

BABERGH DISTRICT COUNCIL

From: Cabinet Member with responsibility for Planning	Report Number: BCa/17/69
To: BDC Cabinet	Date of meetings: 10 May 2018

CONSULTATION RESPONSE TO ‘SUPPORTING HOUSING DELIVERY THROUGH DEVELOPER CONTRIBUTIONS: REFORMING DEVELOPER CONTRIBUTIONS TO AFFORDABLE HOUSING AND INFRASTRUCTURE’

1.0 Purpose of Report

1.1 The purpose of this report is to:

- a) Present and describe the Government’s proposals as set out in their consultation titled ‘Supporting housing delivery through developer contributions: Reforming developer contributions to affordable housing and infrastructure’;
- b) Identify the potential implications in relation to Babergh and Mid Suffolk districts and the District Councils, and the production of the Babergh and Mid Suffolk Joint Local Plan
- c) Provide recommendations and seek agreement on the Councils’ response to the consultation.

2.0 Reason for Decision:

2.1 To ensure that Cabinet are aware of the content and potential implications of the Government’s consultation titled ‘Supporting housing delivery through developer contributions: Reforming developer contributions to affordable housing and infrastructure’, in order that Cabinet endorse the response to the consultation.

2. Recommendations

- 2.1 That Cabinet note the content and potential implications of the Government’s consultation titled ‘Supporting housing delivery through developer contributions: Reforming developer contributions to affordable housing and infrastructure’
- 2.2 That Cabinet endorse the recommended response to the consultation (as contained in Appendix 1).

The Cabinet is able to resolve this matter.

3. Financial Implications

3.1 Responding to this consultation does not raise any direct financial implications. Any financial implications for the Councils arising from any resultant future changes to CIL Legislation and national policy would need to be considered in due course.

3.2 Failure to appropriately consider the implications of the proposed changes could result in a lost opportunity to work towards early alignment of processes and implementation of the new legislation, when introduced. This could also reduce opportunities of maximising infrastructure contributions and of creating transparency around developer contribution income and infrastructure delivery.

3.3 It is likely that there will be financial implications relating to the required changes.

4. Legal Implications

4.1 Responding to this consultation does not raise any direct legal implications. Any legal implications for the Councils arising from any resultant future changes to CIL Legislation and national policy would need to be considered in due course.

4.2 CIL collection and expenditure will no doubt require review in line both with the emerging Local Plan and in consideration of the proposed changes in the CIL legislation to ensure that the rates are appropriately set, and the Regulation 123 Lists are replaced with the required Infrastructure Funding Statement(s), if these changes are required. These changes can be considered as part of the Review of the CIL Expenditure Framework or before, dependant on the timing of any changes to legislation.

5. Risk Management

6. This report most closely links with Strategic Risk no. 1d – Housing Delivery: If we do not secure investment in infrastructure (schools, health, broadband, transport etc.), then development is stifled and/or unsustainable.

6.1 Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
Failure to secure developer contributions such that if we do not secure investment in infrastructure (schools, health, broadband, transport etc.), then development is stifled and/or unsustainable.	2 Unlikely	3 Serious	Adopted Community Infrastructure Levy (CIL), secure investment on infrastructure via the planning process (which includes S106). Creating the Infrastructure Delivery Plan as part of the Strategic Plan, Joint Local Plan with associated Infrastructure Strategy will ensure that infrastructure across both Councils is addressed, New Anglia LEP Economic Strategy, draft created. CIL and S106 will be reviewed in line with the emerging Local Plan to ensure that appropriate contributions to support provision of infrastructure are

			secured.
Failure to consider the implications of the proposed changes could result in a lost opportunity to work towards early alignment of processes and implementation of the new legislation when introduced. This could also reduce opportunities of maximising infrastructure contributions and of creating transparency around developer contribution income and infrastructure delivery.	2 Unlikely	3 Serious	Early consideration of the proposed changes to ensure current processes can be easily and quickly aligned once the revised legislation is known

7. Consultations

7.1 The Infrastructure Team have consulted with the following internal teams that could be impacted by the proposed changes: Planning Policy, Development Management, Strategic Housing, Economic Development, Communities Team and Legal Services.

8. Equality Analysis

8.1 There are no equality and diversity implications arising directly from the content of this report.

9. Shared Service / Partnership Implications

9.1 The CIL Expenditure Framework is a joint framework albeit the monies for each Council are collected and allocated according to where the development is being carried out (in District terms). Expenditure of Council CIL monies would also be spent in accordance with that Councils Regulation 123 lists (which are slightly different for both Councils).

9.2 The joint CIL Expenditure Framework is being presented to both Councils on the 24th April (Babergh) and 26th April (Mid Suffolk) for approval and is accompanied by the CIL Communications Strategy and the Timeline for the Implementation and Review of the scheme.

9.3 Dependant on the Governments decisions and actions following this Government Consultation any changes to the collection and expenditure of CIL will be considered at the appropriate time and where possible as part of the CIL Expenditure Framework Review.

9.4 As part of the development of the Joint Local Plan and the supporting Infrastructure Delivery Plan it is the Intention to refresh the CIL charging regime. How and when this occurs may be influenced by the outcomes of the Consultation and any new or revised legislation as well as the preparation of the Joint Local Plan.

10. Links to Joint Strategic Plan

- 10.1 This Consultation links to the delivery of affordable housing and the capture of s106 and CIL monies for the provision of infrastructure which will contribute to all the three main priority areas that Councillors identified in the Joint Strategic Plan: Economy and Environment, Housing and Strong and Healthy Communities.

11. Key Information

- 11.1 In February 2017 the Government launched a consultation on the Housing White Paper 'Fixing our Broken Housing Market'. The Housing White Paper set out a number of proposals on changes to national housing policy including some proposals related directly to planning, with the intention that the details around these would be followed up with further consultation and amendments to the National Planning Policy Framework (NPPF).
- 11.2 The Councils submitted a response to the Housing White Paper consultation and this response can be viewed at

<http://www.babergh.gov.uk/assets/The-Council/Consultations/Final-responses-FTBHM-28.4.17.pdf>

and

<http://www.midsuffolk.gov.uk/assets/The-Council/Consultations/Final-responses-FTBHM-28.4.17.pdf>.

- 11.3 On 14th September 2017, the Government launched its consultation entitled 'Planning for the Right Homes in the Right Places: Consultation Proposals'. This consultation follows on from the earlier consultation on the Housing White Paper by setting out the detail in relation to a number of the earlier proposals. The Council submitted a response to this Consultation and this response can be viewed at

<http://babberghmidsuffolk.moderngov.co.uk/documents/s7727/Planning%20Consultation%20Report%20-%20Andrea%20Mc.pdf>

<http://babberghmidsuffolk.moderngov.co.uk/documents/s7717/Planning%20Consultation%20Report%20-%20Andrea%20Mc.pdf>

- 11.4 On the 5th March 2018 the Government launched its consultation entitled "Draft Revised National Planning Policy Framework" which follows the others listed in paragraphs 11.2 and 11.3 and sits alongside this Consultation that is the subject of this report. Both Consultations require a response to Government by the 10th May 2018 and both are therefore being presented separately to both Councils Cabinets in early May 2018.

Consultation

11.5 This Consultation from the Ministry of Housing, Communities and Local Government seeks views on reforming developer contributions to affordable housing and infrastructure. It covers the following areas:

1. Community Infrastructure Levy
2. Section 106 Planning Obligations
3. Strategic Infrastructure Tariff
4. Technical Clarifications to Regulations

11.6. A copy of the Consultation document can be found at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/691182/Developer_Contributions_Consultation.pdf

A response to the Government is required by the 10th May 2018.

11.7 Each of the reforms identified in respect of the 4 subject matters listed in paragraph 11.5. above will be considered in turn below, along with a consideration of the implications for Babergh and Mid Suffolk districts and the District Councils, and a recommendation in relation to the Councils' response in relation to the questions contained in the Consultation proposals document. The consultation includes a questionnaire for responding, including options to answer 'yes' or no', and to provide comments. The proposed full responses to the consultation are contained within **Appendix A** of this report.

Key information relating to the Consultation

Background information

11.8 In November 2015 the Government commissioned an independent review into CIL and its relationship with planning obligations. The Review was published in February 2017. It found that the system of developer contributions was not "as fast simple certain or transparent as originally intended". The Government announced a package of reforms at Autumn Budget 2017 in response to the CIL Review. These reforms complement the proposed changes to viability in the National Planning Policy Framework (NPPF) and are intended to make the system of developer contributions more transparent and accountable.

11.9 The Governments 25-year Environment Plan has also set out a commitment to explore how tariffs could be used to steer development towards the least environmentally damaging areas and to secure investment in natural capital. Alongside this the Government is publishing research on "The incidence, value and delivery of planning obligations and CIL in England (2016-17)

11.10 Contributions from development towards local infrastructure are collected primarily through two mechanisms, section 106 planning obligations and CIL. Section 106 planning obligations are negotiated legal agreements between developers and local authorities. They are used to make development acceptable through delivery of

affordable housing or infrastructure or requiring development to be used in a particular way.

11.11 Local Planning Authorities set out policies which indicate the level of contributions required, such as for affordable housing. Individual agreements taking account of these policies are then made on a site by site basis. All section 106 planning obligations are subject to statutory tests (under the CIL Regulations) to ensure they are necessary, proportionate, and directly related to the development.

11.12 CIL was introduced nationally in 2010. It was established on the principle that those responsible for new development should make a reasonable contribution to the costs of providing the necessary additional infrastructure. As a more standardised approach than section 106 planning obligations, it was intended to be faster, fairer, more certain and more transparent. Babergh and Mid Suffolk introduced their CIL charging scheme in April 2016.

11.13 CIL allows authorities to set a fixed rate charge per square metre of new development and is used to address the cumulative impact of development in an area. CIL can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities. The choice as to whether to apply CIL and the rate at which it is set rests with the Local Authority. A proportion of local CIL receipts are earmarked for local areas to spend on anything that addresses the demands that development places on their area. (the Neighbourhood or Parish portion).

11.14 In the Governments view: -

- Developer contributions are an important element towards meeting the cost of funding infrastructure. In 2016/17, an estimated £6.0bn was committed through section 106 planning obligations and CIL, a real term increase of 50% since 2011/12.
- Of this, approximately £5.1bn was committed through section 106 planning obligations. However, not all planning permissions are built out, and planning obligations can be renegotiated, meaning the amount ultimately collected will likely be lower than the amount committed.
- There are significant differences between regions in the value of affordable housing contributions. The greatest value was levied in London and the South East, where land values and affordable housing need are highest, and the lowest value was levied in the North East.
- There was also a significant increase in affordable housing as a proportion of the total value of developer contributions. In 2016/17, affordable housing made up 68% of total CIL and section 106 planning obligations levied, compared to 53% in 2007/08. This equates to £4.0bn levied on affordable housing in 2016/17 compared to £3.2bn in 2007/08.
- Of the estimated £5.1bn agreed through section 106 planning obligations in 2016/17, around £4.0bn was allocated for affordable housing, enough to enable approximately 50,000 dwellings. This represents an almost 10,000 increase in the number of affordable housing dwellings agreed in 2016/17 planning obligations compared to 2011/12.

Issues with the present system

11.15 In the Governments view a range of research including the above CIL Review (see paragraph 11.14 above) has identified the following consistent themes

- The partial take-up of CIL has resulted in a complex patchwork of authorities charging and not charging CIL. Where CIL is charged, it is complex for local authorities to establish and revise rates. These can often be set at a lowest common denominator level;
- Development is delayed by negotiations for section 106 planning obligations, which can be sought alongside CIL contributions;
- Developers can seek to reduce previously agreed section 106 planning obligations on the grounds that they will make the development unviable. This renegotiation reduces accountability to local communities;
- CIL is not responsive to changes in market conditions;
- There is a lack of transparency in both CIL and section 106 planning obligations – people do not know where or when the money is spent; and
- Developer contributions do not enable infrastructure that supports cross boundary planning

Objectives of developer contributions reform (through this Consultation)

11.16 The reforms in this Consultation in the Governments view will enable the necessary supporting infrastructure to be built and to continue to support the delivery of affordable housing

11.17 The key objectives that the Government are seeking to achieve through the reform of developer contributions and the NPPF are to make the system of developer contributions more transparent and accountable by:

- **Reducing complexity and increasing certainty** for local authorities and developers, which will give confidence to communities that infrastructure can be funded.
- Supporting **swifter development** through focusing viability assessment on plan making rather than decision making (when planning applications are submitted). The theory goes that this speeds up the planning process by reducing scope for delays caused by renegotiation of developer contributions.
- **Increasing market responsiveness** so that local authorities can better target increases in value, while reducing the risks for developers in an economic downturn.
- **Improving transparency** for communities and developers over where contributions are spent and expecting all viability assessments to be publicly

available subject to some very limited circumstances. This will **increase accountability** and confidence that sufficient infrastructure will be provided.

- Allowing local authorities to **introduce a Strategic Infrastructure Tariff** to help fund or mitigate strategic infrastructure, ensuring existing and new communities can benefit.
- The Government will also make a number of **technical clarifications** to support the operation of the current system.

In the future

- In the longer term, the Government will continue to explore options for going further. **One option could be for contributions to affordable housing and infrastructure to be set nationally, and to be non-negotiable.** Further consultation would be required, and appropriate transitional arrangements would need to be put in place before any such approach was undertaken. This would allow developers to take account of reforms and reflect the contributions as they secure sites for development.

11.18 The Government states “Communities need assurance that developers will make contributions towards new infrastructure required by development. By reducing the complexity and increasing the certainty of developer contributions, local authorities will be able to secure these contributions more effectively. This will enable them to provide this confidence to communities. Increased certainty will also benefit developers, as they will be better able to price the cost of contributions into their business models”.

11.19 The Government’s proposals to address these objectives are set out below.

Proposed Changes to the Community Infrastructure Levy and s106 Obligations

11.20. The Government are proposing to change these by: -

a) Streamlining the process CIL charging authorities must undertake to set or revise a CIL charging schedule

- **Current position** - Currently two consultations on proposed rates. Regulations set out the minimum requirements including a consultation period. This is followed by an examination in public. Majority of CIL charging authorities across the country have reported they take a minimum of 1-2 years to implement CIL. Process is the same whether setting or revising CIL. This has resource implications. Developers have argued CIL revisions to charging rates should happen more frequently
- **Government Proposal.** – Ensure that consultation requirements for setting and revising a CIL charging schedule are proportionate, by replacing the current statutory formal consultation requirements with a requirement to publish a

statement on how an authority has sought an appropriate level of engagement. This would be considered through the examination process, and would allow authorities to set schedules more quickly, and to expedite revising them in response to changes in circumstance.

- **Implications and Response** – Alongside the development of the Joint Local Plan it is considered that both Councils will need to review/refresh the CIL charging rates as these were set in 2014/15 through public examination and then introduced when we started charging in April 2016. This proposed measure is welcomed particularly if it will be quicker than current review mechanisms although it is hoped that there will be guidance from the Government on what is meant by “proportionate” so that this is clear and not open to challenge.

b) Alignment of evidence requirements for plan making and for setting CIL charging schedules.

- **Current position** - The National Planning Policy Framework requires a consideration of viability as part of plan preparation. CIL charging schedules must undergo formal process and consultation and viability testing before CIL charging rates are set. Both the Joint Local Plan and CIL charging rates are tested through public examination.
- **Government Proposal.** The National Planning Policy Framework requires a consideration of viability as part of local plan preparation. The Draft NPPF Consultation and this Consultation strengthens this approach but changes the emphasis on viability assessment at the plan making stage and places greater emphasis on this rather than the decision taking stage of the planning application process. The draft NPPF also calls for transparency and accountability by expecting all viability assessments to be conducted on an open book basis, be publicly available and to use the Government’s recommended definitions of key factors, as set out in guidance.
- The draft revised NPPF is clear that Local plans should set out contributions expected in association with sites they allocate, and in association with particular types of development It sets out that policies should be supported by evidence regarding viability. Similar information is required to establish that policies in a plan are viable, and to establish the rate at which a CIL can be set.
- The Government’s proposed reforms as to how viability assessments are used also increase the emphasis on the need for clear infrastructure plans. Where viability assessments are undertaken for plan making or in support of a planning application it is expected that they will be published except in limited circumstances (Guidance will be issued to advise on what is meant by limited) Proposals in this consultation include the use of an Infrastructure Funding Statement that sets out how authorities anticipate using funds from developer contributions and how these contributions have been used (see paragraph 11.27 below)
- **Implications and Response** – Alongside the development of the Joint Local Plan both Councils will publish an Infrastructure Delivery Plan which will identify all the infrastructure required to support the Joint Local Plan. Notwithstanding

this Consultation both Councils expect to undertake a review of CIL charging rates at the same time.

- All this work would require viability testing. The alignment of viability testing for plan making as well as viability testing for determining the CIL charging rate setting is to be welcomed. It will streamline processes, ensure that viability considerations are uniform in approach and should avoid any prospect of duplication of work. The timing of this Consultation should not pose operational issues for the preparation of the Joint Local Plan as our intention is to undertake a CIL Review and thereby CIL viability testing alongside viability testing for the Joint Local Plan.

c) Lifting the section 106 pooling contribution

- **Current position** - Regulation 123 of the CIL regulations prevents local authorities from using more than five section 106 planning obligations to fund a single infrastructure project. The pooling restriction incentivises local authorities to introduce CIL in order to collect a fixed contribution towards infrastructure from a large number of developments. In contrast, planning obligations are individually negotiated to allow for site specific issues to be mitigated. Obligations must be directly related and reasonable in scale to the development and necessary to make it acceptable in planning terms.
- However, the CIL Review identified that the pooling restriction could have distortionary effects, and lead to otherwise acceptable sites being rejected for planning permission. The research report highlighted that the restriction was a key concern for both local authorities and developers, and that it was making the process longer, slower and more difficult than before. The research also said it can hold back development and has been found to cause problems for large or strategic sites.
- The Government recognises that where authorities already have CIL in place, it is reasonable to allow them extra flexibility by lifting pooling restrictions. There may also be authorities where it is not feasible to charge CIL, as the amount forecast to be raised would not justify operating the costs of the system, or because an authority considers the viability impact of even a low CIL alongside section 106 planning obligations outweighs the desirability of funding the required infrastructure from CIL.
- **The Government proposals – are to remove the pooling restriction in areas: -**
 - that have adopted CIL;
 - where authorities fall under a threshold based on the tenth percentile of average new build house prices, meaning CIL cannot feasibly be charged;
 - or where development is planned on several strategic sites
- **and to Retain the pooling restriction in other circumstances**

- This will maintain simplicity by ensuring that other tariff-based approaches are avoided by local authorities that have taken a policy decision not to implement CIL.
- **Implications and Response** - As both Councils have adopted CIL this measure is to be welcomed as it would give both Councils flexibility to use s106s to collect contributions for infrastructure as freely as possible and to satisfactorily address cumulative impact in infrastructure terms whilst complying with the three CIL Regulation tests (Obligations must be directly related and reasonable in scale to the development and necessary to make it acceptable in planning terms).

d) Setting CIL rates based on the existing use of land

- **Current position.** If CIL charging schedules do not respond to changes in the housing market, they may quickly become out of date. In a rising housing market, this can mean that local authorities do not capture as much value as they might otherwise secure. In a falling housing market, this can affect development viability and disincentivise landowners from making sites available for development.
- Regulations currently allow different CIL rates to be set within different areas of the charging authority's boundary and on the basis of the type and scale of the proposed development.
- **The Government proposals** - Index residential development to regional or local authority house prices. For non-residential development the Government could index commercial development to a factor of house prices and Consumer Price Index (CPI),³⁶ or to CPI alone.
- By indexing to a measure which is more market responsive such as house prices, it can be ensured that charging schedules stay up to date in terms of the impact on viability. This reduces the need for local authorities to revise charging schedules and creates more long-term certainty for developers. Indexation could be applied on a regional or local authority basis, to account for differing housing markets in different areas.
- In addition, indexing to house prices would support developers in the event of a market downturn, as CIL charges on newly permissioned development would reduce, reducing costs and risk.
- **Implications and Response** – welcome a more responsive approach but consider there is a wide variation of house prices across areas.

e) Simplify the charging of CIL on complex sites as follows

- **Current position** – the charging rates and regimes are based on viability assessment following consultation and tested through public examination. They are set locally, and LPAs have discretion to set at a particular rate or to set the rate at zero and to instead have the infrastructure provided wholly through s106.

- **Government proposals – a series of changes: -**
 - encouraging the use of specific rates for large strategic sites (i.e. with a single rate set for the entire site)
 - charging on the basis of the majority use where 80% of the site is in a single existing use, or where the site is particularly small; and
 - other complex sites could be charged at a generic rate, set without reference to the existing use of the land, or have charges apportioned between the different existing uses.
- **Implications and Resources** – When CIL was set for both Councils it was determined that the income for infrastructure would not be sufficient to address the infrastructure needs of both Districts strategic sites so these were set at zero from a CIL charging point of view with Infrastructure being provided through s106 contributions. This clear division (between s106 and CIL eligible development) has given clarity. This clarity of approach has also been valuable where windfall sites have been approved as there are few existing land allocations in both Districts at present. (Clearly the preparation of a Joint Local Plan will address this). The approach to charging zero on Strategic sites (which are set out in the CIL 123 lists) is established and operational within both Districts.
- This situation will change with the preparation of the Local Plan and site viability. It will be important to understand the infrastructure needs, both in respect of s106 and CIL (and CIL receipts) so that deliverability of sites can be achieved particularly given the Governments wish to see CIL 123 lists replaced with an Infrastructure Funding Statements. Inevitably there will be resource implications, and much will depend on the viability work which is undertaken around the Joint Local Plan and the planned Review of our CIL charging rates. Clearly, planned site allocations will be taken care of through these arrangements but it is not clear at this stage how windfall developments that cannot be predicted or planned for (in infrastructure terms) will be addressed in terms of what the CIL monies will be spent on (without CIL 123 lists) The Infrastructure Funding Statement would need to address this.
- Without seeing the detail of the simplification, it is difficult to comment further. The operation of CIL is complex so simplification in principle is to be welcomed.

f) Indexation

- **Current position** - CIL charges are applied at the point development is permitted. They are indexed to the Building Cost Information Service (BCIS) All-In Tender Price Index. This index reflects changes in contractor costs and is used to account for changes in the costs of delivering infrastructure. . However, contractor costs do not necessarily increase at the same rate as house price inflation. Since 2001, average annual house prices across England and Wales have risen faster than contractor costs. This means the impact that a rate has on the viability of development reduces over time, and the local authority collects less than could otherwise be the case.

- **The Governments proposals** - Index residential development to regional or local authority house prices. For non-residential development the Government could index commercial development to a factor of house prices and Consumer Price Index (CPI) or to CPI alone. By indexing to a measure which is more market responsive such as house prices, it can be ensured that charging schedules stay up to date in terms of the impact on viability. This reduces the need for local authorities to revise charging schedules and creates more long-term certainty for developers. Indexation could be applied on a regional or local authority basis, to account for differing housing markets in different areas. In addition, indexing to house prices would support developers in the event of a market downturn, as CIL charges on newly permissioned development would reduce, reducing costs and risk.
- **Implications and Response.** Clearly both Councils have only had CIL operational since 11th April 2016. Indexation is being applied in accordance with the current CIL Regulation requirements (BCIS). Whilst it is understood that there may be a need for non-residential development to be calculated differently it is difficult to predict whether changes to indexation will be financially advantageous (or not,) but the principle is understood.
- The current systems being used to manage CIL can easily be amended to reflect new rates or indexation criteria.

g) Improving transparency and increasing accountability

11.21 A range of measures as follows: -

- **Current position** – Affordable housing, health facilities, transport, schools and green spaces, alongside new employment opportunities, are cited by communities as the primary benefits likely to increase support for new housing.
- CIL charging authorities are required to report annually on how much CIL has been received, how much has been spent and what it has been spent on. Recent research noted that better communication could do a great deal to adjust public attitudes to development. Local authorities have reported that they would expect benefits from doing more to communicate to local communities what they have secured through developer contributions, but that they often lack resources to do so.
- Developers have also raised concerns about how much money is raised through CIL and where and how the money is spent. A series of case studies identified a clear absence of communication with the public about what the developer contributions have paid for.
- Regulation 123 of the CIL regulations enables local authorities to publish lists of infrastructure they intend to fund through CIL. This regulation also prohibits the use of use of section 106 planning obligations to provide contributions to fund infrastructure on this list

- Some Regulation 123 lists set out generic expenditure headings, while others list particular pieces of infrastructure. Some lists also have little relationship with local infrastructure plans. In the Governments view the CIL 123 lists do not provide the certainty or clarity for local communities originally intended about how the levy is intended to be spent. A more standardised approach to setting out how authorities intend to use CIL, and how monies received has been spent, could provide greater accountability in the Governments view.
- **The Governments proposals** - Remove regulatory requirements for Regulation 123 lists and amend the CIL Regulations to require the publication of Infrastructure Funding Statements. The latter will explain how the spending of any forecasted income from both CIL and s106 planning obligations over the next 5 years will be prioritised and to monitor funds received and their use.
- These changes are supported by the draft National Planning Guidance which is available alongside the NPPF consultation. Where viability assessment is undertaken for plan making, CIL or in support of a planning application it should be the expectation that they will be published except in limited circumstances. Guidance will be issued to explain what limited circumstances would include. This is a question on the draft NPPF.
- The Government is also interested in whether Local Planning Authorities need to seek a sum for monitoring planning obligations as part of a section 106 agreement.
- **Implications and response-** Whilst the CIL123 lists are slightly different for each Council they are clear in terms of what CIL monies can and cannot be spent on. This clarity also allows us to be exact on what infrastructure would be provided by CIL and what would be provided for by s106. This in turn avoids situations where there is “double dipping” with CIL and s 106 (*charging for the same infrastructure through CIL and s106 regimes) which is not legally sound and prohibited by the CIL Regulations.
- Replacing the 123 lists would require the publication of an Infrastructure Funding Statement to explain how the spending of any forecasted income from both CIL and s106 Obligations over the next five years will be prioritised and to monitor funds received and their use. This could be produced at the same time as the plan is made and would be closely aligned to the Infrastructure Delivery Plan.
- The draft National Planning Guidance which support the draft revised NPPF states that the Infrastructure Funding Statement will take the form of a “standard template in an open data format [template under development] in accordance with the National Planning Guidance on viability”. It is difficult to understand the resource (and cost) implications of preparing an Infrastructure Funding Statement (as the template is under development) but it is clear that this is an additional requirement and there will therefore be resource and cost implications., However this would be aligned to the preparation of the Joint Local Plan and the Infrastructure Delivery Plan and it is hoped that there would be some overlaps as all of the infrastructure impacts and viability implications for site allocation and CIL Review would be under preparation at the same time.

- The replacement of the CIL 123 lists and its substitution by the Infrastructure Funding Statement would need to contain a list of infrastructures (in type form) to address what CIL would be spent on for windfall sites coming forward as these would be impossible to predict and forecast.
- In addition, any implications for the CIL Expenditure Framework (as this is linked to the CIL 123 lists) would need to be addressed at the appropriate stage. It is possible that this could be picked up by the CIL Expenditure Framework Review which it is anticipated would commence in October 2018 (if the CIL Expenditure scheme is approved by both Councils in April 2018). Resource implications would be minimised.
- The Governments objective towards improving transparency and increasing accountability for the spend of CIL monies and s106 is supported by a number of prescribed or designed and developing measures for our Councils as follows:
 - The intention is to make the CIL and s106 data transparent by publishing a live version of our software on the Website such that all will be able to see how much each Parish holds for CIL and s106 for infrastructure. This project is currently being progressed and sits alongside the CIL Expenditure Framework and the CIL Expenditure Framework Communication Strategy
 - The CIL Expenditure Framework Communication Strategy provides for communication around expenditure of CIL monies for Parishes Members and key audience membership and signals how key messages are to be undertaken.
 - The use of Parish Investment Infrastructure Plans (PIIPs) will also aid transparency and accountability objectives by flushing out what Parish Councils consider to be their priorities (which will also help with collaborative Bids under the CIL Expenditure Framework).
 - Parishes need to make statutory returns to the Council on their expenditure of their Parish portion (of the CIL monies) on a yearly basis. This
 - Regulation 62 (of the CIL Regulations) requires a report to be placed on the Councils Website each year (by the 31st December each year) on CIL income and expenditure. The reports that were published by 31st December 2018

Babergh

<http://www.midsuffolk.gov.uk/assets/CIL-and-S106-Documents/Babergh-District-Council-CIL-Monitoring-Report-2016-17.pdf>

Mid Suffolk

<http://www.midsuffolk.gov.uk/assets/CIL-and-S106-Documents/Mid-Suffolk-District-Council-CIL-Monitoring-Report-2016-17.pdf>

The introduction of a Strategic Infrastructure Tariff

11.22. This is a new measure the Government is seeking to introduce.

- **Current position** – The Mayor of London is able to charge CIL in addition to London boroughs. The Mayor's CIL is limited to collecting funding towards transport infrastructure, in particular Crossrail. CIL towards Crossrail 1 is a low-level tariff charged across all London boroughs. It has proved to be successful, raising £381 million against a £300 million target since it was introduced in 2012.
- The Government recognises the potential for other strategic authorities to have similar powers where they are seeking funding to support a piece of strategic infrastructure, or to address the cumulative impacts that the strategic infrastructure will have.
- **The Governments proposals** – to introduce a Strategic Infrastructure Tariff (SIT) for combined authorities and joint committees where they have strategic powers. In the Governments view this will increase the flexibility of the developer contribution system and encourage cross boundary planning to support the delivery of strategic infrastructure.
- **Implications and Response** – Our Councils although integrated are not classed as combined authorities; neither is there any joint Committee where there are strategic powers. Neither are we part of a Mayoral CIL. As such SIT would not apply to both Councils.
- In this Consultation there is reference to the prospect of a national standard rate of Local Infrastructure Tariff (LIT) at some point in the future (LIT). This would be likely to apply to both Councils. Clearly if any further changes are proposed to CIL this would be addressed at the appropriate time. There is also a reference to the provision of an standard affordable housing tariff in the future. Again, this would need to be addressed at the time of any proposed changes.

Improvements to the operation of CIL

11.23. Since its introduction in 2010, the CIL regulations have been subject to a number of changes and refinements. The Government further proposes improvements to how the levy operates and further clarity in legislation where needed. The Government also intends to revisit planning practice guidance on CIL.

- **Current position** - CIL regulations allow for some development to be exempt from the levy. Exemptions available from CIL need to be granted by the charging authority prior to the start of works on site. A developer must submit a Commencement Notice to the charging authority prior to the start of works on site to confirm the exemption. Failure to do so results in any exemption being lost. The full levy liability then becomes due immediately, and any ability to pay the levy in instalments is removed.
- **The Governments proposals** – a series of refinements to CIL in terms of guidance which include: -

- a) **A more proportionate approach to administering exemptions**
 - b) **clarifying how indexation is applied where a planning permission is amended**
 - c) **extending abatement provisions to phased planning permissions secured before the introduction of CIL.**
- **Implications and Response** – These measures provide further refinement in terms of guidance to existing operational matters and there are no significant implications for both Councils as the detail is contained within the Regulations within which we operate.

12. Appendices

Title	Location
A Schedule of proposed responses	Attached

13. Background Documents

- 13.1 The joint CIL Expenditure Framework, the CIL Communications Strategy and the Timeline for Implementation and Review were presented to both Cabinet meetings of Babergh and Mid Suffolk. (see hyperlinks below). All items are being presented to Council meetings of both Councils on the 24th and 26th April respectively.

Babergh District Council Cabinet

<http://baberghmidsuffolk.moderngov.co.uk/documents/s9185/CIL%20Expenditure%20Report.pdf>

Mid Suffolk District Council Cabinet

<http://baberghmidsuffolk.moderngov.co.uk/ieListDocuments.aspx?CId=522&MId=1034&Ver=4>

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Appendix A

Schedule of proposed responses

Evidence on the need to fund infrastructure

Question 1

Do you agree with the Government's proposals to set out that:-

- i. Evidence of local infrastructure need for CIL-setting purposes can be the same infrastructure planning and viability evidence produced for plan making? **Yes/No**
- ii. Evidence of a funding gap significantly greater than anticipated CIL income is likely to be sufficient as evidence of infrastructure need? **Yes/No**
- iii. Where charging authorities consider there may have been significant changes in market conditions since evidence was produced, it may be appropriate for charging authorities to take a pragmatic approach to supplementing this information as part of setting CIL – for instance, assessing recent economic and development trends and working with developers (e.g. through local development forums), rather than procuring new and costly evidence? **Yes/No**

Answer

i) Yes

ii) Yes

iii) Yes

Question 2

Are there any factors that the Government should take into account when implementing proposals to align the evidence for CIL charging schedules and plan making?

Answer

The Council's support this proposal and will be taking this approach forward in their emerging Joint Local Plan. The draft National Planning Policy guidance is clear.

Question 3

Do you agree with the Government's proposal to replace the current statutory consultation requirements with a requirement on the charging authority to publish a statement on how it has sought an appropriate level of engagement? **Yes/No**

Answer

Yes

Question 4

Do you have views on how guidance can ensure that consultation is proportionate to the scale of any charge being introduced or amended?

Answer

Streamlining this process will result in resource savings which is supported in principle. Government guidance which aids any consideration for Councils on the degree to which CIL charges differ from their original rates to determine the extent of consultation required would be extremely helpful and provide clarity and certainty. Leaving it to Local Planning Authorities to justify what is 'proportionate' may be likely to give rise to uncertainty (and thereby the potential of legal challenges).

Question 5

Do you agree with the Government's proposal to allow local authorities to pool section 106 planning obligations?

- i. Where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106? **Yes/No**
- ii. Where significant development is planned on several large strategic sites? **Yes/No**

Answer

i) Yes

ii) Yes

Question 6

- i. Do you agree that, if the pooling restriction is to be lifted where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106, this should be measures based on the tenth percentile of average new build house prices? **Yes/No**
- ii. What comments, if any, do you have on how the restriction is lifted in areas where CIL is not feasible, or in national parks?

Answer

i) Yes

ii) This may make it easier to fund cross boundary strategic infrastructure projects through common s106 clauses and the Duty to Co-Operate.

Question 7

Do you believe that, if lifting the pooling restriction where significant development is planned on several large strategic sites, this should be based on either:-

- i). a set percentage of homes, set out in a plan, are being delivered through a limited number of strategic sites; or
- ii). all planning obligations from a strategic site count as one planning obligation?

Answer

i) **No** - lifting pooling restrictions should be linked to an evidential need and impacts from the development giving rise to trigger points around infrastructure rather than an arbitrary percentage figure which may not equate to an infrastructure need.

ii) **Yes**

Question 8

What factors should the Government take into account when defining 'strategic sites' for the purposes of lifting the pooling restriction?

Answer

A definition of strategic sites would be supported and may prevent conflict between developers and LPAs regarding whether a site is strategic or not (which usually removes them from the standard CIL tariffs). However, the definition of strategic sites should have regard to the different contexts sites can have in each Local Planning Authority. It may not simply be the scale of development that qualifies the site, it will depend upon other factors also such as is the site a key regeneration objective for the local area, is the site significant in unlocking further land for development or linked to large scale infrastructure delivery projects of district or cross boundary importance. On this basis the definition needs to be wider to reflect this.

Question 9

What further comments, if any, do you have on how pooling restrictions should be lifted?

Answer

None.

Question 10

Do you agree with the Government's proposal to introduce a 2-month grace period for developers to submit a Commencement Notice in relation to exempted development?

Yes/No**Answer**

No. A commencement date is critical to the determination of when CIL is payable. Giving a two-month grace period just extends the deadline by two months. At present the onus is on the developer to advise of his intention to start. This may transfer the onus onto the Council for monitoring and result in additional resource and cost implications. What is critical is having the Commencement Notice submitted before commencement starts.

Question 11

If introducing a grace period, what other factors, such as a small penalty for submitting a Commencement Notice during the grace period, should the Government take into account?

Answer

None

Question 12

How else can the Government seek to take a more proportionate approach to administering exemptions?

Answer

- Self-Build exemption should not be lost through failure to submit a commencement notice. It should only be lost if the property is sold during the three-year clawback period or if the claimants are unable to provide the evidence required by part 2 of the self-build claim form. A surcharge for failure to submit a commencement notice could still be levied but losing the whole exemption with no opportunity to recover it is disproportionate.
- Another problem is the effect of death on exemptions. Change the Regulations to allow surviving relatives to inherit the CIL exemption. If a self-builder dies within the three-year clawback period, the CIL Regulations require that the CIL is recovered from the estate. Only recover the CIL payment if the property is sold and not because the surviving relative did not have their name on the assumption of liability form.
- Affordable housing exemption should only be lost through staircasing not through failure to submit a commencement notice.

Question 13

Do you agree that Government should amend regulations so that they allow a development originally permitted before CIL came into force, to balance CIL liabilities between different phases of the same development? **Yes/No**

Answer

Yes

Question 14

Are there any particular factors the Government should take into account in allowing abatement for phased planning permissions secured before introduction of CIL?

Answer

If a s106 has been completed as part of a planning permission which has been granted and the development is extant. This would distort any phased approach to development and there would be a double dipping position with a s106 in force with additional CIL Liability being charged.

Question 15

Do you agree that Government should amend regulations on how indexation applies to development that is both originally permitted and then amended while CIL is in force to align with the approach taken in the recently amended CIL regulations?

Answer

Yes. This provision is already present in the CIL Regulations and we are already taking this approach.

Question 16

Do you agree with the Government's proposal to allow local authorities to set differential CIL rates based on the existing use of land? **Yes/No**

Answer
Yes

Question 17

If implementing this proposal do you agree that the Government should:

- i. encourage authorities to set a single CIL rate for strategic sites? **Yes/No**
- ii. for sites with multiple existing uses, set out that CIL liabilities should be calculated on the basis of the majority existing use for small sites? **Yes/No**
- iii. set out that, for other sites, CIL liabilities should be calculated on the basis of the majority existing use where 80% or more of the site is in a single existing use? **Yes/No**
- iv. What comments, if any, do you have on using a threshold of 80% or more of a site being in a single existing use, to determine where CIL liabilities should be calculated on the basis of the majority existing use?

Answer

- i)No**
- ii)Yes**
- iii)Yes**
- iv)None**

Question 18

What further comments, if any, do you have on how CIL should operate on sites with multiple existing uses, including the avoidance of gaming?

Answer

None although we do not understand the term “avoidance of gaming”. Further clarification on this should be issued

Question 19

Do you have a preference between CIL rates for residential development being indexed to either:

- a) The change in seasonally adjusted regional house price indexation on a monthly or quarterly basis; or
- b) The change in local authority-level house price indexation on an annual basis

Answer

a) Current indexing practice shows that forecast figures change pretty much monthly anyway. It may be more transparent if a monthly or quarterly index was used.

Question 20

Do you agree with the Government’s proposal to index CIL to a different metric for non-residential development? **Yes/No**

Answer

Yes

Question 21

If yes, do you believe that indexation for non-residential development should be based on:
i. the Consumer Prices Index? **Yes/No**
ii. a combined proportion of the House Price Index and Consumer Prices Index? **Yes/No**

Answer

- i)Yes
- ii)No

Question 22

What alternative regularly updated, robust, nationally applied and publicly available data could be used to index CIL for non-residential development?

Answer

Cannot recommend an alternative.

Question 23

Do you have any further comments on how the way in which CIL is indexed can be made more market responsive?

Answer

No

Question 24

Do you agree with the Government's proposal to:

- i. remove the restrictions in regulation 123, and regulation 123 lists? **Yes/No**
- ii. introduce a requirement for local authorities to provide an annual Infrastructure Funding Statement? **Yes/No**

Answer

- i)No – concerns that double dipping may result otherwise. The Districts CIL 123 lists are clear and are linked to our emerging CIL Expenditure Framework (our proposals for expenditure) which allow flexibility. We have recently carried out engagement with our Parishes who understood the CIL 123 lists and will be making Bids under our CIL expenditure scheme to spend money on the infrastructure within our Lists. In addition, there is uncertainty how Infrastructure requirements will be paid for by CIL if the CIL 123 lists are withdrawn and windfall development takes place (which cannot be planned for or forecasted – (see Infrastructure Funding Statements proposals)
- ii)Yes if the CIL 123 lists remain and the template is clear for the Infrastructure Funding Statement. This could support the Councils Infrastructure Delivery Plan

Question 25

What details should the Government require or encourage Infrastructure Funding Statements to include?

Answer

- Infrastructure Funding Statements should clearly set out:-
- i) an estimate of total S106 and CIL funds collected

ii) clarity over the projects / types of infrastructure which CIL is expected to pay for and S106 is expected to pay for. Particularly to provide for windfall sites that are unplanned and cannot be forecasted

iii) an indication on the amounts of money to be spend on types of infrastructure and where/what those projects are. If possible, also indicate when the funds are expected to be spent.

Question 26

What views do you have on whether local planning authorities may need to seek a sum as part of section 106 planning obligations for monitoring planning obligations? Any views on potential impacts would also be welcomed.

Answer

Monitoring charges have been the subject of litigation in appeals and challenged. In recent appeal cases it has become clear that a stance has been taken that Local Authorities should not charge because it is part of the Councils function to do effective monitoring., However if a charge could legally be used, such a charge would enable Council's to undertake better and more comprehensive monitoring of S106 provisions which historically has been very challenging due to resources and costs..

Question 27

Do you agree that combined authorities and joint committees with strategic planning powers should be given the ability to charge a SIT? **Yes/No**

Answer

Yes

Question 28

Do you agree with the proposed definition of strategic infrastructure? **Yes/No**

Answer

Yes

Question 29

Do you have any further comments on the definition of strategic infrastructure?

Answer

Strategic infrastructure should be consistent with that which is identified in Local Plans as having a cross boundary significance. They should also be clearly identified in any Statement of Common Ground produced for the Duty to Cooperate. They should also be included in any Infrastructure Delivery Plans.

Question 30

Do you agree that a proportion of funding raised through SIT could be used to fund local infrastructure priorities that mitigate the impacts of strategic infrastructure? **Yes/No**

Answer

Yes, this would provide a mechanism to integrate strategic infrastructure into the places that it impacts upon. It would also provide cohesiveness between infrastructure types. There is a fuzzy distinction between local and strategic infrastructure and using funding secured through a SIT to deliver local infrastructure that mitigates the impacts of strategic infrastructure to deliver a more holistic approach.

Question 31

If so, what proportion of the funding raised through SIT do you think should be spent on local infrastructure priorities?

Answer

Difficult to define but should be limited enough that it does not compromise the ability to deliver Strategic Infrastructure. CIL Regulations, already allow for LPAs to 'donate' funds to appropriate infrastructure projects which may extend beyond their own boundaries if this is preferable. This is provided for in the Councils CIL Expenditure Framework.

Question 32

Do you agree that the SIT should be collected by local authorities on behalf of the SIT charging authority? **Yes/No**

Answer

Yes

Question 33

Do you agree that the local authority should be able to keep up to 4% of the SIT receipts to cover the administrative costs of collecting the SIT? **Yes/No**

Answer

Yes

Question 34

Do you have any comments on the other technical clarifications to CIL?

Answer

- No comments to make in respect of the technical clarifications of CIL which both Councils understand and work within the Regulatory provisions of.
- In respect of the suggested approach to self-build extension exemptions, this is open to "fraud" by small time developers who are doing properties up to sell on but claiming self-build exemptions. There currently seems to be little guidance by way of making checks on the number of claims by individuals for self-build exemption and no evidence requirements of ownership. This is missed in the Consultation and Guidance on this should be issued.
- There have also been instances of self-build exemption being issued and then a failure to submit the Commencement Notice 24 hours before the works start on site; the self-build exemption being lost as a consequence. There should be a mechanism for reasonable appeals in this instance. Also, failure by developers

to submit payments on time in a payment plan hence the whole payment being due. This approach is understood. However, the 2-month grace period does not sit comfortably against this in that developers if they failed to meet their payment plan arrangements would not get any “grace period”