

Crawley Borough Council

Report to Cabinet 29 November 2017

Community Infrastructure Levy (CIL) – Delegation of Enforcement Powers

Joint Report of the Head of Economic and Environmental Services
and the Head of Legal and Democratic Services
PES/262

1. Purpose

- 1.1 To seek Cabinet approval to delegate to officers duties and powers associated with the Community Infrastructure Levy (CIL) Regulatory Framework.
- 1.2 This will ensure that the Council can administer the levy efficiently and comprehensively within Crawley, notably in relation to the Council's responsibilities for collecting CIL liabilities and enforcing against non-payment of CIL.

2. Recommendations

- 2.1 The Cabinet is recommended to :
 - (a) Approve the exercise of the duties and powers set out in Appendix A (1-4) to this report that are delegated to the Head of Economic and Environmental Services, that the exercise of duties and powers relating to the provision of land and or infrastructure in Kind as set out in Appendix A(5) be delegated to the Head of Economic and Environmental Services in consultation with the stet
 - (b) Approve a limited power to accept a "land payment" or "infrastructure payment" is delegated to the Head of Economic and Environmental Services, in consultation with relevant the Cabinet Member for Planning and Economic Development, subject to defined limits as follows:
 - Land with a value of less than £200,000
 - Infrastructure with a value of less than £250,000Further that it be delegated to the Head of Economic and Environmental Services in consultation with the Cabinet Member for Planning and Economic Development to agree the infrastructure that the council would be willing to except as an infrastructure payment and to publish these details on the council's website. (In all other cases the decision will remain with the Cabinet).
 - (c) Approve the Policy on Surcharges and the Levy of late Payment Interest as set out in Appendix B
 - (d) Request that Full Council approve the proposed constitutional changes as set out Appendix A.

3. Reasons for Recommendations

- 3.1 The Introduction of the Community Infrastructure Levy (CIL) brings with it a number of new obligations, duties and powers for the Council. This includes responsibility for determining liability, serving notices, collecting funds and enforcing non-payment as set out in the Community Infrastructure Levy (CIL) Regulations 2010 as amended.
- 3.2 Whilst the current scheme of officer delegation for planning functions includes a wide range of provisions relating to the operation of the Planning and Development functions, it does not cover the specific activities set out in the CIL regulatory framework. To enable the levy to be administered effectively, efficiently and properly, delegation of a number of the Council's duties and powers to officers is recommended.
- 3.3 The vast majority of decisions relating to CIL will be of a routine administrative nature and these functions should be delegated to officers.
- 3.4 Regulation 73 of the CIL Regulations authorises the Council to accept a 'land payment' (an acquisition of land from a person liable to pay a CIL charge) or an 'infrastructure payment' (the provision of one or more items of infrastructure from a person liable to pay a CIL charge) in satisfaction of the whole or part of a CIL charge. However, before an infrastructure payment can be accepted the Council must publish a document on its web site giving notice of its willingness to accept infrastructure payments and the document must also incorporate a policy statement setting out the infrastructure projects or types of infrastructure that the Council would be willing to accept. Cabinet is therefore requested to approve the recommendation set out in section 2.1(b) above.
- 3.5 There are a number of provisions in the CIL Regulations which gives the Council a power to impose a surcharge or levy late payment interest – hence why Cabinet is requested to approve the recommendation set out in section 2.1(c) above.

4. Background

- 4.1 The Cabinet will recall that at their meeting on 29th June 2016, a report was considered and subsequently approved by Council on 20th July 2016, to adopt the Community Infrastructure Levy (CIL) Charging Schedule as well as the Regulation 123 list for planning applications approved on or after 17th July 2016.
- 4.2 The Council further resolved to approve an Instalments Policy as well as a Discretionary Social Housing Relief Policy. Delegations were also granted to the Head of Strategic Housing and Planning in consultation with the Portfolio Holder for Planning and Economic Development for non-substantive alterations to be made to the CIL Charging Schedule, and the Regulation 123 list and the two approved policies (Council Minute 26 refers).
- 4.3 The CIL charging schedule came into effect on 17th August 2016. All qualifying development granted planning permission after this date is CIL liable.
- 4.4 Section 3 above explains the reasons why there needs to be further delegation of powers related to CIL's Regulatory Framework to officers and this is expanded on further below.

5. Further Information and Analysis in Support of the Recommendations

- 5.1 Appendix A sets out the recommended delegations to officers to reflect the introduction of CIL. These duties and powers focus on the day to day implementation of CIL particularly:
- a. Charging, including determination of liability, applications for relief and the issue of statutory notices;
 - b. Collection and enforcement.
- 5.2 The use of these powers is clearly prescribed by the CIL Regulations and as such the volume of discretion in each case is relatively limited. Additionally, the Regulations require either a response within a set timeframe (e.g. reviews of chargeable amounts) or decisive action (in the case of enforcement) for a number of the duties proposed for delegation. Cabinet is therefore requested to recommend these delegations to Council.
- 5.3 However the CIL Regulations do provide for some decisions to be taken which will clearly involve elements of Policy discretion and which therefore should not be delegated to officers. Those decisions are:
- Substantive amendments and withdrawal of the Discretionary Social Housing Relief Policy;
 - Substantive amendments and withdrawal of the Instalments Policy;
 - Substantive amendments to the Charging Schedule and Regulation 123 list.
- 5.4 The Council's proposed Policy on Surcharges and the Levy of Late Payment interest is as set out in Appendix B

6. Implications

- 6.1 There are no direct financial implications. The Council's ability to pursue and secure CIL payments are reinforced as a consequence of the powers given to it via the CIL regulatory framework. The recommendations in this report serve to give officers the ability to implement these powers in a more efficient and effective way. The legal powers and duties are set out in The Community Infrastructure Levy Regulations 2010 as amended

7. Programme

- 7.1 Subject to Cabinet approval of the recommendations set out in Section 2 of this report, Council officers will become equipped with the necessary powers to take enforcement against non-payment of CIL liabilities, strengthening the Council's ability to fulfil the CIL regulations and to unlock resources to invest in infrastructure, which will assist Crawley to accommodate the cumulative impact of its ongoing growth.

8. Background Papers

None

Delegation of Functions

1. Exercise the Council's duties and powers in relation to the enforcement of the Community Infrastructure Levy (CIL) as set out in the Planning Act 2008 and Community Infrastructure Levy Regulations 2010 as amended or any Regulations amending or replacing the same.

Delegated to the Head of Economic Development and Environmental Services and/or the Head of Legal and Democratic Services.

2. Exercise the Council's duties and powers in relation to the calculation of the chargeable amount and the determination of liability, in respect of the Community Infrastructure Levy (CIL) as set out in the Planning Act 2008 and Community Infrastructure Levy Regulations 2010 as amended or any Regulations amending or replacing the same.

Delegated to the Head of Economic Development and Environmental Services

3. Exercise the Council's duties and powers in respect of appeals relating to the Community Infrastructure Levy (CIL) as set out in the Planning Act 2008 and Community Infrastructure Levy Regulations 2010 as amended or any Regulations amending or replacing the same.

Delegated to the Head of Economic Development and Environmental Services

4. Exercise the Council's duties in relation to the assessment of claims for exemption and/or relief from the Community Infrastructure Levy (CIL), in accordance with any relevant policies adopted by the Council as set out in the Planning Act 2008 and Community Infrastructure Levy Regulations 2010 as amended or any Regulations amending or replacing the same.

Delegated to the Head Economic Development and Environmental Services

5. Exercise the Council's duties in relation to administration of CIL, including determination of applications to satisfy CIL through the provision of land and/or infrastructure in-kind, and completion of any associated agreements as set out in the Planning Act 2008 and Community Infrastructure Levy Regulations 2010 as amended or any Regulations amending or replacing the same.

Delegated to the Head of Economic Development and Environmental Services in consultation with relevant Portfolio holders.

Crawley Borough Council

Community Infrastructure Levy – Policy on Surcharges and Late Payment Interest

Surcharges and Interest

Failure to Assume Liability Regulation 80	<p>The Council will impose a surcharge of £50 on each person liable to pay CIL in respect of a chargeable development if</p> <ol style="list-style-type: none">1. nobody has assumed liability to pay CIL in respect of the chargeable development; and2. the chargeable development has commenced.
Apportionment of Liability Regulation 81	<p>When the Council is required to apportion liability to pay CIL between each material interest in the relevant land, the Council will impose a surcharge of £500 in respect of each of those interests.</p>
Failure to submit a Notice of Chargeable Development Regulation 82	<p>When a chargeable development has commenced before the Council receives a valid commencement notice it will impose a surcharge equal to 20% of the chargeable amount payable in respect of the development or £2,500 whichever is the lower amount.</p>
Failure to submit a Commencement Notice Regulation 83	<p>The Council will impose a surcharge equal to 20% of the chargeable amount payable in respect of the development or £2,500 whichever is the lower amount.</p>
Disqualifying Events Regulation 84	<p>If a person who is required to notify the relevant authority of a disqualifying event, fails to do so before the end of the period of 14 days beginning with the day on which the disqualifying event occurs, the Council will impose a surcharge equal to 20% of the chargeable amount or £2,500, whichever is the lower amount.</p>

<p>Late Payment Surcharge</p> <p>Regulation 85</p>	<p>When the CIL payment due is not received in full after the end of the period of 30 days beginning with the day on which the payment is due, the Council will impose a surcharge of 5% of the monies due or £200 whichever is the greater amount.</p> <p>In addition, the Council will impose further surcharges of 5% or £200 (whichever is the greater amount) on any amounts of CIL that remains unpaid six months and twelve months after the due date.</p>
<p>Late Payment Interest</p> <p>Regulation 87</p>	<p>If CIL payment due is not received on the date it is due, the Council will impose and add Late Payment Interest. Late Payment Interest is calculated from the period starting on the day after the payment was due and ending on the day the unpaid amount is received, at an annual rate of 2.5% above the Bank of England base rate.</p>
<p>Failure to Comply with an Information Notice</p> <p>Regulation 86</p>	<p>When a person fails to comply with any requirement of an information notice before the end of the period of 14 days beginning with the day on which the notice is served, the Council will impose a surcharge of 20% of the relevant amount or £1,000 whichever is the lower amount.</p>