

REPORT TO	DATE OF MEETING
Cabinet	10 th September 2014

Report template revised July 2012



SUBJECT	PORTFOLIO	AUTHOR	ITEM
Community Infrastructure Levy – Instalments Policy and Payment in Kind	Strategic Planning and Housing	Steven Brown	6

SUMMARY AND LINK TO CORPORATE PRIORITIES

The purpose of this report is to consider two policies to ensure the fair, practical and flexible implementation of CIL. The policies relate to the payment of CIL in instalments and payment in kind. The policies are being brought forward now following the successful judgement in relation to the Judicial Review challenge against our charging schedule (17th April 2014). We now have certainty that we can carry on charging CIL.

The details of the policies have now been finalised and the purpose of this report is to seek formal adoption of these policies. The policies (in particular the instalments policy) will need to be the subject of on-going monitoring to ensure they don't adversely impact upon the required levels of residential development coming forward and in turn collection of the levels of CIL that was anticipated.

RECOMMENDATIONS

That Cabinet recommends to Council that the following policies (as set out in this report) should be adopted:

- a) CIL 'Payment in kind' policy
- b) CIL Instalments policy

DETAILS AND REASONING

Background

Cabinet is asked to recommend to Council the adoption of policies to cover the two areas set out below.

1. Payment in Kind

Paragraph: 061, of the 12 June 2014 DCLG Guidance states:

There may be circumstances where the charging authority and person liable for the levy will wish land and /or infrastructure to be provided, instead of money, to satisfy a charge arising from the levy. For example, where an authority has already planned to invest levy receipts in a project there may be time, cost and efficiency benefits in accepting completed infrastructure from the party liable

for the payment of the levy. Payment in kind can also enable developers, users and authorities to have more certainty about timescale over which certain infrastructure items will be delivered.

Subject to relevant conditions, and at its discretion, an authority may enter into an agreement for a land payment to discharge part or all of a levy liability. Charging authorities may also enter into agreements to receive infrastructure payment.”

The adoption of such a policy would allow - in the circumstances prescribed in that policy - for a developer to either provide land or create infrastructure to facilitate a development. The specific example we have in the Borough where such a policy would be beneficial is the former gasworks site in Lostock Hall. The policy if implemented would allow the developer to create the link road extension at the Cawsey through to Walton Park, in lieu of the CIL payment. This would provide us with greater flexibility in addressing particular site circumstances in order to achieve a desired planning outcome. It may also allow for the implementation of infrastructure earlier in the development process than would otherwise be the case. In terms of economies of scale it would also potentially allow for the infrastructure to be delivered by the residential developer as part of the wider contract for the development of the area utilising the workforce, machinery etc. that is already on site, rather than a separate discreet contract thereby being more cost effective.

The proposed policy wording is therefore:

i. In those circumstances that the authority resolve are acceptable it will accept land and/or infrastructure in lieu of the CIL payment where through independent assessment it has been demonstrated that the land and/or infrastructure is of same value of the CIL that would have been payable on any given site. The infrastructure would cover for example, although not exclusively, such areas as highways, community, health or education provision.

2. Instalments Policy

Paragraph: 055 of the Guidance sets out the circumstances in which a charging authority can have a policy in place to allow the CIL payments to be made in instalments. The Guidance states:

“Where a charging authority wishes to allow payment instalments, they must have published an instalment policy on their website (under Regulation 69B). An instalment policy can assist the viability and delivery of development by taking account of financial restrictions, for example in areas such as development of homes within the buy to let sector. Few if any developments generate value until they are complete either in whole or in phases. Willingness to allow an instalments policy can be a material consideration in assessing the viability of proposed levy rates. The authority has freedom to decide the number of payments, the amount and the time due. The authority may revise or withdraw the policy when appropriate.”

If there isn't an instalments policy in place then the payment is due in full at the end of 60 days after the commencement of development. If the terms of the instalment policy are broken, then the amount payable is due immediately.

The policy must be displayed on the Charging authority's website.

Historically in circumstances where there has been a charge in association with a development which has been secured through a Section 106 Agreement, it has always been the case that the payments are tied in to key triggers in the development to allow developers' to secure some degree of return from the development before they are required to make the full payments. This has been to ensure that the deliverability of development has not been threatened. CIL is far more onerous than this requiring full payment within 60

days. There is a significant concern that particularly in relation to the larger strategic housing developments that very significant sums of money will have to be paid at the start of the development and these will deter these developers from progressing because of viability issues. The same would also be true of smaller developments where the builder often needs to sell one plot to finance the next. If they are required to pay the full CIL liability at commencement of development then this could prevent such developments progressing.

Preston and Chorley already have such an instalment policy in place. Having considered those policies the policy suggested is as per the more exacting Chorley model. This policy will need to be kept under review as the requirement to pay the full amount within 240 days where the liability is £40,000 or more will in practice mean that developments for 6 dwellings or more will be required to comply with this timescale. The issue will therefore be whether this adversely impacts on the viability of the large strategic housing sites for example, where the financial return to the developer has been historically tied to the stage of development. Now the case will be that very significant sums of money will be payable within 240 days. So for example a development of 1000 homes would result in the requirement to pay £6.5 million within the 240 days. It is therefore suggested that the impact of the policy should be reviewed 12 months from its inception.

ii. Community Infrastructure Levy Instalments Policy

In accordance with Regulation 69(b) of the CIL (Amendment) Regulations 2011 South Ribble Borough Council (The Charging Authority) will apply the following Instalment Policy to all development which is liable to CIL.		
SOUTH RIBBLE BOROUGH COUNCIL INSTALMENTS POLICY		
Total CIL Liability	Number of Instalments and amount Payable	Payment Period
Amount less than £10,000 or amount due in respect of a single dwelling	1	100% payable within 60 days of commencement notice
Between £10,000 & £20,000	2	1st instalment 50% within 60 days 2nd instalment 50% within 120 days
Between £20,000 & £40,000	3 EQUAL INSTALMENTS	1st instalment 60 days 2nd instalment 120 days 3rd instalment 180 days
Amount over £40,000	4 EQUAL INSTALMENTS	1st instalment 25% 60 days 2nd instalment 25% 120 days 3rd instalment 25% 180 days 4th instalment 25% 240 days

WIDER IMPLICATIONS

In the preparation of this report, consideration has been given to the impact of its proposals in all the areas listed below, and the table shows any implications in respect of each of these. The risk assessment which has been carried out forms part of the background papers to the report.

FINANCIAL	As a result of the successful Judicial Review judgement of 17 th April 2014 the authority will be able to continue to collect as previously planned. The proposed policies will still result in the same amount of CIL being collected or collected in kind, but will potentially increase the timescale over which it is collected.
LEGAL	The legal challenge (as above) was unsuccessful and therefore we can continue to charge CIL in accordance with the Charging Schedules approved by Council in July 2013. The Council will continue to take into account all relevant legislation and guidance in implementing and charging CIL
RISK	The full risk assessment forms part of the background papers to this report.
THE IMPACT ON EQUALITY	No implications arising from this report

OTHER (see below)	
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<i>Asset Management</i>	<i>Corporate Plans and Policies</i>	<i>Crime and Disorder</i>	<i>Efficiency Savings/Value for Money</i>
<i>Equality, Diversity and Community Cohesion</i>	<i>Freedom of Information/ Data Protection</i>	<i>Health and Safety</i>	<i>Health Inequalities</i>
<i>Human Rights Act 1998</i>	<i>Implementing Electronic Government</i>	<i>Staffing, Training and Development</i>	<i>Sustainability</i>

BACKGROUND DOCUMENTS

The Planning Inspectorate – Report on the Examination of the Draft Community Infrastructure Levy Charging Schedules of Chorley Borough Council, Preston City Council and South Ribble Borough Council, June 2013

Case No: CO/11961/2013 Royal Courts of Justice, Strand, London, WC2A 2LL 17TH April 2014
Judgement of Justice Lindblom - Between the Queen (on application of Fox Strategic Land & Property Limited) and Chorley Borough Council and Preston City Council and South Ribble Borough Council

Department for Communities & Local Government, Planning Practice Guidance, Community Infrastructure Levy, June 2014.