

## CABINET

31<sup>st</sup> July 2020

# REVIEW OF THE MANAGEMENT AND ADMINISTRATION OF THE COMMUNITY INFRASTRUCTURE LEVY

### Report of the Interim Director of Places

Strategic Aim:	[Sustainable Growth]	
Key Decision: Yes	Forward Plan Reference: FP150520	
Reason for Urgency:	[N/A]	
Exempt Information	No	
Cabinet Member(s) Responsible:	Mr G Brown Deputy Leader and Portfolio Holder for Environment, Finance, Planning and Property	
Contact Officer(s):	Penny Sharp, Interim Director of Places	Tel: 01572 758160 psharp@rutland.gov.uk
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Ward Councillors	All	

### DECISION RECOMMENDATIONS

That Cabinet:

- 1.1 That the Strategic Director of Places in consultation with the Deputy Director Corporate Governance to make decisions in specific matters and cases relating to the application, administration, amendment, financial review and enforcement of the Community Infrastructure Levy Charging Schedule and Scheme as set out in Appendix 1 of this report, pursuant to the Community Infrastructure Levy Regulations 2010 (as amended) and adopted by the Council on 1<sup>st</sup> March 2016;
- 1.2 That the Strategic Director of Place in consultation with the Section 151 Officer and Deputy Director Corporate Governance, and the Portfolio Holders for Planning and Resources to make decisions relating temporary amendments to the Council's CIL instalment policy in response to the Covid-19 situation;
- 1.3 That the Strategic Director of Places in consultation with the Portfolio Holder for Planning to make decisions in specific matters and cases relating to the application, administration, amendment, and review of outstanding Section 106 agreements as set out in paragraph 3.11 of this report, where this affects the provision of community facilities consultation will also be with the relevant ward

Member;

- 1.4 That the Strategic Director of Place in consultation with the Section 151 Officer and Deputy Director Corporate Governance, and the Portfolio Holders for Planning and Resources to make decisions relating to the expenditure of Section 106 monies up to a value of £500,000 to deliver infrastructure and community facilities in accordance with the provisions of each individual obligation;
- 1.5 The publication of a public statement that Exceptional Circumstances Relief will become available in the area of the Council;
- 1.6 The Exceptional Circumstances Relief Policy as set out at Appendix 2 and to take all appropriate steps to ensure that the Policy becomes applicable to the adopted Community Infrastructure Levy ("**CIL**") in the area of the Council.

## **2 PURPOSE OF THE REPORT**

- 2.1 To notify Cabinet on a thorough review of the historic management and administration of the Community Infrastructure Levy since its introduction in Rutland which is ongoing and being undertaken by Officers alongside a review of outstanding Section 106 agreements.
- 2.2 The purpose of these reviews is to maximise the availability of resources to support existing and future priorities for the Council as well as reviewing the effectiveness of current CIL management and administration.
- 2.3 To request authority for the delegation of authority to assist with specific matters and cases related to the administration of the CIL regime;
- 2.4 To request authority for the delegation of authority to assist with the specific matters and cases related to the administration of outstanding Section 106 agreements;
- 2.5 To request authority for the delegation of authority to make temporary amendments to the CIL instalment policy as a response to the current Covid-19 situation; and
- 2.6 To seek authority to implement Exceptional Circumstances Relief in the area of the Council by approving a public statement to this effect.

## **3 BACKGROUND AND MAIN CONSIDERATIONS**

### **3.1 Day to day delegations with respect to CIL management and administration**

3.2 The CIL regime in the County of Rutland was adopted by the Council on 1<sup>st</sup> March 2016. The initial work on reviewing the management and administration of CIL has identified that there is no specific delegations within the regime adopted by Council that would enable its effective management. Delegated authority is sought for the Strategic Director of Places to have the delegations as set out below to deal with specific matters and cases regarding the day to day management of the CIL regime, as set out in Appendix 1 to this report. This is considered a prudent way forward for the following reasons:

- 3.2.1 There are often urgent day-to-day decisions required to be made in the administration of the CIL regime.
- 3.2.2 There is also a need to respond to minor changes in policy and regulation involving the CIL regime following central government direction.

### **3.3 Exceptional Circumstances**

3.4 The Report also asks that Cabinet adopt an Exceptional Circumstances Relief Policy. The Council's current CIL implementation note states that in very limited circumstances, Exceptional Circumstances Relief from CIL may be available at the discretion of the Council. However, if it is determined to make relief for exceptional circumstances available in accordance with Regulations 55 to 58 of the Community Infrastructure Regulations 2010 (as amended) in Rutland, then a key first step is for the service of a notice of a statement of exceptional relief. The Council has not published a public notice to this effect and so the recommendations set out above seek

the approval of Cabinet to do so. Once the notice is published then the policy which is annexed to this report (Appendix 2) can be implemented. This document sets out the policy criteria for Exceptional Circumstances Relief in the following way:

3.4.1 the use of an exceptional circumstances policy enables the Council to avoid making individual sites with specific and exceptional cost burdens unviable should exceptional circumstances arise. It is a mechanism to enable growth and deliver development where CIL and section 106 conflict. The Regulations state that the Council may grant full or partial relief from liability to pay CIL if it appears to the Council that there are exceptional circumstances which justify doing so, and the Council considers expedience to do so. Each case will be considered individually by the Council, which retains the discretion to make judgements about the viability of the scheme in economic terms and whether the Exceptional Circumstances policy applies – it should be noted that the circumstances are expected to be genuinely exceptional;

3.4.2 before granting Exceptional Circumstance Relief for an individual scheme, the Council must also be satisfied that the relief would not constitute notifiable State aid;

3.4.3 the CIL Regulations specify the requirements that must be met in making the Exceptional Circumstances Assessment Regulation 53(3). The charging authority, i.e., the Council, may grant relief for exceptional circumstances if:

- a) it has made relief for exceptional circumstances available in the area,
- b) a planning obligation under Section 106 of the Town and Country Planning Act 1990 has been entered into in respect of the planning permission which permits the chargeable development; and
- c) the Charging Authority:

considers that required payment of the CIL charge by it in respect of the chargeable development would have an unacceptable impact on the viability of the chargeable development; and

it is satisfied that to grant relief would not constitute State Aid which would be required to be notified to and approved by the European Commission.

3.5 Cabinet is therefore requested to consider and approve the delegation of authority to the Director of Places in consultation with others to make decisions in specific matters and cases relating:

3.5.1 the implementation of the Exceptional Circumstances Policy;

3.5.2 responses to minor changes in policy and regulation involving the CIL regime following central government direction; and

3.5.3 urgent day-to-day decisions required to be made in the administration of the CIL regime.

3.6 The extent of this delegation is set out more fully in Appendix 1 to this report.

### 3.7 Temporary revisions to the CIL instalment policy

3.8 In addition, due to the impact of Covid-19 on local businesses, it is proposed to also delegate authority to the Director of Places to make temporary revisions to the CIL instalment policy. The current instalment policy is set out in Appendix 3 to this report. The purpose of any temporary revisions will be specifically targeted to support small developments of less than 25 dwellings and/or small and medium sized developers.

3.9 This approach is in line with recent Government guidance issued in response to Covid-19, published on 13<sup>th</sup> May 2020 which is proposing to enable local authorities to introduce new instalment policies for un-commenced development. The Government proposes to amend the CIL regulations in due course to give authorities more discretion to defer payment for small and medium sized developers without having to impose additional costs on them. CIL charging authorities have the power under regulation 69B to allow those liable to CIL to pay the charge in one or more instalments and can set the date(s) on which each payment is due. In the absence of such a policy, CIL is payable - in full - at the end of the period of 60 days beginning with the intended commencement date (see regulation 70(7)). The Government guidance means that CIL charging authorities can bring into effect a new instalment policy at any time. However, any new instalment policy will only apply to chargeable developments commencing after the new instalment policy comes into effect. CIL is therefore payable in accordance with the instalment policy that was in place at the time of commencement of the chargeable development. For phased development, as each phase is a separate chargeable development, later phases that have not yet commenced could be subject to a new instalment policy. CIL charging authorities could therefore take advantage of this provision to introduce new instalment policies for as-yet un-commenced chargeable development.

### 3.10 Day to day delegations regarding Section 106 agreements

3.11 The Report also requests Cabinet to consider and approve delegated authority for the Strategic Director of Places to have the delegations to deal with the day to day management of outstanding Section 106 agreements. This is considered a prudent way forward and would related to the following specific matters and cases:

3.11.1 there are occasions when urgent day-to-day decisions are required in the administration of the Section 106 regime;

3.11.2 there is a need to put some form of procedure in place to ensure that the S106 moneys in existing agreements are spent appropriately and timely; and

3.11.3 there are a large number of obligations which have been complied with or which would no longer seem to be relevant or appropriate. There is currently no formal procedure in place within the Council to enable these to be removed from the Local Land Charges Register (or to agree that a clause or obligation is no longer necessary or relevant), thus reducing Officer time on processing of searches and responding to enquiries from Solicitors and Personal Search Companies.

## 4 **CONSULTATION**

- 4.1 The publication of a public statement that exceptional relief policy will be published on the Council's website alongside any temporary revisions regarding the instalment policy.

## **5 ALTERNATIVE OPTIONS**

- 5.1 The alternative options are not to agree to the proposed delegations and authority to temporarily amend the instalment policy in the light of Covid-19. The proposals seek to improve the effectiveness of the management and administration of both CIL and outstanding Section 106 agreements and therefore are recommended to Cabinet on this basis.

## **6 FINANCIAL IMPLICATIONS**

- 6.1 The cost of the proposals are contained within the existing CIL budget. There may be some delay in CIL income through any revisions to the instalment policy – this will be considered in more detail when a decision is made to revise the current policy.

## **7 LEGAL AND GOVERNANCE CONSIDERATIONS**

- 7.1 The Council adopted the Community Infrastructure Levy on 1<sup>st</sup> March 2016 pursuant to the Community Infrastructure Levy Regulations (as amended) 2010. The Council now wishes to apply the Exceptional Circumstances Relief in the area of the Council pursuant to Regulations 55-57 of the Community Infrastructure Levy Regulations 2010 (as amended).
- 7.2 The other legal implications are set out in the Report.

## **8 DATA PROTECTION IMPLICATIONS**

- 8.1 There are no Data Protection Impact Assessment implications arising from this report.

## **9 EQUALITY IMPACT ASSESSMENT**

- 9.1 An Equality Impact Assessment has not been completed as it is not deemed relevant to this report.

## **10 COMMUNITY SAFETY IMPLICATIONS**

- 10.1 None identified.

## **11 HEALTH AND WELLBEING IMPLICATIONS**

- 11.1 None identified.

## **12 ORGANISATIONAL IMPLICATIONS**

- 12.1 Environmental implications - None identified
- 12.2 Human Resource implications - None identified

12.3 Procurement Implications - None identified

### **13 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

13.1 Officers consider that it is important for delegations to be provided that will allow for the day to day management of both the CIL and Section 106 regimes. Officers are of the opinion that it would also be prudent to apply the exceptional circumstances relief in the area of the Council. This may provide a solution in limited circumstances where the exceptional circumstances of a development which involves additional Section 106 obligations is not viable

### **14 BACKGROUND PAPERS**

14.1 CIL charging schedule.

14.2 CIL implementation guidance.

14.3 CIL Inspector's report.

### **15 APPENDICES**

15.1 Appendix 1 – Delegation with respect to management and administration of the Community Infrastructure Levy

15.2 Appendix 2 – Exceptional Circumstances Policy

15.3 Appendix 3 - Current CIL instalment Policy

**A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.**

**Proposed Delegation to Officers - Discharge of functions pursuant to the Community Infrastructure Levy Regulations 2010 (as amended)**

**1. To the Director of Places:**

The discharge of the Councils functions under the Community Infrastructure Regulations 2010 (as amended) or any Regulations amending or replacing the same up to and including the issue of a Reminder Notice and the Service of a CIL Stop Notice and without prejudice to the generality of the foregoing, the power to exercise the following specific functions:-

- Determining the validity of an Assumption of Liability Notice or a Transfer of Assumed Liability Notice.
- Preparing and serving an Information Notice
- Issuing and serving a Default Liability Notice
- Apportioning liability between material interests in relevant land
- Calculating a chargeable amount
- Determining a claim for an exemption or relief or the withdrawal of an exemption or relief
- Preparing and serving a Notice of Chargeable Development
- Issuing, serving or withdrawing a Liability Notice
- Determining the validity of a Commencement Notice
- Determining a deemed date of commencement of chargeable development
- Issuing and serving a Demand Notice or a revised Demand Notice
- Making a Declaration that an amount of CIL will not be payable by a person until works which are chargeable development are commenced on land in which the person has a material interest
- Issuing and serving a Reminder Notice
- Determining in accordance with any policy from time to time adopted by the Council whether to impose a surcharge :
  - (i) on apportionment of liability;
  - (ii) for late payment ; or
  - (iii) for a failure:-
    - to assume liability;
    - to submit a Notice of Chargeable Development;
    - to notify of the occurrence of a disqualifying event;
    - to submit a Commencement Notice;
    - where a Demand Notice has been suspended, to give notice of the commencement of the chargeable development ; or
    - to comply with an Information Notice.

- Determining in accordance with any policy from time to time adopted by the Council whether to impose late payment interest.
- Determining, in consultation with the relevant Cabinet Portfolio Holder(s) whether to accept a land payment with a value not exceeding £125,000.
- Determining, in consultation with the relevant Cabinet Portfolio Holder(s), whether to accept an infrastructure payment with a value not exceeding £250,000.
- Issuing and serving a CIL Stop Notice Warning Letter.
- Issuing and serving, in consultation with the Deputy Director Corporate Governance, a CIL Stop Notice
- Withdrawing a CIL Stop Notice.
- Conducting appeals against:-
  - (i) a Liability Notice
  - (ii) a review of a chargeable amount
  - (iii) the apportionment of liability
  - (iv) the grant of a relief or exemption
  - (v) the imposition of a surcharge
  - (vi) the service of a CIL Stop Notice
- Requiring an owner of a material interest in land to provide information.
- Authorising officers to enter land.
- Procurement of independent viability assessments, paid by the developer, with respect to applications for Exceptional Circumstances Relief.
- Authorising the publication of the CIL Annual Financial statement.

## **2. To the Head of Legal & Democratic Services**

The discharge of all the Council's CIL enforcement functions following the issue of a Reminder Notice other than the issue of a CIL Stop Notice and without prejudice to the generality of the foregoing, the power to exercise the following specific functions:-

- Applying to a justice of the peace for a warrant to enter land used as a private dwelling.
- Instituting prosecution proceedings for the willful obstruction of the exercise of lawful rights of entry
- Instituting prosecution proceeding for contravening a CIL Stop Notice.
- Applying for an injunction to enforce compliance with a CIL Stop Notice.
- Instituting prosecution proceedings for giving false or misleading information.

- Instituting Debt Recovery Proceedings and follow up enforcement action in the County Court.
- Applying to the Magistrates Court for a Liability Order.
- Appointing bailiffs to levy distress and sell goods.
- Applying to the Magistrates Court for a warrant committing a debtor to prison.
- Applying to the County Court for a Charging Order.
- Applying to the County Court to enforce a Charging Order.
- Applying to the County Court to enforce a Local Land Charge
- Instituting insolvency or bankruptcy proceedings.