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FW: Planning Article for your consideration

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Carol Stephenson
Clerk to the Council
01903 812042

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From: Kwan, Norman [mailto:Norman.Kwan@horsham.gov.uk]

Sent: 21 February 2017 13:40

To: Amberley Clerk; Ashington Clerk; Ashurst Clerk; Billingshurst Clerk; Bramber Clerk; Broadbridge Heath Clerk; Coldwaltham Clerk; Colgate Clerk; Cowfold Clerk; Henfield Clerk; Itchingfield Clerk; Lower Beeding Clerk; North Horsham Clerk; Nuthurst Clerk; Parham Clerk; Pulborough Clerk; Rudgwick Clerk; Ruspur Clerk; Shermanbury Clerk; Shipley Clerk; Slinfold Clerk; Southwater Clerk; Steyning Clerk; Storrington & Sullington Clerk; Thakeham Clerk; Upper Beeding Clerk; Warnham Clerk; Washington Clerk; West Chiltington Clerk; West Grinstead Clerk; Wiston Clerk; Woodmancote Clerk; Denne Clerk; North Horsham Clerk; Trafalgar Clerk; Forest Clerk

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What proposals to replace CIL would mean for applicants and authorities

17 February 2017 by Jamie Carpenter , 2 comments

A system put forward by a government-commissioned review to replace the Community Infrastructure Levy (CIL) would see all development face a low-level charge, with no - or very few - exemptions, the removal

of the need for an examination process, and a mandatory requirement placed on town halls to adopt the new mechanism.



Infrastructure: CIL is not raising as much money as anticipated by government and town halls, review says

CIL Watch: who's charging what

- [Want to know whether your local authority has published Community Infrastructure Levy proposals? Our live table includes the latest details of councils' levy plans, including a breakdown of charges by development type.](#)

There's an "awful lot wrong" with the Community Infrastructure Levy (CIL), says Liz Peace, whose review into the development tariff was published alongside this month's Housing White Paper. Speaking to *Planning*, the former British Property Federation chief executive said that the mechanism had been implemented in a more complicated way than was envisaged by the policy-makers. She added that the levy has not raised as much funding as anticipated, "has spawned a whole industry", and more development is exempt from the charge than had been intended.

However, despite concluding that CIL "is not fulfilling the original intention of providing a faster, fairer, simpler, more certain and more transparent way of ensuring that all development contributes something towards cumulative infrastructure need", the review panel headed by Peace stopped short of the "kill CIL" recommendation sought by some property professionals. Instead, it proposes that the system is reformed.

Under the proposals put forward in the panel's report, CIL would be replaced with a twin-track system. All developments would be subject to a "streamlined low-level tariff", which the report names the Local Infrastructure Tariff (LIT). Larger developments would be subject to an additional section 106, in an acknowledgment that the largest and most complex developments "require a bespoke approach to their specific infrastructure needs", the report adds. Peace said that the proposals would "keep the principle of CIL, but massively streamline the system".

Practitioners will have to wait another six months, however, to find out how the government intends to respond to the review's findings. The Housing White Paper said that the government will respond to the review and "make an announcement" in the Autumn Budget.

For Peace, one of the key benefits of the system recommended by the review panel is that the proposals would "get away from this massive CIL industry that has grown up". The report recommends that housing developments of ten units or fewer would face no section 106 contributions, and pay only a LIT fee. Peace points to figures showing that 85 per cent of all applications in England in 2015 were for schemes of this size. "You would be taking the bulk of planning applications out of the complex CIL system," she said.

Peace added that the review's proposal to introduce a nationally-prescribed "standardised methodology" for setting rates under the LIT system, combined with a recommendation to do away with CIL's "complex examination process", would mean that local authorities will not have to go through "complicated arguments" with the development industry over viability when setting their charges. At the moment, she said, "you almost have an arms race between local authorities and developers". The review's proposals would "sweep all that away", Peace added.

Graham Jones, the Planning Officers Society (POS)'s CIL and infrastructure planning specialist, said that a charge setting system that avoids examination would be "quicker, less expensive, and would short-circuit the difficulties authorities have in getting charges up and running". However, Matthew Spilsbury, director at consultancy Turley, counters that the existing CIL examination process is currently not sufficiently robust and, if anything, it should be strengthened. He believes that developers will continue to contest charges. Stephen Ashworth, partner at law firm Dentons, agrees. "It'll end up being just as much of a debate," he said.

Peace said that the review panel's analysis suggested that local planning authorities would "get either the same or more" funding under the proposed system compared to CIL. While the LIT rate would be set at a lower level than CIL tariffs, the LIT would be applied to more development, with fewer exemptions, she said. Peace added that the panel had concluded that the new system should be mandatory for local authorities, with an opt out only where the cost of collection is not justified by the receipts collected. The panel's report states that benefits to a local authority of a simpler alternative to CIL "which cuts out all the burden of rate setting and collecting but which, in most cases, collects a similar amount of money" should encourage rapid adoption.

However, Spilsbury said that areas where CIL is unviable would face the same situation under LIT. He said he had concerns over how the system would work in the North, where CIL coverage is patchy. "If CIL was unviable, LIT is going to also be unviable," he said.

The review proposes that LIT should eventually replace CIL completely and a final cut-off date should be fixed in order to "prevent drift in implementation". "2020 would seem a logical date to aim for since that is the end of the current Parliament," the review says. Experts agree that the detail of the transitional arrangements will be crucial to ensure that the introduction of the new system does not slow development. Spilsbury warned that, if developers believe that they could face lower payments under the new system than under CIL, "you'll end up with development slowing down ... the government needs to be alive to the threat". Independent planning adviser Gilian Macinnes, a member of the review panel, agrees that caution is required. "The last thing the government wants to happen is for people to say they won't pursue development at the moment because there might be a better fiscal environment if they don't," she said.

With the review's recommendations now in the public domain, but the government's view of the proposals unclear, charging authorities face a dilemma over whether push ahead with work on preparing or reviewing CIL charging schedules. "We are going to have to wait for another six months," said POS' Jones. "During that time, there will be a hiatus, with local authorities not wanting to put their hard pressed resources into something that may not be with us in the future." However, Macinnes and Ashworth advise authorities to press ahead with work on CIL. They say that the timescales involved with putting in place a new system are likely to be lengthy. "If I was a local authority, I'd assume that CIL will be with us for a long time," said Ashworth.

Colette McCormack, partner at law firm Winckworth Sherwood, said that, whatever the outcome of the review, the government should act soon to iron out glitches in the regulations that are currently causing practitioners difficulties. "Regardless of what happens, those CIL regulations need amending, even in the short-term," she said.

Five More Proposed Changes To The Levy

1. Pooling restrictions removed

Under existing rules, councils are only able to pool up to five section 106 contributions to pay for any one project. But the review recommends these restrictions are removed completely. "For the biggest schemes, most applicants would rather deliver onsite infrastructure through section 106, but find the pooling restrictions nerve-racking," said CIL review panel member Gilian Macinnes.

2. Payment in kind process made easier

The review recommends that, for larger developments, it should be possible under the proposed system for section 106 infrastructure to be delivered "in kind" on site, and that the Local Infrastructure Tariff (LIT) contribution should also be able to be delivered via in kind provision. Colette McCormack, partner at law firm Winckworth Sherwood, said the CIL regulations make provision for payments in kind, but they are not often used because they are "complex".

3. Reversal of existing floorspace credit

Where development involves demolition or change of use, current rules allow existing floorspace to be offset against a CIL charge. But the review says that the exemption is one of the "biggest contributors to complexity and cost in managing the CIL process". In future, when a development involves replacement of a building, or a change of use, the LIT should be charged on gross floor space, the review recommends. "It could result in high costs for conversions and the redevelopment of brownfield sites," warned Matthew Spilsbury, director at consultancy Turley.

4. Powers for councils to borrow against future levy income

Many local authority submissions to the review called for the ability to be able to borrow against future CIL income, the panel's report says. It "strongly" recommends that the government addresses "as a matter of priority" how best funds might be made available to town halls to support upfront infrastructure needs. It adds that if borrowing is not considered appropriate, other options could be considered.

5. Mayoral infrastructure tariffs for combined authorities

The review says that there is a "good case" for enabling combined authorities to collect a "mayoral-type CIL", described as a Strategic Infrastructure Tariff (SIT), as a contribution to a small number of major pieces of infrastructure. The report says that the tariff would have to take into account town halls' own Local Infrastructure Tariffs (LITs). Turley's Spilsbury said that the proposal would be problematic in Greater Manchester, where some councils have not introduced CIL due to viability concerns. "To suggest you could introduce a LIT and apply a SIT on top of that, I can't see how that is going to work," he said.

Liz Peace, the chair of the government's CIL review panel, will speak at next month's National Planning Summit. [Click here](#) for further details.

Norman Kwan

Neighbourhood Planning Officer

Telephone: 01403 215053 |

Email: Norman.Kwan@horsham.gov.uk



Horsham District Council, Parkside, Chart Way, Horsham, West Sussex RH12 1RL

Telephone: 01403 215100 (calls may be recorded) horsham.gov.uk Chief Executive - Tom Crowley

From: Kwan, Norman

Sent: 21 February 2017 13:31

To: Amberley Clerk; Ashington Clerk; Ashurst Clerk; Billingshurst Clerk; Bramber Clerk; Broadbridge Heath Clerk; Coldwaltham Clerk; Colgate Clerk; Cowfold Clerk; Henfield Clerk; Itchingfield Clerk; Lower Beeding Clerk; North Horsham Clerk; Nuthurst Clerk; Parham Clerk; Pulborough Clerk; Rudgwick Clerk; Ruspur Clerk; Shermanbury Clerk; Shipley Clerk; Slinfold Clerk; Southwater Clerk; Steyning Clerk; Storrington & Sullington Clerk; Thakeham Clerk; Upper Beeding Clerk; Warnham Clerk; Washington Clerk; West Chiltington Clerk; West Grinstead Clerk; Wiston Clerk; Woodmancote Clerk; Denne Clerk; North Horsham Clerk; Trafalgar Clerk; Forest Clerk

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Plans approved for 130 West Sussex homes despite neighbourhood plan clash

20 February 2017 by Michael Donnelly , [Be the First to Comment](#)

Plans have been approved for 130 homes on the edge of a town in West Sussex - contrary to policies in a neighbourhood plan - after planners found that the local council could not demonstrate a five or 'even a three-year' housing land supply.



Lindfield, West Sussex (pic: ReflectedSerendipity via Flickr)

Mid Sussex District Council approved the outline application at a planning committee meeting last week. The application sought consent for up to 130 homes on land to the east of Gravelly Lane, Lindfield.

[A planning report](#) on the application said that the the proposed site is "outside the built-up area boundary of Lindfield and is therefore contrary to both policy C1 of the Mid Sussex Local Plan (MSLP) and Policy 1 of the 'made' Lindfield and Lindfield Rural Neighbourhood Plan" (LLRNP)".

However, the report said that, as the council was unable to currently demonstrate a five-year housing land supply, the National Planning Policy Framework "states that the relevant policies for the supply of housing are not up to date".

The document said that housing and planning minister Gavin Barwell's [December written ministerial statement](#) had "modified this position slightly by stating that the neighbourhood plan as a relevant policy would not be deemed as 'out of date' under paragraph 49 where the neighbourhood plan had allocated sites for housing, been part of the local development plan for two years or less, and the planning authority can demonstrate a three-year supply of deliverable housing sites".

But it said that "since Mid Sussex cannot demonstrate even a three-year housing land supply, this modified position is meaningless".

Recommending approval, planners said that the development would provide up to 130 dwellings, 30 per cent of which would be affordable.

In addition, it said that the economic benefits, "including the new homes bonus, job creation during the construction phase and additional spend within the local economy post construction, are matters that should attract significant weight in support of the scheme".

Norman Kwan

Neighbourhood Planning Officer

Telephone: 01403 215053 |

Email: Norman.Kwan@horsham.gov.uk



Horsham District Council, Parkside, Chart Way, Horsham, West Sussex RH12 1RL

Telephone: 01403 215100 (calls may be recorded) horsham.gov.uk Chief Executive - Tom Crowley

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