

Subject:	Update of the Developer Contributions Technical Guidance, setting the CIL Instalment Policy and amending the validation review date for CIL.		
Date of Meeting:	18 June 2020		
Report of:	Executive Director, Economy, Environment & Culture		
Contact Officer:	Name:	Simon Barrett & Isabel Elder	Tel: 01273 293437
	Email:	isabel.elder@brighton-hove.gov.uk simon.barrett@brighton-hove.gov.uk	
Ward(s) affected:	All		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The report seeks approval for the revised Developer Contributions Technical Guidance and the proposed Community Infrastructure Levy (CIL) Instalment Payment Policy. Both are required to be in place prior to the proposed CIL start date of 5 October.
- 1.2 The report seeks a further amendment to the local validation requirement initially approved by this committee on 16 January.
- 1.3 The report goes on to provide updates on the position with other CIL matters including the Infrastructure Delivery Plan and governance.

2. RECOMMENDATIONS:

- 2.1 That the Committee approves the revised Developer Contributions Technical Guidance attached as Appendix 1, subject to any minor alterations (grammatical and spelling) to be agreed by the Head of Planning in consultation of the Chair of TECC Committee.
- 2.2 That the Committee approves the proposed Community Infrastructure Levy Instalment Payment Policy, attached as Appendix 2.
- 2.3 That the Committee agrees the amendment of the planning application local validation criteria to require a completed CIL Additional Information Form 1 as part of the validation process from 6th July 2020 for all applications for full planning permission, including householder applications, for reserved matters following an outline planning permission, and for applications for lawful development certificates.

- 2.4 That the Committee agrees the validation requirement set out in paragraph 2.3 will lapse if Full Council does not, on 23rd July 2020, approve the commencement of CIL.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 At its meeting on 7 May 2020, this Committee formally agreed Brighton and Hove’s Community Infrastructure Levy (CIL) Charging Schedule to be referred onto Full Council for adoption (23 July meeting). As part of the administration of CIL it is necessary to update the Developer Contributions Technical Guidance, adopted in 2017, to incorporate the changes that CIL makes to the S106 regime. The document will take effect from 5 October with the implementation start date of CIL (subject to the agreement of Council).
- 3.2 Instalment policies allow councils to set a local policy for managing CIL payments in stages. The introduction of an Instalment Policy is discretionary but has been implemented in different forms by our comparator unitary and neighbouring district authorities (who are levying CIL). In response to the recent Covid19 pandemic the government has also issued a recommendation that local authorities implement an Instalment Policy pending them making legislative changes through Parliament.

Developer Contributions Technical Guidance

- 3.3 In preparation for the potential introduction of CIL in Brighton and Hove, on 5 October 2020, it is necessary to update this guidance to reflect how CIL and S106 will work together. S106 payments will be significantly scaled back on the introduction of CIL as, from this point, S106 contributions will be limited to site specific measures and all off site infrastructure requirements will be funded from CIL.

- 3.4 The table below sets out the changes proposed to s106 in the revised document:

Obligation Formula	Action	Reason
Affordable Housing & offsite/commuted sums	Retained	Affordable housing can only be provided for by a S106. This will either be on site or by commuted sums. The formula remains the same
Local Employment and Training	Retained	This obligation provides direct training onsite and remains within a S106 as it is for site specific measures. The formula remains the same.
Sustainable Transport and Travel	Removed	The formula contained off site requirements which will now fall within CIL e.g. sustainable transport initiatives. Site specific requirements will still be secured but will be costed individually based on specific needs, therefore no formula is required.
Open Space	Removed	The formula included off site measures and these will now fall under CIL.
Education	Removed	The formula secured funding for education

		contributions, unless there is a specific site policy for a school to be provided on the development site, this type of spend will now be secured from CIL
Public Realm	Removed	The formula included off site measures and these will now fall under CIL

- 3.5 The revised guidance will only have specific formulas for Affordable Housing and for the Local Employment Training Scheme. All other on-site requirements identified in the planning process will need to be costed by the relevant service on a case by case basis reflecting the actual need from the development and its anticipated cost. The proposed Technical Guidance is in Appendix 1.
- 3.6 The formula for calculating commuted sums for affordable housing needs to be updated, however, given the current economic situation, it is considered that this should be undertaken when there is more knowledge about the impact of Covid19 on the housing market. Any work undertaken at present may be inaccurate and harm the economic recovery.
- 3.7 Officers will monitor the house price situation and return to a future committee in 2021 with an update to this formula when more data is available.

The September 2019 CIL Regulations amendment included an option for councils to introduce a charge for monitoring S106 agreements. The revised technical guidance includes a new section on proposed monitoring and management fees. It also includes reference to how indexation will be applied using relevant indexes for construction-based costs (e.g. new housing) and cost of living indexation for revenue-based items (e.g. the Local Employment Scheme).

Instalment Policy

- 3.8 The CIL Regulations 2010 (as amended) state that a CIL payment is due within 60 days of commencement of works on site unless there is a locally agreed Instalment Policy.
- 3.9 In May 2020 the Ministry for Housing, Communities and Local Government (MHCLG) issued guidance stating it would be prudent for local authorities to adopt a CIL Instalment Policy to assist developers with their cash flow in the current economic situation. MHCLG are proposing to further amend the CIL regulations regarding payment penalties and interest. This will specifically benefit those small and medium sized developments, that have already commenced on site, as it will allow payments to be deferred and late payment interest not to be charged. These changes will need to be approved in Parliament, but councils will be able to use their discretion to apply this approach in the meantime.
- 3.10 In terms of an instalment policy, there is no national guidance or regulations and the approach in neighbouring authorities and unitaries is varied. The proposed policy has taken into consideration other authorities instalment policies and the issues they and developers have faced since March 2020. There is a summary of the key parts of the policy below (see full Instalment Policy in Appendix 2)

- The policy has three bands: under £50k; £50k to £250k and over £250k;
- The under £50k band will assist the cash flow of the smaller developer by allowing a 90-day payment window;
- Payments under £250k will be in two instalments, over 180 days (approx. 6 months);
- Payments over £250k will be in three instalments and over 270 days (approx. 9 months).

A comparison of some of the key parts of the policy against the approach adopted by neighbouring Sussex councils and other unitary authorities has been prepared and is include as Appendix 3.

- 3.11 The proposed instalment policy aims to balance the need for CIL income to pay for infrastructure and when developers will be able to pay. The proposed policy specifically takes into consideration the cash flow challenges of small developers who are likely to be the regular contributors to CIL.

Under the regulations, the policy can be amended at any time and does not require stakeholder or industry consultation, though once approved it must be placed on the Councils website. It is proposed that the policy is reviewed in 2022 to allow an evaluation of the impact on developments in the current challenging financial climate.

Local Validation Requirement

- 3.12 On 16 January 2020, this committee agreed the amendment of the planning application local validation criteria to require a completed CIL Additional Information Form 1 as part of the validation process from 2nd March 2020 for all applications for full planning permission, including householder applications, for reserved matters following an outline planning permission, and for applications for lawful development certificates. It further agreed that the approval would lapse if Full Council did not approve the commencement of CIL on 14 May 2020.
- 3.13 Due to the Covid19 pandemic the approval of the commencement of CIL was only approved at this committee on 7 May with the amended recommendation for Full Council to adopt the CIL at its 23 July meeting. To reflect this change in approval timescales it is necessary to amend the recommendation of the 16 January report to insert a revised end point of 23 July Full Council meeting whereby the approval for the submission of CIL Form 1 will lapse if the CIL Charging Schedule is not approved at that meeting

Other Matters

- 3.14 On 12 September 2019, TECC Committee agreed that further work on the governance options for spending CIL receipts would be brought to a future meeting of this committee. This was to allow a suitable sum of CIL receipts to accumulate and to allow for consultation across the council on spending priorities. It is now intended to bring a report back to TECC committee on governance in spring/summer 2021.

- 3.15 In order to make informed decisions on the priority and level of financial support provided to infrastructure projects, the council also needs to review and refresh its Infrastructure Delivery Plan (IDP) 2017. This sets out the levels of investment, funding sources and priorities of the council over several financial years. A report updating this document will also be brought to TECC committee in the spring/summer 2021.

Councils have the discretion to choose whether they wish to introduce a Payment in Kind policy for the payment of CIL. This is an alternative payment method in the form of either land or buildings. The CIL Regulations (as amended) allow a council as the Charging Authority to introduce such a policy which details the alternatives that it would accept instead of a financial payment. This will be considered once the IDP has been prepared, which will identify if any suitable opportunities may arise.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 The existing technical guidance needs to be updated in order to be transparent as to how CIL and S106 will work together. The alternative not to revise the document would result in lack of clarity for developers, officers and councillors.
- 4.2 If the Council does not introduce an Instalment Policy, all CIL payments will be required within 60 days of commencement of works on site. This could lead to challenges for developers of small and medium sized developments to bring schemes forward. The proposed policy allows more flexibility for these payments and will support new development.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 The Council is updating the technical guidance in line with the CIL regulations so all parties have a clear understanding of how CIL and S106 relate. Service directorates have been consulted throughout the CIL Charging Schedule setting process about the change in the way funds are secured and the requisite changes to the Technical Guidance. As having an Instalment Policy is currently discretionary, there is no requirement in the CIL regulations to consult on its provisions.

6. CONCLUSION

- 6.1 This report sets out the changes required to the developer contributions technical guidance; recommends a balanced initial approach to the Instalment Policy; and amendments to validation requirements to correspond with the deferral of the CIL start date. The instalment policy can be revised at any time as circumstance and pending national legislation may require.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 CIL receipts will be an important source of income for funding infrastructure in the city, and consideration will need to be given to ensure that the use of receipts is compatible with the aims and objectives of the council as well as being compliant

with CIL Regulations. Governance options for the spending of CIL receipts are to be considered at a later date.

- 7.2 The current forecast value of receipts the council may receive from the implementation of the CIL is estimated at around £2 million per annum over the plan period to 2030, however this is dependent on the type and size of developments and therefore the annual amounts received are likely to vary significantly from year to year. Income from Section 106 contributions are likely to reduce as these are scaled back to reflect the CIL charging arrangements, however, it is anticipated that this reduction will be at least offset by CIL infrastructure income.
- 7.3 The September 2019 CIL Regulations amendment allows charging authorities to use up to 5% of CIL receipts on expenses in connection with the initial set-up and ongoing operation of the CIL scheme. Staff costs associated with administration of the scheme, reported in September 2019 at £0.158m, have up to now been met from existing revenue budgets within the City Development and Regeneration Division. It is anticipated that this administration fee will be sufficient to fund these ongoing costs in accordance with CIL Regulations.
- 7.4 The CIL Regulations 2010 (as amended) currently state that a CIL payment is due within 60 days of commencement of works on site unless there is a locally agreed Instalment Policy. In May 2020 the MHCLG issued guidance stating it would be prudent for local authorities to adopt a CIL Instalment Policy to assist developers with their cash flow in the current economic situation (Covid-19 Pandemic). Whilst this will delay the receipt of CIL income to the Council, this is not considered to be sufficiently detrimental to cashflow to reject the proposal. Furthermore, all CIL income will still be received before the Council would incur any expenditure on agreed infrastructure projects. Similar policy proposals are in place in many other councils in Sussex which specifically take into consideration the cash flow challenges of small developers, who are likely to be the regular contributors to CIL, and therefore likely to support new development.

Finance Officer Consulted: Jill Fisher, Head of Finance Date: 08/06/20

Legal Implications:

- 7.5 The statutory tests allowing local planning authorities to seek developer financial contributions and other planning obligations are set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). Such obligations may only be sought if they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. In addition to these statutory requirements, the National Planning Practice Guidance advises that the role of planning obligations is where site-specific impact mitigation is necessary, as referred to in paragraph 3.3 above. Hence the need to revise the Developer Contributions Technical Guidance as recommended.
- 7.6 So far as payment of CIL contributions by instalments is concerned, Regulation 69B of the 2010 CIL Regulations provides that where a charging authority wishes

to allow persons liable to pay CIL to do so by instalments an instalment policy must be published on its website and made available for inspection at the authority's principal office and at such other places within its area that it considers appropriate.

- 7.7 The draft Instalment Payment Policy attached as Appendix 2 contains the information required by Regulation 69B.

Lawyer Consulted: *Name Hilary Woodward* *Date: 29/5/20*

Equalities Implications:

- 7.8 An Equalities Impact and Outcome Assessment (EIA) has been prepared alongside the CIL Draft Charging Schedule and is available on the councils' website. The EIA was updated at the submission stage of the process. Income raised from CIL will go towards funding infrastructure necessary to support new development and communities

Sustainability Implications:

- 7.9 CIL and S106 receipts will help to fund infrastructure necessary to support new development and sustainable communities and should therefore have a positive impact in terms of sustainability outcomes. A Strategic Environmental Impact (SEA) screening option for this CIL concluded that a SEA is not required.

SUPPORTING DOCUMENTATION

Appendices:

1. Technical Guidance
2. Draft Instalment Policy
3. Analysis of Neighbouring Councils' Instalment Policies

Background Documents

1. None.

