a Commencement Notice will no longer be required for residential extensions.

*Question 3: Are there any elements in regulation 7 which will prevent the Government achieving the policy intent?*

EDDC response: “The removal of the requirement for a commencement notice for a residential extension will put an unrealistic administrative burden on the local authority to check whether development has commenced on such sites where the CIL receipt is likely to be minimal in any case. We would suggest removing residential extensions from CIL entirely to reduce the administrative burden of implementing CIL the cost of which is unlikely to be covered by the CIL received.

There are no proposed transitional arrangements for regulation 7, how is it intended that this change is implemented in relation to developments where a liability notice has already been issued and the liable party advised of the requirements. It would place an unrealistic administrative burden for the authority to notify affected parties and so these changes should only apply to developments granted post the commencement date of the new regulations. ”

### **Extending abatement provisions**

- 2.4 The Government are proposing, through draft regulation 13, to allow phased development originally permitted before CIL came into force (1 September 2016 in East Devon) to balance liabilities between different phases of the same development.

*Question 4: Are there any elements in regulation 13 which will prevent the Government achieving the policy intent?*

EDDC response: “It is likely that a phased development will be the subject of a phased payment plan, however the effect of regulation 13 on any phased payment plan and the need to issue a new liability notice is not addressed in the regulations and should be made clear in the regulations or explanatory text.”

### **Applying indexation where a planning permission is amended**

- 2.5 Draft regulation 6 proposes changes to CIL liability where a planning permission is amended. It enables reductions in CIL liability where a planning permission is amended to be calculated at the rate that applied when the original permission was granted, whilst increases in liability are to be charged at the rate in place when the amendment was granted.

*Question 5: Are there any elements in regulation 6 which will prevent the Government achieving the policy intent?*

EDDC response: “The effect of this change and the requirement to issue a new liability notice on any phased payment plan is not clear and needs to be clarified.”

### **Indexation of Community Infrastructure Levy rates**

2.6 CIL rates are currently indexed on January 1 each year to the All-in Tender Price Index published by the Royal Institution of Chartered Surveyors, reflecting changes to the cost of building infrastructure. The Government consider that Levy rates should be linked more closely to the value of development – draft regulation 5 proposes indexing residential development to a three-year smoothed average of the annual local House Price Index; whilst non-residential development will be indexed to the Consumer Price Index. In addition, the cap in the neighbourhood share (previously up to £100 per existing dwelling in parish without a ‘made’ neighbourhood plan) will be indexed to the Consumer Price Index.

*Question 6: Are there any elements in regulation 5 which will prevent the Government achieving the policy intent?*

EDDC response: “Unsure as to why the cap in the neighbourhood share for areas without a ‘made’ neighbourhood plan will be indexed to the Consumer Price Index, when the vast majority of CIL income is generated from residential development. EDDC would ask that this remains indexed to the annual House Price Index.”

*Question 7: Do you have any further comments in relation to the Government’s proposed approach to Community Infrastructure Levy indexation including, for residential development, the approach of using a smoothed index using local house prices.*

EDDC response: “Further guidance would be useful on:

- Whether this will apply retrospectively to sites?
- Will there be a lead in time?
- The implications for existing CIL Charging Schedules and whether they need to be updated (and consulted on) within a certain timeframe?”

### **Removing regulation 123 restrictions and introducing Infrastructure Funding Statements**

2.7 Draft regulation 10 confirms the Government proposal to remove regulation 123 lists (i.e. the list of infrastructure projects or types of infrastructure that a local authority intends will be, or may be, wholly or partly funded by CIL). Instead, there will be a requirement for local authorities to prepare an annual Infrastructure Funding Statement by 31 December each year. This statement will set out how developer contributions have been spent, and anticipated revenue and spend for future years. The Government will produce a data specification and tools to help local authorities to collect data for the Infrastructure Funding Statement.

*Question 8: Are there any elements in regulation 10 which will prevent the Government achieving the policy intent?*

EDDC response: “No, but need to ensure that the data specification and tools will work with existing systems that are used to implement CIL, specifically Exacom. Guidance on how to forecast anticipated developer contributions in future years is required”

### **Monitoring fees**

2.8 Although a proportion of CIL revenue (up to 5%) can be used for administration of the Levy, there is uncertainty as to whether section 106 planning obligations can be used in a similar way. Therefore, draft regulation 11 allows authorities to seek a monitoring fee through section 106 obligations – such fees should be proportionate and reasonable.

*Question 9: Are there any elements in regulation 11 which will prevent the Government achieving the policy intent?*

EDDC response: "Clear examples or guidance should be provided to ensure a consistent approach on what is proportionate and reasonable."

### **Delivering Starter Homes**

2.9 In line with the housing White Paper and National Planning Policy Framework which introduce starter homes as a new affordable home ownership product, draft regulation 8 confirms that starter homes are exempt from paying CIL where the dwelling is sold to individuals whose household annual income is no more than £80,000.

*Question 10: Are there any elements in regulation 8 which will prevent the Government achieving the policy intent?*

EDDC response: "It is not currently clear who will be responsible for assessing household annual income – this should be made clear in accompanying guidance. The regulations do not state whether or not the household annual income will be index-linked to account for future changes in income."

### **Other technical clarifications**

2.10 Finally, a small number of other clarifications are proposed in the regulations, relating to the meaning of 'retained parts of in-use buildings'; "relevant person" on liability notices; amended planning permissions; and where a Combined Authority has introduced CIL.

*Question 11: Are there any elements in regulations 13 to 15 which will prevent the Government achieving the policy intent?*

EDDC response: "No."

## **3. Conclusion**

3.1 The Government's approach to reforming the system of developer contributions is broadly welcomed. This consultation on the draft regulations is inherently technical in nature – the suggested council responses generally seek further clarification or guidance, along with some suggested amendments. Following the endorsement of this committee, the responses to the consultation questions will be submitted via the online survey (as requested by the Government) by the closing date of 11.45pm on 31 January.