

Neighbourhood Planning Guidance Note 27

Community Infrastructure Levy

April 2013 - Revised August 2017



The Community Infrastructure Levy came into force in April 2010 and allows local authorities to raise funds from owners or developers of land undertaking new building projects in their area, to help fund infrastructure.

The government commissioned an independent review of the Community Infrastructure Levy in November 2015 to assess the extent to which CIL does or can provide an effective mechanism for funding infrastructure, and to recommend changes that would improve its operation in support of the government's wider housing and growth objectives.

The independent review group submitted their report to ministers in October 2016, and their report together with supporting papers can be found at:
<https://www.gov.uk/government/publications/community-infrastructure-levy-review-report-to-government>

The government responded to the publication of the review as part of its Housing White paper published in February 2017, specifically at para 2.29 on page 40 the government said:
"...The Government will examine the options for reforming the system of developer contributions including ensuring direct benefit for communities, and will respond to the independent review and make an announcement at Autumn Budget 2017"

The White Paper can be found at : https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590464/Fixing_our_broken_housing_market_-_print_ready_version.pdf

Given that the future of CIL in its current format is uncertain Herefordshire Council have taken the decision to pause progressing the adoption of CIL locally, until it has had opportunity to review the governments formal response which is expected in the Autumn Statement as stated in the White Paper

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What is the Community Infrastructure Levy?

The Community Infrastructure Levy (CIL) is a statutory mechanism through which local authorities in England and Wales can help to enable growth by promoting the delivery of necessary infrastructure.

CIL arises from the following legislation:

- Planning Act 2008 (as amended);
- Localism Act 2011 (which amends the Planning Act 2008);
- The Community Infrastructure Levy Regulations 2010 (as amended);

and is administered in accordance with the following statutory guidance

- National Planning Practice Guidance (NPPG): Community Infrastructure Levy.

When it takes effect, Herefordshire's CIL will run alongside Section 106 agreements ('S106s') which will continue to operate where it is necessary to make the proposed developments acceptable.

As a charging authority, Herefordshire Council is required to publish a list of infrastructure that it intends will be, or may be, wholly or partly funded by CIL.

Herefordshire Council as charging authority is required to pass a set percentage (15% or 25%) of CIL funds generated onto local communities. The money passed onto local communities can be spent on a wider range of things than detailed in the infrastructure list. Herefordshire Council will publish separate guidance on this in due course.

Aside from the funds passed onto local communities and used to cover administrative charges (not be more than 5% of the CIL raised) Herefordshire Council controls the CIL fund and ultimately has responsibility in determining the infrastructure projects on which CIL will be spent.

When CIL is in effect it will still be possible to have S106s where these are necessary to make developments acceptable, provided that it is not for purposes which the Council intends to spend CIL as shown in a published list.

This means that when the CIL Charging Schedule takes effect, most developments will pay the fixed CIL rates and some developments will also be required to make S106 contributions, but overall the gross amount of contributions will not exceed current levels (allowing for indexation).

Once the CIL Charging Schedule is in effect, it will take some time for significant amounts of CIL to accumulate. This is because developments will only be liable, in most cases, where planning permission is granted after the 'effect' date and even then CIL is not payable until development commences – which can in many cases be within months or years.

The Council is in the process of producing its Preliminary Draft Charging Schedule, as required by the CIL regulations.

The next steps are as follows:

- Preliminary Draft Charging Schedule (PDCS) published for consultation - July /August 2015
- Review representations - September 2015
- Finalise DCS - November 2015
- Submit DCS, and its evidence base, for independent examination - Jan 2016

What development is subject to a charge?

CIL is charged on any development that results in the increase of floor space. The term 'increase in floor space' refers to the gross additional floor space created and therefore includes communal areas, and stairwells. CIL is not applied on any area not within a building (e.g. car parks, open space). There are however some exceptions:

- 'new builds' (including an extension to an existing building) which has a floor space less than 100m² (unless creating an additional dwelling);
- a building "into which people do not normally go";
- a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery;

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- a change of use of an existing building. The regulations also exempt development by charities where the development will be used wholly or mainly for charitable purposes.

Where an existing building is currently on site and lawfully used, and where such a building will be demolished as part of a new development, the floor space of the existing building will be deducted from the chargeable floor space. For example, if the site of an existing supermarket were to be demolished and rebuilt with a larger unit, CIL will only be charged on the floor space created.

What will happen to the existing system of planning obligations (s106/s278 agreements)?

Restrictions to pooling S106s

In accordance with Regulation 123 of the CIL Regulations 2010 (as amended), as of the 6th April 2015, limitations on pooling contributions from S106s came into effect, meaning that “no more may be collected in respect of a specific infrastructure project or a type of infrastructure through a S106 agreement, if five or more obligations for that project or type of infrastructure have been entered into since 6 April 2010, and it is a type of infrastructure that is capable of being funded by the levy”. (Infrastructure that is capable of being funded by CIL is defined by the Planning Act 2008 in terms of physical facilities so does not encompass some social and employment purposes that are often the subject of S106s).

Section 278 Agreements (S278s)

S278 agreements are agreements between a highway authority and a person who agrees to pay all or part of the cost of highways works under the Highways Act 1980 (as amended). Similar to S106s, S278s cannot be required for works that are intended to be funded through CIL, i.e. works in the R123 List. However, the pooling restrictions for S106s do not apply to S278s.

Planning Obligations SPD

Because the R123 List will impact on what is capable of being negotiated in S106s, to assist with providing clarity about S106s and the interface with CIL, the Council intends to consult on a revised ‘Planning Obligations

Supplementary Planning Document’ (SPD) in due course to replace the existing SPD (April 2008).

The revised Planning Obligations SPD will take into account the restrictions to pooling S106s and also new government policy and guidance on S106s for small-scale developments and affordable housing.

In the meantime the existing Planning Obligations SPD (April 2008) remains a useful aid in understanding the types of S106s which are being negotiated and how such provisions may continue once the CIL takes effect.

Interface between CIL and S106s

The Council must ensure there is clarity about what developers will be expected to pay for, and by which route (CIL/S106/S278) so that they don’t effectively pay twice for the same infrastructure.

Regulation 123 (R123) List

To assist with providing clarity about S106s and the interface with CIL charges, Regulation 123(2) of the CIL Regulations 2010 (as amended) allows the Council, upon publication of the CIL, “to set out a list of those projects or types of infrastructure that it intends to fund, or may fund, through the levy” – the ‘R123 List’.

If an item of infrastructure is on the R123 List, the Council cannot require a S106 to make provision or fund it as part of approving a planning application.

Inclusion of projects in the R123 List does not imply any order of priority, nor that the Council necessarily spend CIL on any and/or every listed project

Following the adoption and implementation of the Charging Schedule, Herefordshire Council will publish its R123 List which will be subject to regular review (anticipated to be done annually), as part of a continuous monitoring process recording the collection, spend and neighbourhood allocation of CIL.

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What is 'Neighbourhood Funding' and how is it allocated?

Neighbourhood Funding' allows Parish Councils to receive an allocation (15%/25%) of CIL which can be spent against local identified priorities. CIL monies so apportioned must be used to support development, specifically they can't be used as a replacement for normal everyday disbursement by the Parish. Whilst the neighbourhood fund must be used in support of development, it does not need to be spent directly within the same area as the site(s) from which the CIL funding comes, as long as the spending can be shown to support development. This gives Parish's considerable freedom to spend their proportion of CIL on the things that address the wider impacts of development in their area and/or allows for more development to take place. Examples include:

- new or improved community facilities i.e the village hall, play areas/open space;
- provision of affordable housing;
- anything else that is concerned with addressing the demands that development places on an area.

With a Neighbourhood Development Plan in place 25% of the CIL collected against any liable development within the parish/NDP area. There is no annual cap on an area covered by an NDP

In areas where there is no NDP in place then 15% of the eligible CIL can be passed to the parish. However this is subject to an annual cap is equivalent to £100 multiplied by the number of existing council tax dwellings in the parish

The most up-to-date guidance on the 'neighbourhood portion' of CIL which can be found at: <http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/>

How can I find out how the money is spent?

Herefordshire Council as the charging authority will have to produce an annual report for the preceding financial year detailing the total receipts for the reported year, total expenditure and a summary of the items of infrastructure to which these receipts were applied. Parish and town councils will likewise have to produce an annual report on their proportion of the "neighbourhood funds".

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Neighbourhood Planning guidance notes available:

Deciding to produce a Neighbourhood Development Plan

1. Which is the right tool for your parish
2. What is a Neighbourhood Development Plan
3. Getting started
4. A guide to procedures
5. Funding

Plan Production

6. Developing a Vision and Objectives
7. Generating options
8. Writing planning policies
9. Environmental Assessment
10. Evidence base and information requirements
11. Implementation and Monitoring
12. Best practice community engagement techniques
13. Statutory consultees
14. Writing a consultation statement
15. Planning and other legislation
16. Web enabling your plan
17. Using OS based mapping
18. Glossary of planning terms

Topics

19. Sustainable Water Management in Herefordshire
20. Guide to settlement boundaries
21. Guide to site assessment and choosing allocation sites
22. Meeting your housing requirements
23. Conservation issues
24. Recreational areas
25. Renewable energy
26. Transport issues
27. Community Infrastructure Levy

Additional Guidance

28. Setting up a steering group
29. Creating a questionnaire
30. Community facilities
31. Conformity with the Local Plan (Core Strategy)
32. Examinations of Neighbourhood Development Plans
33. Guide to Neighbourhood Development Plan Referendums
34. Tourism
35. Basic Conditions
36. Your plan - Contributing to sustainable development