

## COMMUNITY INFRASTRUCTURE LEVY (CIL)

### Executive Summary

The report seeks delegated authority for the Deputy Chief Executive to carry out the administration of CIL enforcement as prescribed by the Community Infrastructure Levy Regulations 2010 (as amended) (hereafter called the Regulations). This will include the authority for the withdrawal of exemptions and reliefs, impose surcharges and late payment interest and take formal enforcement action to secure the recovery of the CIL. The limits of what the Deputy Chief Executive can/cannot do in exercising this authority is prescribed by the Regulations. The Deputy Chief Executive will exercise this authority through the functions of the Planning Policy Manager whose service functions include serving Demand Notices, receiving Commencement Notices and monitoring and reporting CIL payments.

Regulation 65(7) of the Regulations allows the Council to withdraw a Liability Notice that it has issued by giving notice to that effect in writing to the persons on whom it was served. Delegated authority is also being sought for the Deputy Chief Executive to exercise this function. Guidance on when a Liability Notice could be withdrawn will be published by the Deputy Chief Executive to ensure consistency in the decision making process and the proper administration of this authority.

It is the view of the Deputy Chief Executive that based on experience so far, a number of the enforcement powers will rarely be used. However, it is important to clarify and confirm who has the authority to exercise these functions to avoid any successful future legal challenge when they are used. Legal and allied action will be delegated to the Head of Democratic and Legal Services.

The Council adopted CIL in October 2014 and has been operating since 1 April 2015. The Council is one of the first authorities in Surrey to introduce CIL and Officers have had significant operational experience to administer all aspects of the CIL Regulations. Officers are also doing the best they can to inform agents and applicants of their obligations under the CIL Regulations. For example, Officers are presently considering highlighting these in the informative attached to planning consents.

The proposals contained in this report do not affect the current arrangements for determining how CIL is spent.

### Recommendations

The Executive is requested to:

#### RESOLVE That

- (i) Delegated authority be given to the Deputy Chief Executive in consultation with the Portfolio Holder for Planning to administer CIL enforcement in accordance Regulations 80 to 92 of the Community Infrastructure Levy Regulations 2010 (as amended);
- (ii) Delegated authority be given to the Deputy Chief Executive in consultation with the Portfolio Holder for Planning to, when justified, withdraw a CIL Liability Notice issued by the Council in accordance with Regulation 65(7) of the Community Infrastructure Regulations 2010 (as amended);

## Community Infrastructure Levy (CIL)

- (iii) Delegated authority be given to the Head of Democratic and Legal Services to administer CIL enforcement in accordance with Regulations 93 - 111 of the Community Infrastructure Levy Regulations 2010 (as amended); and
- (iv) Delegated authority be given to the Deputy Chief Executive for the administration of Community Infrastructure Levy under Part 8 of the Community Infrastructure Levy Regulations 2010 (as amended).

### Reasons for Decision

Reason: To ensure the effective and efficient administration of CIL enforcement without the risk of a successful legal challenge.

The Executive has the authority to determine the recommendation(s) set out above.

**Background Papers:** [Community Infrastructure Levy Regulations 2010 \(as amended\)](#).

**Reporting Person:** Douglas Spinks, Deputy Chief Executive  
Email: douglas.spinks@woking.gov.uk, Extn: 3440

**Contact Person:** Ernest Amoako, Planning Policy Manager  
Email: ernest.amoako@woking.gov.uk, Extn: 3427

**Portfolio Holder:** Councillor Ashley Bowes  
Email: cllrashley.bowes@woking.gov.uk

**Shadow Portfolio Holder:** Councillor Louise Morales  
Email: cllrlouise.morales@woking.gov.uk

**Date Published:** 20 June 2018

### 1.0 Introduction

- 1.1 The Council adopted its Community Infrastructure Levy in October 2014. It came into effect from 1 April 2015 and has been operating effectively since. CIL is relatively new and lessons continue to be learnt through our own experience and the experience of other authorities. The delegated authority being sought by the report will strengthen further the effective administration of CIL.
- 1.2 CIL is the primary means used by the Council to secure developer contributions towards infrastructure provision to support development. Members should also note that a proportion of the CIL income is required to be passed on to local communities where the development had occurred to be used on local infrastructure projects. This could be 15% or 25% of the CIL income arising from the development depending on whether the community has a Neighbourhood Plan or not. The importance of CIL to ensuring sustainable development across the borough cannot be underestimated. It is therefore critical that it is effectively administered, monitored and enforced to ensure that the necessary contributions are appropriately secured to provide the necessary infrastructure. Section 106 Planning Obligations will continue to apply but only in limited circumstances where the infrastructure is particularly necessary to enable a particular development to come forward. Any Section 106 Agreement must be 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.
- 1.3 Presently, CIL is only charged on residential and retail developments to ensure the economic viability of all types of development across the Borough. The administration of CIL is significantly prescribed by Government Regulations with limited scope for discretion. Broadly, the CIL process comprises the Council serving a Liability Notice on the person who assumes liability or land owner to pay a prescribed amount of levy to implement a planning consent, the applicant/land owner notifying the Council prior to commencement of the development when the development is likely to commence, the Council then issuing a Demand Notice requesting that the person who assumed liability or land owner pay the CIL levy on commencement of the development and/or in accordance with the terms of payment as set out by the Council's instalment policy. When the person who assumed liability or land owner fails to pay the levy in accordance with the strict requirements of the Regulations, the Regulations sets out enforcement provisions. It is envisaged that enforcement action will be rarely used, nevertheless, having the delegated authority to take any enforcement action when required will minimise the risk of a successful legal challenge when the person who assumed liability or land owner decides to challenge the Council on a decision to enforce the Regulations.
- 1.4 The report therefore seeks delegated authority for the Deputy Chief Executive to carry out the administration of the CIL enforcement procedures as prescribed by the Regulations. The Deputy Chief Executive will exercise this authority through the Planning Policy Manager whose service functions include serving Demand Notices, receiving Commencement Notices, monitoring and reporting on CIL payments.
- 1.5 Regulation 65(7) of the Regulations is a specific provision that allows scope for the Council to withdraw a Liability Notice issued by it by giving notice to that effect in writing to the persons on whom it was served. The Regulations do not provide any further guidance on when it is appropriate to withdraw a Liability Notice. Delegated authority is sought for the Deputy Chief Executive to exercise this responsibility and to provide the necessary guidance on when this Regulation would apply. The guidance will ensure consistency in application and the proper use of the authority. It is important to highlight that this would apply in very limited situations when it can be justified by very special circumstances. An example would be when the Council had wrongly issued a Liability Notice or miscalculated the liability.

## Community Infrastructure Levy (CIL)

- 1.6 The administration of CIL is part of the day to day operation of the planning service. Decisions on the above are therefore taken on a day to day basis often within strict deadlines. It is therefore appropriate that this authority resides with the Deputy Chief Executive whose overall functions include 'Place' under which the planning function sits. There are also specific aspects of CIL enforcement, in particular, relating to Regulations 93 – 111 of the Regulations where delegated authority has been sought for the Head of Democratic and Legal Services to enforce.
- 1.7 The proposals contained in this report do not affect the current arrangements for determining how CIL is spent.

### 2.0 Summary of key enforcement matters which delegated authority is sought

2.1 The Regulations regarding CIL enforcement are many and detailed and it is not intended to list all of them. However, a summary of the key headlines are set out below to give Members an idea of what they are. Full details can be accessed by the following link. Particular reference is made to Regulations 80 to 121: <https://www.legislation.gov.uk/ukdsi/2010/9780111492390/contents>.

2.2 **Surcharges and interest** – Collecting authorities can impose a range of financial penalties on a person(s) when the liability, collection and/or payment processes have not been followed correctly. These penalties are designed to ensure that authorities do not lose out financially by having to carry out additional tasks. The Regulations allows the Council to apply specifically prescribed surcharges for:

- failure to assume liability (£50);
- apportionment of liability (£500);
- failure to submit a notice of chargeable development (20% of chargeable amount or £2,500, whichever is lower);
- failure to submit a Commencement Notice (20% of chargeable amount or £2,500, whichever is lower where payment is not received after the end of 30 days. A further 5% may be imposed if payment is not received after 6 months and a further 5% after 12 months);
- disqualifying events;
- late payment (5% of payable amount or £200, whichever is greater);
- failure to comply with an information notice (20% of chargeable amount or £1,000, whichever is the lower);
- late payment interest (Regulation 87) – annual rate of 2.5% above the Bank of England base rate.

The surcharges and/or interest in relation to the above will be collected by treating it as if it were part of the CIL that the person is liable to pay. The surcharges are prescribed by the Regulations and the Council has no discretion to vary them. In this regard, the Deputy Chief Executive will apply any future revisions to the charges that the Government may wish to introduce.

## Community Infrastructure Levy (CIL)

- 2.3 **CIL stop notices** (Regulations 89 – 94) – The Council may issue a stop notice when the chargeable development has started and CIL has not been paid and the Council considers it expedient to stop the development until the amount has been paid. In taking this action, the Council must first serve a warning notice of its intention to impose a CIL stop notice before serving the stop notice in writing. A stop notice must be withdrawn if payment is made or it can be withdrawn for other reasons.
- 2.4 **Offence** – a person served with a stop notice commits an offence if he/she contravenes the stop notice.
- 2.5 **Injunction** – The Council may apply to the Court for an injunction if it considers it necessary or expedient for any actual or apprehended breach of a CIL stop notice to be restrained by injunction.
- 2.6 **Recovery of CIL** – Collection authorities have various powers (Regulations 96 – 107) to recover charges that are due. These include:
- 2.7 **Liability Order** – The Council must serve a ‘reminder notice’ on the person whom the application is to be made before it applies for a Liability Order. This must state every amount in respect of which the authority is to make the application. A reminder notice may be served in respect of an amount at any time after it becomes due. Where the amount stated in a reminder notice is wholly or partly unpaid at the end of the period seven days beginning with the day on which the reminder notice was served, the Council may apply to a Magistrates’ Court for a Liability Order against the person by whom it is payable.
- 2.8 **Distress** – After a Liability Order has been made, the Council may levy the amount by distress and sale of goods of the debtor against whom the liability order was made. The procedure is set out in Regulation 98. The debtor can make full payment up to the point before the goods are sold.
- 2.9 **Commitment to prison** – Regulation 100 allows the Council to apply to a Magistrate Court for the issue of a warrant committing the debtor to prison where the Council has been unable to recover the amount due. The Regulations sets out how this provision would apply. This will be an exceptional situation and will be used as a last resort for the Council when all other methods of enforcement have been exhausted.
- 2.10 **Charging Order** (Regulations 103 – 104) – Following the procurement of a Liability Order and where more than £2,000 is owed, the Council may apply to the Court for a Charging Order. This method of enforcement may be used as an alternative to distress.
- 2.11 Whilst the above provides a succinct summary of the enforcement provisions of the Regulations, they are by no means exhaustive in detail. The delegated authority being sought relates to all matters regarding enforcement as prescribed by the CIL regulations.

### 3.0 Appeals

- 3.1 There is a check and balance to ensure fairness in the administration of the CIL procedures. It allows scope for interested persons who are aggrieved to appeal against the decisions of the collecting authority, in this case the Council. For example, a person who has requested a review of a chargeable amount and is aggrieved of the decision of the Council may appeal on the ground that the chargeable amount has been calculated incorrectly. A person may also appeal against apportionment of liability, grant of charitable relief, imposition of a surcharge, incorrect determination of a deemed commencement date and an imposition of a stop notice. The appeals procedure protects the applicant against the inappropriate use of the enforcement powers and could also be a necessary check and balance for ensuring that the Council exercises its enforcement powers with due care.

### 4.0 Implications

#### Financial

- 4.1 CIL is expected to generate a significant amount of money towards infrastructure provision to support development. The CIL Charging Schedule estimates this to be about £14M over 10 years. However, this amount can only be realised if the CIL procedures are appropriately administered, monitored and enforced by the Council. The delegated authority being sought will help to achieve that. The procedures relating to CIL are prescribed by Government Regulations, including responsibilities of the Charging Authority and interested persons who apply for CIL liable developments. Presently the administration of CIL is being funded from the investment programme and existing staff resources. However, given its legalistic nature, the enforcement of CIL procedures could be a significant burden on staff time in both Planning and Legal Services. This will be closely monitored. The CIL Regulations allows for CIL income to be spent on administration expenses incurred in connection with the set up and administration of the CIL to the value of no more than 5% of the annual CIL income. Based on the figures provided in the Charging Schedule there could be sufficient money to support the administration of the CIL procedures if future monitoring would justify the need for additional resources.

#### Human Resource/Training and Development

- 4.2 The enforcement of CIL procedures could require significant staff resources across Planning and Legal Services. It could be time consuming given the prescriptive nature of the CIL Regulations, which the Council has no flexibility to change.

#### Community Safety

- 4.3 Addressed as part of the Sustainability Impact Assessment.

#### Risk Management

- 4.4 There is the risk of a successful legal challenge against enforcement action taken by the Council if there is no clarity on who has the authority to enforce those actions. This could adversely impact on the amount of money that could be secured under CIL.

#### Sustainability

- 4.5 Addressed as part of the Sustainability Impact Assessment.

#### Equalities

- 4.6 Addressed as part of the Equalities Impact Assessment.

#### Safeguarding

- 4.7 There are no safeguarding implications arising directly from this report.

### 5.0 Consultations

- 5.1 The Portfolio Holder for Planning has been consulted.

REPORT ENDS