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## **Joint Scrutiny Report of the:**

**Children & Young People Scrutiny Committee;  
Community & Adult Services Scrutiny Committee;  
Economy & Culture Scrutiny Committee;  
Environmental Scrutiny Committee;  
Policy Review & Performance Scrutiny Committee.**

# **Community Infrastructure Levy**

**April 2016**



**City and County of Cardiff Council**

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## CHAIR'S FOREWORD



**Councillor Paul Mitchell**

**Chairperson – Environmental Scrutiny Committee**

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## INQUIRY METHODOLOGY

The Joint Committee Task & Finish Exercise considered the options for introducing a Community Infrastructure Levy to Cardiff (CIL). In reviewing the various options the group drew upon a number of information sources including:

- Witnesses from other local authorities who had delivered the Community Infrastructure Levy;
- Witnesses from / associated to the building and construction industry;
- Witnesses from within Cardiff Council's planning service;
- Cardiff Council's Cabinet Member for Transport, Planning & Sustainability and the Chair of Cardiff's Planning Committee;
- Evidence gathered by Cardiff's Scrutiny Research Team and presented in a report titled 'Selected Local Authorities' Charging Structures, Strategies and Experiences on the Community Infrastructure Levy (CIL)' – attached to this report as **Appendix 1**.

From this body of evidence the Members drew key findings and the thirteen recommendations listed in this report. The Scrutiny Cross Committee Task & Finish Exercise will report to the Policy Review & Performance Scrutiny Committee in April 2016, and subject to approval of the report will commend their recommendations to the Council's Cabinet for consideration.

The CIL is a planning charge on new development. The ability for a local planning authority to charge this levy came into effect from April 2010, but cannot be set until an adopted Local Development Plan is in place. Cardiff's Local Development Plan was adopted in February 2016.

Government regulations and guidance set out the process to be followed in preparing a charging schedule for the CIL, this includes requirements for consultation and an Independent Examination. The charging schedule needs to be based on viability and infrastructure planning evidence.

The rate(s) (at pounds per square metre) set in a charging schedule must be based on appropriate and available evidence and must aim to strike a balance between the desirability of funding (in whole or in part) the estimated total cost of infrastructure required to support the development of the area, taking into account other actual and expected sources of funding; and, the overall potential effects of the levy on the economic viability of development across the area.

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## INQUIRY TERMS OF REFERENCE

The aim of the inquiry is to provide Members with the opportunity to explore and consider how the Community Infrastructure Levy is due to be implemented in Cardiff. This will include reviewing:

- The definition of the Community Infrastructure Levy and how it might work in practice;
- The relationship between Community Infrastructure Levy and Section 106 funding;
- The relative strengths and weaknesses of Community Infrastructure Levy and Section 106 funding;
- The need of Community Infrastructure Levy and Section 106 funding to develop infrastructure (both strategic & local);
- The potential effects of the Community Infrastructure Levy on development;
- The proposed charging rate and estimated value of funding that will be generated by the Community Infrastructure Levy;
- The process for Councillor consultation and regular updates on allocating Community Infrastructure Levy funds once they have been collected;
- The work undertaken to estimate the value of Community Infrastructure Levy that should be charged;
- The approach taken by other local authorities in implementing the Community Infrastructure Levy. This would include rates set, strategies applied and lessons learnt;
- The view of developers on the implementation of the Community Infrastructure Levy;
- How the Community Infrastructure Levy will impact on the Council's decision making process;
- The implementation timeline for the Community Infrastructure Levy.

## SUMMARY KEY FINDINGS & RECOMMENDATIONS

### Community Infrastructure Levy – Strategy

#### Key Findings

- Section 106 (S106) funding is an established approach for achieving developer contributions to provide necessary infrastructure to support new developments. Over the years Cardiff has generated significant monies from this form of developer contribution.
- The CIL is not designed to replace other existing planning obligations. It is charged on a £/m<sup>2</sup> rate and will be set at a level which is considered 'viable' across a range of scenarios (i.e. is not measured on a site by site basis). The CIL rate will need to consider the cost of S106 obligations. CIL does not affect affordable housing (which will continue via S106). Unlike S106, CIL can be used to fund infrastructure that is not directly related to the development and can be spent on wider 'strategic' infrastructure.
- Cardiff has eight major development or strategic sites, these are:
  - Strategic Site A: Central Enterprise Zone (approximately 2000 homes);
  - Strategic Site B: Former Gas Works, Ferry Road (approximately 500 homes);
  - Strategic Site C: North West Cardiff (approximately 5000 homes);
  - Strategic Sites D/E: North of J33 / South of Creigiau (approximately 2000 & 650 homes respectively);
  - Strategic Site F: North East Cardiff (West of Pontprennau) (approximately 4500 homes);
  - Strategic Site G: East of Pontprennau Link Road (approximately 1300 homes);
  - Strategic Site H: South of St Mellons Business Park.
- During the meetings there was some concern that failure to adopt a CIL would mean less funding would be made available to support the development of the major strategic sites and that this could result in a



repeat of the development problems seen in Pontprennau. Members were assured that this was not the case and that funding from a S106 approach and a mix of S106 and CIL would actually equate to the same amount. They were told that the significant difference in the current planning system which would prevent repeating the same problems experienced in Pontprennau was the use and development of Masterplanning. This process will be used to identify the infrastructure required to develop a new strategic site / area and developer contributions will in future be linked into any new planning decisions. The idea that Cardiff will miss out on developer contributions because it doesn't have a CIL is a myth. The pre and post CIL adoption values will both be based on the same viability test, i.e. the overall funding will be similar.

- If CIL is ramped to the maximum level then the immediate local development suffers at the expense of improving other parts of the city. It was felt that high quality developments needed to be supported by high quality infrastructure.
- At the end of the second meeting all witness groups (Peter Brett Associates, Savills & Caerphilly County Borough Council (CCBC)) agreed that perhaps the strategic sites should be considered separately and have a £0 rate CIL. The main reasons for their view are that these are mainly to be built on greenfield sites; they have significant new infrastructure pressures and that many of these sites would actually have planning permission before it would be possible to adopt CIL. Members also seemed to agree that the strategic sites should be addressed separately and, therefore, have a zero rate CIL.
- CCBC adopted a Local Development Plan in 2010. They adopted the CIL in July 2014 as they wanted to use it to develop a number of highway infrastructure schemes – had this not been an aim then they would not have signed up to the CIL. To date they have only collected £20,000 of income (although CCBC has a much lower infrastructure requirement than Cardiff).

- Since adoption of the CIL in CCBC two large strategic sites have come forward – they will treat these as strategic sites and apply a zero rate CIL.
- If CCBC were now at the point of deciding whether or not to adopt CIL then they probably wouldn't do it. They are now 'within the animal' and have to cover the costs. They hope that the large new schemes which have come on-board will generate £3million.
- Some Members hoped that inner city areas like Grangetown would benefit from CIL on some of the strategic sites as much investment is needed in the area. They asked if CIL wasn't raised on the strategic sites how the money would be generated to filter down to the inner city areas.
- One of the largest benefits of CIL was that it would pick up developer contributions from smaller developments which would not necessarily be subject to a section 106 agreement. Members suggested that a good approach would be to apply CIL in the established parts of the city and have a zero rate for the strategic sites.
- Emerging evidence from across the UK is that there is a benefit in applying CIL to smaller sites and that S106 is better suited for larger strategic sites.
- A big benefit of using CIL is that previously small developments of less than 10 units made little if anything in the form of developer contributions. A CIL could capture developer contributions from the smaller sites.
- Bristol has an identified five year housing supply – this from a planning perspective is a good thing and makes it easier for the authority to reject applications.
- While Bristol is similar in many ways to Cardiff there are two major differences in planning terms. 1) It does not have a green belt or wedge; 2) it does not have any major strategic sites as it has grown to its actual boundaries.

- Bristol only really uses S106 for affordable housing, some highways work and site specific mediation works. As a whole S106 is used far less than it was before.
- Three Bristol wards generate and receive 40% of the developer contributions.
- A witness commented that most local authorities with strategic sites / urban extensions opt for low or zero CIL rates such sites. Swindon is a good example of an authority of where this has happened.
- Wokingham has a very high CIL (£370 per m<sup>2</sup>) and has elected to deliver all of the infrastructure work in-house. Wokingham has two or three large urban extensions. It is seen as a brave move as they maintain the development risk – most authorities transfer the risk back to the developer. Wokingham has an in house ‘Development Team’ which is confident of delivering the required works.
- CIL is generally paid at the start of a development – not when houses are sold. Councils can if they want implement an instalment programme. If the amount is less than £35,000 then it has to be paid up front. If it is more than £35,000 then it can be paid in instalments.
- By following its strategy Bristol is actually £1m per annum better off than expected. 1st year income is slow as there is generally an income lag between implementation of CIL and actually receiving any monies. A planning application generally lasts for 3 years.
- It is estimated that the strategic sites will only account for half of the development in the city over the period of the Local Development Plan.
- It was noted that viability for small Cardiff developments was generally very good as they don’t have to provide much in the way of new infrastructure.

- To achieve a degree of consistency Bristol has decided to freeze the rates at the same level for five years. They hope that this will provide developers with a degree of confidence in the new system.
- A Member asked a witness if CIL rates should reflect the current land values and was told that they should in fact reflect the viability of the development. The Bristol rates were set at 50% of maximum viability. Bristol City Council likes to be seen as pro development.
- Simplicity and ease of enforcement was seen as a key ingredient for a successful CIL.

### **Recommendation 1**

After reviewing a number of Community Infrastructure Levy strategies and taking into consideration Cardiff's current planning position, geographical landscape and economic structure the task group concluded that a zonal approach seemed to be the best way forward for the city. It was felt that Cardiff should be split into three distinct zones, these were:

- **Strategic Sites** – Members concluded that the Community Infrastructure Levy should not apply to these sites; instead developer obligations should continue to be made in the form of Section 106 Agreements which would ensure that the required infrastructure is directed specifically into each site. This approach also seemed to be the most practical solution as in reality the eight strategic sites are likely to have secured planning permission before Cardiff could adopt the Community Infrastructure Levy – i.e. they would by default have to gain all developer contributions through Section 106 Agreements. This should be monitored and reported to the Planning Committee within two years to ensure that the section 106 process is securing an appropriate level of infrastructure investment at c.£250 per square metre across the city as a whole.
- **Residential Inner Zone** – This would focus around the city centre area where the existing infrastructure is more established and site viability is

generally higher. The Residential Inner Zone should have a higher Community Infrastructure Levy charge than the Residential Outer zone where existing infrastructure is less established and site viability is generally lower. Members concluded that having a Community Infrastructure Levy for the Residential Inner Zone would help the Council gather developer contributions from the large number of smaller developments which have in the past been missed by Section 106 Agreements which tended to focus on larger developments. This would ensure that all developments in the Residential Inner Zone would make a contribution to support the development of infrastructure in the city.

- **Residential Outer Zone** - This would focus on the areas outside of the city centre area where the existing infrastructure is less established and site viability is generally lower. The Residential Outer Zone should have a lower Community Infrastructure Levy charge than the Residential Inner Zone where existing infrastructure is more established and site viability is generally higher. Members concluded that having a Community Infrastructure Levy for the Residential Outer Zone would help the Council gather developer contributions from the large number of smaller developments which have in the past been missed by Section 106 Agreements which tended to focus on larger developments. This would ensure that all developments in the Residential Outer Zone would make a contribution to support the development of infrastructure in the city.

A map illustrating the zonal approach from Recommendation 1 has been attached to this report as **Appendix 1**.

## **Recommendation 2**

Members believe that the Residential Inner Zone and Residential Outer Zone should be supported by a Community Infrastructure Levy variation tool which relates the contribution percentage to the number of units in the development.

The following banding scheme was suggested:

- 1 to 49 units – Community Infrastructure Levy charged at the standard Residential Inner Zone or Residential Outer Zone rate.
- 50 to 499 units – Community Infrastructure Levy charged with a medium sized percentage reduction against the standard Residential Inner Zone or Residential Outer Zone rate.
- 500 + units – Community Infrastructure Levy charged with a large sized percentage reduction against the standard Residential Inner Zone or Residential Outer Zone rate.

The general rule of thumb would be similar to that applied for the Strategic Sites, i.e. the larger the development the greater the additional amount of new infrastructure needed to support the development. The task group believes that new local infrastructure on a larger scale is better being directly funded through Section 106 Agreements.

## Proposed Cardiff Community Infrastructure Levy Rates

### Key Findings

- Student accommodation did not attract a CIL charge under the published draft charging schedule – many other cities with established universities levy a CIL charge for student accommodation as they believe that the student accommodation market is currently very buoyant.
- Bristol has a split CIL charging schedule for residential development (£70 per m<sup>2</sup> in the inner zone & £50 per m<sup>2</sup> in the outer zone). This contrasts to the blanket rate of £100 per m<sup>2</sup> proposed for Cardiff. Bristol charge £70 per m<sup>2</sup> for hotels; £120 per m<sup>2</sup> for retail and £100 per m<sup>2</sup> for student accommodation. Cardiff is proposing to charge £250 per m<sup>2</sup> for the two identified categories of retail and £0 per m<sup>2</sup> for hotels and student accommodation. The proposed CIL Charging Schedule published by Cardiff in September 2014 is potentially subject to change.
- Inspectors tend to be less optimistic than local authorities and so the figures quoted in the initial draft CIL Charging Schedule will probably come down after inspection. That seems to be the experience of the other local authorities who have had their CIL adopted.
- Cardiff's approach was grouped into fewer areas than most other authorities to make the process as simple as possible.
- Peter Brett Associates works on the viability evidence and all local authority areas are different. The Bristol CIL is older and calculated at a different time, i.e. an older pre recessionary base. If they recalculated it now it would probably have to change. Given the timescales between Bristol and Cardiff making the calculation it seems difficult to make a direct comparison.
- Members were told that they needed to see the bigger picture when deciding on the implementation of a CIL rate and not simply work within

the parameters of the CIL regulations. The Peter Brett Associates calculations are based on the parameters of the CIL regulations.

- Bristol has two residential rates – Inner @ £70 per m<sup>2</sup>; and Outer @ £50 per m<sup>2</sup>. Overall the Bristol rates are much lower than those proposed for Cardiff. They set the rates at 50% of the viability level as they wanted to be seen as developer friendly. Following review of the Bristol CIL rates the inspectors did not ask the authority to make any changes.
- Bristol charges £100 per m<sup>2</sup> for student accommodation. The initial Cardiff rates do not allow for a CIL charge against student accommodation, although it has been suggested that this may change in the next phase of consultation. If a city has a well established university (Redbrick or Russell Group) then student accommodation appears to be an attractive potential income source. It was noted that by the time a CIL is adopted in Cardiff the student accommodation opportunity might have passed. Rates on student accommodation in the UK can be as high as £370 per m<sup>2</sup>.
- The Bristol CIL rates submitted to the inspectors remained the same after the review of the CIL proposals, i.e. the inspectors agreed with the approach put forward by Bristol. In many cases inspectors ask local authorities to reduce CIL rates following inspection.
- Affordable housing is exempt from CIL so it will remain as the significant part of S106 agreements.
- The Scrutiny Research Report identified that a wide variety of CIL rates were applied across the country. Overall the initial CIL rates proposed by Cardiff seemed high when compared against most other authorities.

### **Recommendation 3**

Members felt that the rates provided in Cardiff's preliminary Draft Charging Schedule were high when compared to other local authorities who had or



were in the process of adopting the Community Infrastructure Levy. For example, both the flat rate residential charge of £100 per meter square and the comparison and convenience retail charges of £250 per meter square were amongst the highest published rates in the Scrutiny Research report titled 'Selected Local Authorities' Charging Structures, Strategies and Experiences on the Community Infrastructure Levy (CIL)'.

The task group acknowledges that calculating this figure is a very complicated exercise which involves a considerable number of variables; however, they ask that the complete schedule of rates is reviewed in advance of the publication of the Draft Charging Schedule in spring 2016. The review should rely on the professional advice provided by Cardiff Council officers; the evidence gathered by Peter Brett Associates and comparative information from other local authorities who have adopted the Community Infrastructure Levy.

#### **Recommendation 4**

Members recommend that a Community Infrastructure Levy charge of at least £100 per metre square is applied against student accommodation; the community infrastructure levy rate applied against student accommodation in Cardiff's preliminary draft charging schedule was NIL. Evidence suggests that the viability level for student accommodation in the United Kingdom is high (particularly for cities with a Russell Group university, for example, Cardiff), and that developers generally don't dispute rates of over £100 per meter square for such developments.

## Recent Legislative Change & Developer Contributions

### Key Findings

- The Planning (Wales) Act 2015 created a series of three new planning obligations which must be achieved to satisfy the requirement of a S106 Agreement. These are that it is necessary to make the development acceptable in planning terms; that it is directly related to the development and that it is fairly and reasonably related in scale and kind to the development. These changes mean that S106 Agreements now need to be more specific and so the Council needs to update the process it uses to support the creation of such agreements. It was felt that consultation and agreement of use needed to be earlier in the process; this should include agreeing a list of consultees and stipulating a point in the process where input and decision making on the nature of the S106 Agreement is made. Now seems like a good time to look at the process.
- The Planning (Wales) Act 2015 states that it is now not possible for S106 funding to be pooled more than five times to fund a single project. This means that local authorities need to be smarter and more specific in how they write S106 Agreements; doing this will ensure that they do not accidentally 'lock' themselves out of funding a necessary and relevant project using this developer contribution.
- The task group needs to examine the impact of the Planning (Wales) Act 2015 on implementing the CIL. It seems that the potential use of two different funding streams (S106 and CIL) has merely created confusion – it is now important to provide some degree of clarity between the uses of the two funding streams.
- The Environmental Scrutiny Committee is due to undertake a scrutiny task & finish exercise on the 'Management of Section 106 Funding for the Delivery of Community Projects'. This has a clear linkage to this CIL task & finish exercise.

- The importance of doing as much consultative planning up front before actually generating any money was emphasised during the task & finish exercise.
- The change in S106 legislation around pooling of no more than five pots of S106 funding means that the Council has to change the way that it operates. Previously it had a practice of pooling lots of small S106 contributions to deliver large infrastructure projects. The use of CIL now helps them direct all of the funding into specific infrastructure projects. Section 106 agreements now need to comply with the three legal tests and have to provide specific detail on what they will be used to address.
- The loss of S106 funding to wards in Bristol did not create much of an impact as decision making has generally been delegated away from wards to Neighbourhood Partnerships.
- Two authorities also prepared 'Developer Contributions Supplementary Planning Documents' alongside Community Infrastructure Levy preparation to provide clarity and to identify those obligations still required for large strategic sites. A 'Developer Contributions Supplementary Planning Document' will explain the process by which planning obligations in Cardiff will be sought. Several authorities saw the implementation of CIL as a good opportunity to write new Statutory Planning Guidance on the use of developer contributions.

#### **Recommendation 5**

The Community Infrastructure Levy Regulations 2010 (amended) created a significant change in the way that we now have to deal with developer contributions in Wales. For example, it provides three new legal tests which have to be applied against any new Section 106 Agreements; it restricts the number of pooled Section 106 Agreements to five per project and generally requires that Section 106 Agreements are written in a more detailed and development specific manner. In addition to this the Council is currently

working towards the adoption of a Community Infrastructure Levy for Cardiff which will produce further change in the way that developer contributions are managed. In the light of this change Members recommend that the Council should produce a new Supplementary Planning Guidance document for developer contributions. Such a document should detail all of the developer contribution process in Cardiff and provide clarity for all stakeholders during the period of change.

### **Recommendation 6**

The Environmental Scrutiny Committee is due to start a task & finish exercise titled 'Management of Section 106 Funding for the Development of Community Projects'. This exercise will review and consider the new process for agreeing what can be included in a Section 106 Agreement and how potential projects can in future be funded from this and other forms of developer contributions. In particular the exercise will explore how the Council can develop a list of projects while potentially building community councils into the process. Implementing such a process could help support community councils identify suitable projects which can be funded from future developer contributions, for example, Community Infrastructure Levy monies and Section 106 funding. Members recommend that this task & finish report is considered when developing new Supplementary Planning Guidance for developer contributions.

## Community Infrastructure Levy – Regulation 123 List

### Key Findings

- When adopting the CIL the Council will need to publish a Regulation 123 List to define infrastructure which can be paid for through the funding mechanism. Projects or areas designated for funding through the CIL and which are included on the Regulation 123 List cannot receive financial support from any other type of developer contribution, for example, if a school is listed on the Regulation 123 List then it cannot receive any S106 funding. The list has to include all planned and potential projects to be funded by CIL.
- CIL is best used for large infrastructure projects. CIL monies cannot be used for affordable housing – this can only and will only be secured using S106 contributions.
- Bristol's Regulation 123 list contained a small number of very specific and expensive infrastructure items. In the early years Bristol only received a very small amount of CIL funding – only £3,600,659 collected in the first two years. This funding is allocated against a specific series of bus transit schemes and the money can only be spent once it has reached the required level (in this case approximately £5 million).
- Members were keen to have the opportunity to comment on the draft Regulation 123 List prior to it being finalised. They were told that the draft Regulation 123 List would be available in spring 2016.
- Rhondda Cynon Taff (RCT) decided to use the CIL to fund all schools in the local authority area. This has proved a problem as income from CIL has been slow and as long as the Regulation 123 List remains the same then schools in RCT cannot receive any S106 funding. As a result RCT are reviewing the content of their Regulation 123 List.
- The Mayoral CIL was cited as an example of best practice – this involved all London contributions being used to fund Cross Rail. It was noted that

CIL funding for such projects does take a long time to build up. It was suggested that allocating CIL funding to the South East Wales Metro would seem like a good idea.

- There would be greater buy in from developers to the CIL if they knew what was going to be on the Regulation 123 List.
- Members were keen to know how the Regulation 123 List would be developed and who would be consulted in developing the list.
- Creation of the CCBC Regulation 123 List involved starting with a list of all required infrastructure and then reviewing all possible funding sources to calculate any funding gaps. Once this was worked out CCBC applied a basic rule of thumb where onsite works use S106 and for offsite works use CIL. The overall CCBC funding gap was £91 million.
- The Bristol Regulation 123 List includes a very specific list of large infrastructure items which support large areas of the city. The items listed on the Regulation 123 List are drawn from the Infrastructure Plan which is a mandatory part of Local Development Plans in England. Initially they have prioritised a number of important transport schemes. The Regulation 123 List can be reviewed on a regular basis and could potentially change if an administration or administration priorities changed. Bristol last reviewed the Regulation 123 List three months ago.
- Infrastructure Plans are not a mandatory part of Local Development Plans in Wales, however, Cardiff has included one in its Plan and the inspectors have asked that it is reviewed every year.
- There needs to be a clear process in determining how items are allocated to the Regulation 123 List. Details of consultation and the decision making process need to be clearly recorded, for example, how the process relates to Cabinet decisions, the Capital Programme Board and the annual budget setting process.

- The Bristol CIL is yet to generate enough to cover the required amounts for the first transport schemes which they hope to fund. This does not mean that the monies have to sit there until the total amount is collected, instead funding can be drawn down in phases as the scheme(s) develop.

#### **Recommendation 7**

Members recommend that Cardiff's Regulation 123 List includes very specifically defined projects which are generated by and supported from existing Council strategies. Evidence suggested that failing to specifically define a project could result in wider services being excluded from Section 106 Agreements, for example, Rhondda Cynon Taff placed schools on its Regulation 123 list – this then prevented them from receiving Section 106 Agreement funding for any schools in the local authority area. This approach is particularly impractical during the initial phase of a new Community Infrastructure Levy as funding can often take up to two years to filter through the system potentially cash flow issues for a local authority.

#### **Recommendation 8**

The task group was told that the Council is looking to publish a Draft Regulation 123 List in spring 2016; this would include a list of proposed projects to be funded by the Community Infrastructure Levy. They would like to have the opportunity to review the Draft Regulation 123 List so that they can provide feedback on the proposals in advance of the List being finalised.

## Community Infrastructure Levy – Administration

### Key Findings

- Many in the industry thought that CIL would simplify the developer contribution process – instead it has become over bureaucratic.
- In CCBC the major issues which have been created by CIL are administrative. They have had many problems with self build as they don't complete the forms properly (they assume that the process is covered by the planning process and don't understand that it is a separate form). Also social housing is exempt from CIL and dealing with the exemption forms is very onerous. CCBC estimate that it costs 5% to administer the scheme. Many developers were (are) unaware that separate paperwork needs to be completed for Building Regulations and CIL. This has caused a problem as developers have generally submitted to Building Regulations and forgotten to submit to CIL. CCBC has yet to start enforcement for failure to declare or pay CIL. These problems are despite starting to create a CIL administrative system two years in advance of adopting CIL.
- In Bristol certain aspects of the CIL administration have proved problematic, in particular processing exemptions paperwork for self build, social housing and extensions. Administering CIL creates lots of work for little return.
- 5% of the CIL funding collected can be used to cover the cost of administering the scheme. Bristol reviews the amount it draws down on an annual basis and the percentage value varies from year to year. CIL set up costs can be recovered retrospectively from within the 5% administration allowance; this is quite useful as CIL receipts can take several years to filter through after implementation of the scheme.
- CIL administration in Bristol spends 80% of its time chasing 15% of the CIL receipts.



- Dealing with fewer S106 agreements does not deliver financial benefits in terms of reduced local authority legal costs as the developer pays for the legal set up costs of a S106 agreement.

### **Recommendation 9**

It was clear from the evidence that certain elements of the community infrastructure process were difficult to administer, time consuming and created a financial burden for services tasked with running the scheme. Examples suggested that:

- Small builders found managing the community infrastructure levy paperwork difficult;
- In some instances local authorities spent as much as 80% of allocated collection time chasing as little as 15% of the total monies;
- That dealing with Community Infrastructure Levy exemptions such as self build and extensions involved significant work for little or no reward.

To help address these issues the task group recommends that:

- The Planning Service starts designing its Community Infrastructure Levy administration scheme as early as possible and learns from the best practice examples and lessons learnt of other local authorities;
- The Planning Service undertakes a review to explore the charging possibilities for Community Infrastructure Levy administration;
- The Council engages in proper engagement with the appropriate stakeholders to clearly explain the implications of the Community Infrastructure Levy and exactly how the process will work.

## **Community Infrastructure Levy – 15% Community Council Funding Allocation**

### **Key Findings**

- 15% of the funding generated through CIL within a particular ward / local neighbourhood boundary has to be spent within the area. When there is a community council within the area the 15% funding is allocated to them so that the money can be spent on whatever the community council deems appropriate. The 15% funding allocation to community councils is capped at a £100 contribution per dwelling across the overall area.
- Two thirds of the CCBC area has community councils. These have all been briefed on CIL allocations; however, no limits have been applied on how the monies are spent. The CCBC view is that the best way forward here is to work with and educate the community councils to help achieve a good outcome. In CCBC working groups have been set up to help local community councils develop schemes.
- A view exists that giving CIL funding to community councils is no more than 'buying off' local people and that local authorities will agree a planning consent just to get the CIL. Clearly this isn't correct; however, it does stress the importance of educating local people (in particular community councils) about how CIL may be used.

### **Recommendation 10**

The Council needs to engage with and educate community councils on the changes caused by the implementation of the Community Infrastructure Levy. In particular they need to raise awareness of the potential 15% Community Infrastructure Levy funding windfall which could be triggered by new developments in the area along with an explanation of the options available for spending the monies.

## Community Infrastructure Levy – General Information

### Key Findings

- Norwich has pooled all CIL monies from the region into a city region approach. This appears to be working well. Peter Brett Associates felt that this was a better approach for development as a whole.
- Plymouth has applied a good neighbourhood approach for local CIL spend. They use the CIL monies to match fund local crowdfunding projects.
- Shropshire has created a series of local neighbourhood plans which appear to work well.
- Funding obligations need to directly relate to the development, however, they are not restricted by ward or other geographical boundaries.
- The CIL is an essential planning tool which will be used to generate significant amounts of future development. It is a fixed per m<sup>2</sup> charge which will assist the development change. It is different from S106 in that it cannot be negotiated.
- The purpose of CIL is to demonstrate there is a 'funding gap'. CIL will not be able to pay for all identified infrastructure requirements.
- CIL can only be implemented after a Local Development Plan is approved. The CIL can only be adopted after it has been through a thorough consultation process; this will include examination by a public inspector.
- CIL is only one of a number of funding sources which can be used to develop infrastructure. Other options include the Workplace Parking Levy; grants; Council funding; UK Government funding; Welsh Government funding; European funding; statutory undertakers; private finance; road user charging; voluntary sector.

- The Masterplanning process has been well received by developers. A masterplan is a good tool for helping to manage the development of large new sites.
- CIL is payable on implementation, i.e. when the build starts. Potentially deals can be done on larger schemes as there are potential cashflow issues for larger developments. S106 Agreements can be delayed, i.e. payment isn't necessarily required at the starting point of the build and can, subject to the terms of the S106 Agreement, be phased across different parts of the development. Developers appear to prefer the S106 approach because it is more flexible than CIL. The CIL rate is fixed and it makes phasing of development difficult. Also in any established industry it is natural for parties to be reluctant to change.
- Cardiff aims to adopt the CIL in January 2017.
- Cardiff adopted its Local Development Plan in February 2016.
- Developers care about the infrastructure to be provided around the new developments – it helps to sell the properties they build. This means that the Council and developers like to engage about the development of new sites as early as possible. Developers are not in the business of delaying applications to avoid developer contribution payments as there are much larger sums of money at stake.
- Members felt that it was often sensible to ask for developer contributions to upgrade existing facilities instead of asking for new infrastructure or to fund 'the big idea'. Developers find it cheaper to build a facility asked for as a part of a S106 Agreement instead of just providing the cash. They are onsite already, enjoy existing economies of scale, it is quicker and cheaper as the Council doesn't have commission and run the project and overall it involves fewer local authority working hours (which equates to money) to deliver the infrastructure.

- When the construction industry representative was asked if developers preferred to fulfil developer obligations by building a facility or by providing cash he responded by saying that this depended on the development, i.e. that they would prefer to take the decision on a case by case basis when reviewing the section 106 agreement.
- It was noted that the overall value for Cardiff's Infrastructure Plan requirement was £2.4 billion (this included rail improvements). CIL and S106 are only a part of the funding which will be used to fund this new infrastructure.
- Prior to the task group meetings the Members were not really aware of the impact that CIL would have on funding infrastructure in Cardiff. Further to this there was a lack of knowledge on how the CIL would impact on S106 funding and how Members could access funding from this source for their local ward.
- The Housing Partnership Programme will not be exempt from CIL.
- Creating the major developments would be a long term project. Properties and developer contributions would be released over a long period of time. Developers don't like flooding the market with properties as this can bring down prices.
- Providing a definitive view on CIL is very difficult as it a very new mechanism. Very few authorities have actually adopted it and circumstances are changing all the time.
- S106 funding and CIL are calculated using a standardised approach.
- Not all S106 funding has to be spent on the specific site; areas away from the site which are impacted by the new development can receive funding. For example, road alterations away from the site can be funded by S106 funding as long as the new site has an impact on the specific piece of road.

- New developments and refurbishments both attract CIL. In particular there is lots of guidance for refurbishments which CCBC has yet to really get to grips with. A basic rule with CIL is that extra floor space generates a liability. A discount applies for initial floor space and anything over an extra 100m<sup>2</sup> attracts a charge.
- CCBC undertook a joint viability study with RCT and Merthyr Councils. The viability in all three areas is very different – this is mainly down to the affordable housing requirement of each authority, for example, RCT 20% and CCBC 40%.
- When Peter Brett associates were asked to estimate the potential CIL value for Cardiff it was explained that it would depend on how the value is calculated. It has been estimated that it will be £40 million to £50 million without taking into account affordable housing. If the 20% social housing figure was applied then this would be closer to £30 million.
- Bristol was the eighth local authority in the United Kingdom to adopt CIL and was one of the government's CIL frontrunners. CIL charges took effect on 1st January 2013.
- The general expectations of CIL prior to launch were to create a more transparent system; to generate fewer Section 106 Agreements; to create a fairer mechanism for collecting funds for infrastructure as virtually all development pays a proportionate amount and to create a greater level of developer contributions overall.
- Evidence suggested that the successful authorities engaged well with Members from the outset, i.e. they kept them briefed and involved them in all steps of the exercise. Early planning is essential.
- Lessons learnt suggested that it was important to make CIL information a validation requirement of a planning application. In addition to this it is important to involve as many Council services as possible in the process.

- Geography and approach can influence spending decisions. Governance needs to incorporate partnership working with parish councils and other mechanisms in non-parished areas. It is very important for people to accept that CIL isn't a 'silver bullet' for funding all infrastructure requirements.
- The Department for Communities and Local Government reported on Section 106 and as part interviewed early adopters of CIL. They cited a number of benefits from CIL, these included - the ability to demonstrate that funding would be in place to support growth alongside a new local plan; speed of securing payments because of avoiding negotiations and wider range of receipts where it would not have been realistic to negotiate previously.

#### **Recommendation 11**

During the task & finish exercise Members discussed the options of receiving financial contributions as a part of a Section 106 Agreement against having the developer actually deliver the work in lieu of an actual financial contribution. While advantages were identified for both approaches the group generally preferred the option of having the infrastructure actually provided by the developer instead of simply receiving a financial contribution. They felt that it transferred risk of delivering the infrastructure back onto the developer who in actual fact would probably be in a better position to deliver the project. In turn it would also reduced the burden of work for the local authority, for example, it wouldn't have to commission the project to a third party and then manage it, etc.. Therefore, Members recommend that whenever possible the Council should look to encourage developers to actually provide the infrastructure instead of accepting a financial contribution.

### **Recommendation 12**

Prior to and during the task & finish exercise it was clear that Member knowledge and understanding of the Community Infrastructure Levy and Section 106 Funding was limited. The recent legislative changes and proposal to introduce the Community Infrastructure Levy suggests that now is a good time to raise Member awareness on developer contributions and how these funding sources can benefit Cardiff communities. On this basis the task group recommends that the Council should offer Member training on developer contributions in the next 12 months. The training should be used to raise Member awareness of the changes, include details of any new Supplementary Planning Guidance for developer contributions and explain how such funding can be used to benefit local communities.

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## WITNESSES TO THE INQUIRY

During the inquiry the task group was grateful to the following witnesses who provided verbal evidence or written contributions:

- Councillor Ramesh Patel, Cabinet Member for Transport, Planning & Sustainability
- Councillor Michael Michael, Chair of Cardiff's Planning Committee
- Simon Gilbert - Operational Manager, Development Management (Strategic & Place Making)
- Michael Barnett – Planner
- Scott Caldwell – Director for Development at Savills
- Rhian Kyte - Team Leader, Strategic & Development Plans at Caerphilly County Borough Council
- Mark Felgate – Peter Brett Associates
- Russell Porter - Peter Brett Associates
- Jim Cliffe - Planning Obligations Manager, Bristol City Council
- Gladys Hingco, Scrutiny Research Manager
- Luke Catterson Researcher

## LEGAL IMPLICATIONS

The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct legal implications. However, legal implications may arise if and when the matters under review are implemented with or without modification. Any report with recommendations for decision that goes to Cabinet / Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal power of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

## FINANCIAL IMPLICATIONS

The Scrutiny Committee is empowered to enquire, consider, review and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

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