

Cheltenham Borough Council
Cabinet – 18 June 2013
Community Infrastructure Levy

Legal Implications Section – Expansion

Limited on Pooling of Contributions

The practice within some local authorities of requiring contributions within s106 agreements/undertakings to be pooled together to mitigate the culminative impacts of developments is being discouraged through the CIL Regulations.

Under the CIL regulations, from 6 April 2014 (or 6 April 2015 if proposed reforms are to be implemented), a planning obligation or undertaking so far as it provides for the funding or provision of an infrastructure project/type that may not be taken into account in determining a planning application if five or more planning obligations entered into on or after 6 April 2010 already provide for the funding or provision of that project or type of infrastructure.

This therefore encourages the adoption of CIL, as it prevents agreements or undertakings from being used to achieve a purpose that the Secretary of State thinks would better achieved through the application of CIL.

Prevention of Double Dipping

On the adoption of a Charging Schedule, there is to be no actual or perceived “double dipping” with developers paying twice for the same item of infrastructure.

If a Charging Schedule is adopted, but no list of infrastructure projects or types of infrastructure that the Council intends will be or maybe wholly or partly funded by CIL has been published by the Council, on the Charging Schedule taking effect any obligations within a s106 agreement or undertaking so far as they deals with the funding or provision of infrastructure cannot be taken into account in determining a planning application.

If a list has been published, then on the Charging Schedule taking effect it will be those obligations within a planning agreement or undertaking dealing with the funding or provision of infrastructure projects or types of infrastructure within the list will not be able to be taken into account in determining a planning application.

Secretary of State guidance on the issue of the interaction of CIL and s106 obligations states that:

- i) s106 requirements should be scaled back to those matters that are directly related to a specific site and not set out in the list;
- ii) where the list includes a generic term (such as education or transport), section 106 contributions should not normally be sought on any specific projects in that category;
- iii) when authorities revise the list, they should not remove an item just so that they can fund the item through a new s106 agreement.

Therefore, the production of the list and any items included within it will need careful consideration in light of any items that the Council would still wish to be dealt with by way of s106 obligations.

However, as regards the implications for CIL spending, there is currently no requirement that CIL receipts can only be applied for infrastructure appearing on the list.