

From: Derek Murphy, Cabinet Member for Economic Development
Simon Jones, Corporate Director Growth, Environment and Transport

To: Growth, Economic Development and Communities Cabinet Committee - 18 January 2024

Subject: 2023 Community Infrastructure Levy Position

Classification: Unrestricted

Past Pathway of report: N/A

Future Pathway of report: N/A

Electoral Division: County Wide

Summary: This report is designed to provide a background understanding of the Community Infrastructure Levy (CIL) and the emerging pattern of reduced developer contribution funding secured through this mechanism yet required to mitigate the impacts of growth on County Council infrastructure and services in certain locations.

Recommendation:

The Committee is asked to note the contents of the report and make any recommendations to the Cabinet Member.

1. Introduction

- 1.1 The Community Infrastructure Levy (CIL) is a planning charge, introduced by the Planning Act 2008, as a tool for local planning authorities in England and Wales to help deliver infrastructure to support the development of their area. It came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010. Changes were subsequently made to the Community Infrastructure Levy Regulations through the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 which came into force on 1 September 2019.
- 1.2 Development may be liable for a charge under CIL depending on rates and criteria that the local planning authority i.e. a district, borough or city council has calculated and set in its area.
- 1.3 New developments that create net additional 'gross internal area' of 100 square metres or more, or create new dwellings, are potentially liable for the levy. The levy is a financial tariff paid at a cost per sq. metre of development. There are however a number of exemptions and reliefs that alleviate or reduce the charges on certain development types or in particular geographical areas.
- 1.4 Each year all district, borough and county councils are required to produce their Infrastructure Funding Statements (IFS). Authorities should consider the

known and expected infrastructure costs taking into account other possible sources of funding to meet them. This process should help the local planning authority to identify the infrastructure funding gap and a levy funding target.

- 1.5 This paper should be read in conjunction with the January 2024 GEDCCC 2023 Infrastructure Funding Statement paper.

2. The Five CIL Authorities in Kent

- 2.1 Developer contributions are secured through the CIL mechanism within five Local Planning Authorities in the county: Canterbury; Dartford; Folkestone and Hythe; Maidstone; and Sevenoaks. In these areas the contributions are collected by the Local Planning Authorities. In the last financial year, of the five CIL authorities, the County Council only received and spent contributions in Folkestone and Hythe.
- 2.2 Folkestone and Hythe are the only CIL authority that routinely provides KCC with a proportion (35%) of its CIL income, whereas other authorities invite KCC to submit bids to be made towards projects, then determining their success through their own unique internal governance processes. The bidding process required in some areas is particularly resource intensive and due to their competitive nature can often lead to failure and abortive work. Bids are open to all infrastructure providers that can include the County Council, community groups, departments within their own authority or utility providers.
- 2.3 Taking into context that any of KCC's bids would be to support strategic infrastructure already identified as being necessary through the local plan or planning application processes, the bidding processes is not conducive to securing funding for essential high value statutory infrastructure.
- 2.4 A percentage of CIL receipts is not available to the County Council for its strategic infrastructure needs. In all instances 5% of CIL can be retained by the Local Planning Authorities for administration purposes. In addition, either 15% or 25% is provided directly to Parished or Non-Parished areas, the higher level being provided to areas with neighbourhood plans in place. The result of the above is that between 70%-80% of CIL should generally be available towards strategic infrastructure.
- 2.5 In Sevenoaks, unique among the five, governance runs differently from the other authorities, they provide 25% of the CIL income whether there is a neighbourhood plan or not. There are also two different rates for CIL charged across the District so some parish and town councils will receive up to 35% of the CIL income. This means there is less available for the strategic spend.
- 2.6 The 2019 amendments to the CIL regulations removed the previous restriction on 'pooling' more than five planning obligations towards a single piece of infrastructure. This means that charging authorities can use funds from both CIL and s106 to pay for the same piece of infrastructure, regardless of how many planning applications have already contributed towards it. This amendment recognised the acute challenges of CIL funding, which is widely acknowledged as not being sufficient to meet the various infrastructure requirements that are

needed to make new developments sustainable in planning terms. In practice, however, the approach for using both s106 and CIL in combination is inconsistent across the five authorities, and indeed England.

2.7 Canterbury

2.8 Canterbury is the latest of the five CIL authorities to adopt CIL which they have been charging since 1st April 2020. The City's 2022 Infrastructure Funding Statement demonstrated a total retained CIL pot of £312,909 as at March 2022. The authority do not currently have any governance mechanism in place that allows for the County Council to access funds for strategic infrastructure.

2.9 The adopted 2017 Local Plan allows for all strategic sites to be dealt with through the s106 system with only the minor sites being reliant on CIL. However, most of those sites now have planning permissions and without a new local plan in place, it is uncertain as to how much support there will be for the use of s106 on future applications.

2.10 Dartford

2.11 Dartford was the first authority to introduce CIL in Kent, doing so on 1st April 2014. [Dartford's Annual Community Infrastructure Levy Rate Summary 2022](#) sets out the details of the current CIL Charging rates. The District's 2022 Infrastructure Funding Statement (IFS) demonstrated a total retained CIL pot of £20,243,817, the highest of the CIL authorities within Kent.

2.12 Almost all developer contributions are now collected using CIL and not s106.

2.13 Folkestone and Hythe

2.14 Folkestone & Hythe District Council formally adopted its revised Community Infrastructure Levy (CIL) Charging Schedule on 29 March 2023. The Schedule came into effect on 1 April 2023 and has replaced the CIL Charging Schedule (June 2016). CIL has been operational in the District since the 1st August 2016.

2.15 Folkestone and Hythe CIL policy ensures that KCC receives 35% of their CIL receipts for the previous financial year. In addition to the fixed proportion, their policy also now allows for KCC to secure contributions towards Education through s106 agreements to ensure that sufficient funding is provided for this area.

2.16 The District's 2022 [Infrastructure Funding Statement](#) demonstrated a total retained CIL pot of £1,771,242.06 as at March 2022.

2.17 Maidstone

- 2.18 On 25 October 2017 Maidstone Borough Council formally approved the [Community Infrastructure Levy \(CIL\) charging schedule](#) at full council. It came into effect in the Borough from Monday 1 October 2018.
- 2.19 The Borough's 2022 [Infrastructure Funding Statement](#) demonstrated a total retained CIL pot of £3,173,699. Almost all developer contributions are now collected using CIL and not s106.
- 2.20 KCC made an application to Maidstone Borough Council for CIL funding in July 2022. Bids were made towards the expansion of the Maidstone Grammar School for Girls (£4,519,310) and a number of highways schemes, (Linton Crossroads, M20 J7 & Hermitage Lane Walking and Cycling improvements) totalling £7,014,731. Over a year after submission of the bids, the Borough Council advised KCC that we had been successful in only one of our bids. The successful bid was for £1.83m towards the upgrade of junction 7 of the M20 and all other bids were unsuccessful. The County Council will attempt to secure other funding opportunities as well as seek to work with the Borough Council to improve the rating of the failed bids. The £1.83m figure is not shown in table 1 below, as this is the provisional total value of the successful bid which is conditional to terms being agreed and is not yet received.
- 2.21 Sevenoaks
- 2.22 Sevenoaks District Council has been a CIL charging authority since 4 August 2014. From this date until March 2021.
- 2.23 The District's 2020 Infrastructure Funding Statement demonstrated a total retained CIL pot of £2,027,780.00 of which there remained £95,251 unallocated. Almost all developer contributions are now collected using CIL and not s106, however the authority has recently agreed with KCC to enter into s106 agreements to towards the costs of Education infrastructure.
- 2.24 KCC made a successful bid towards Education sports facilities for £1.5m.

3. CIL Income

- 3.1 Table 1 below shows the picture of CIL funding received by the five CIL authorities since 2015, and up to the end of the financial year in 2022 alongside that passed to KCC. Out of the £42.6 million of CIL received by authorities across the county, KCC has been allocated £2.62 million of the total amount. This is 6.15% of the total CIL income across the county up until the end of 2021 - 22 financial year.
- 3.2 Costs of KCC infrastructure items can be considerable, a 2FE Primary School being in the region of £10m. New Waste Transfer Stations will also be required in certain areas of the county to process the additional levels of waste produced by development, such facilities have an indicative cost of £13m each. When reviewing the amounts demonstrated in the table below, it becomes immediately apparent that the amounts of CIL being received would

be insufficient to cover the costs of Education alone, let alone the wider impacts on services that KCC provides that should be being mitigated.

District	District CIL Receipts up to 2022 *	County CIL receipts up to 2022	Percentage
Canterbury	£487,982	£0	0
Dartford	£24,430,597	£0	0
Folkestone & Hythe	£2,094,550	£369,681	17.6
Maidstone	£3,300,062	£0	0
Sevenoaks	£12,300,000(approx.)	£ 2,250,000	
Total	£42,613,161	£2,619,681	6

Table 1 – CIL funding received by Kent Charging Authorities

*Information taken from Local Authority Infrastructure Funding Statements

- 3.3 To demonstrate the point further, Table 2 below provides information on the overall amounts received by KCC through CIL to date against the amounts KCC require to mitigate the cumulative impacts of the planning applications received as recorded on our database. This shows the levels of funding that KCC should be seeking from the LPA CIL pots. The tables can be used to gain an insight into the potential funding gaps emerging in each authority.
- 3.4 To a degree the table is comparable to the s106 KPI on developer contributions sought through s106 agreements, for which the service reported a success rate of 99.6% of mitigation secured against mitigation requested. Clearly the rate of secured CIL receipts against that requested, at 7.6% in CIL areas, is significantly lower.

	CIL received by KCC since CIL commenced	Total KCC CIL mitigation requested from planning applications
Canterbury	£0	£2,714,039.80
Dartford	£0	£2,267,755.96
Folkestone & Hythe	£933,735	£8,914,789.90

3.5	Maidstone	£0	£11,182,201.87
	Sevenoaks	£2,250,000	£16,407,423.80

Table 2 – CIL funding received by the County Council V KCC mitigation required.

- 3.6 Whilst the figures above are helpful there are other factors to be considered. Of the money received from Sevenoaks £750,000 went towards a jointly co-ordinated project to improve Swanley Station, so not directly mitigating impacts on a KCC service. The remaining £1.5m Sevenoaks CIL was towards a £3.7 million scheme for the creation of new playing fields and other sports facilities on the joint campus occupied by Trinity School, Weald of Kent Grammar School and Tunbridge Wells Boys Grammar School. The now completed project has substantially augmented, modernised and improved the existing sports facilities on the campus. The new facilities are also available to local sports clubs, teams, groups and individuals for hire in the evenings and at weekends, when not used by the schools. Sporting facilities are also offered at no-profit or no-cost to visually impaired children through the auspices of the previous owners of the site, the Royal Society for Blind Children (RSBC).
- 3.7 In Dartford £4.2m CIL is being invested by the Borough on highway improvement schemes through the Kent Thameside Strategic Transport Infrastructure Programme, particularly in and around the town centre.
- 3.8 CIL income has to date been received in annual blocks and other than in Folkestone and Hythe, is related to projects as opposed to planning applications. It is therefore not possible to directly compare an amount requested from an application, to the level of funding received for that application.
- 3.9 Therefore the only way to attempt to demonstrate the potential funding gaps is through an annual presentation of a table akin to Table 2 of this report.
- 3.10 It should also be noted that some authorities do allow for certain KCC areas or types of development to be mitigated by s106 and CIL contributions in combination. Development income can vary year by year depending on multiple factors, relating primarily to the number or size of applications being granted consent and the ability of existing infrastructure to accommodate growth. For instance, current reduced birth rates in some areas result in additional Primary Education infrastructure, or mitigation, not being sought. Other areas such as Ashford have been hit by nutrient neutrality issues which have resulted in a reduction in consents and consequential low s106 values. In Canterbury the consenting of large strategic site applications covered by s106 means that, whilst a CIL authority, KCC is still receiving significant funding through that mechanism.

4. Financial Implications

- 4.1 The purpose of the main body of this report is to highlight the financial implications of the impacts on KCC services within CIL authorities.
- 4.2 Whilst KCC continues to secure considerable amounts of s106 at a 99.6% success rate of the mitigation required, there is approximately £38m of unsecured mitigation that may never be realised within the CIL Authorities. This significantly reduces KCC's ability to provide the required levels of mitigation in those areas and will become a financial burden on KCC's budget. The potential loss of income to mitigate the impacts of growth within CIL authorities is significant. KCC service areas have been made aware of the potential implications in CIL areas. Each KCC Service is to make "CIL bids" for funding as and when a policy compliant project is at a suitable point to do so to ensure, as much as possible, that the burden of growth related costs do not impact on the County Council's budget.

5. Legal Implications

- 5.1 In situations whereby the County Council believes that a Local Planning Authority is allowing planning applications to be consented without providing sufficient levels of mitigation the authority is able to object and if necessary legally challenge planning decisions.
- 5.2 Importantly KCC's position at recent appeals on the use of combined s106 and CIL, along with the County Council receiving s106 developer contributions directly, rather than via the LPA has been endorsed by the determining planning inspectors.

6. Conclusions

- 6.1 The picture of the overall emerging loss of CIL funding for the County Council is complex and the full impacts on KCC's infrastructure and services is, to a degree, still emerging. In Canterbury for instance, KCC continues to secure significant amounts of s106 through their existing Local Plan strategic sites policy that allows s106 use for those sites. Folkestone & Hythe and Sevenoaks have recently agreed s106 agreements to cover the costs of mitigating education infrastructure.
- 6.2 Noting the multiple factors to be considered, it should still remain clear that CIL alone is unable to fund the levels of infrastructure required by a county council. It is also clear that the legislation does allow for s106 and CIL to be used in combination to close any funding gaps otherwise emerging.
- 6.3 Along with other upper tier authorities across the country, the County Council continues to make appropriate representations in response to Government planning reforms to highlight the issues with the existing national policies on

securing sufficient levels of growth-related mitigation and affordable housing, particularly relating to CIL areas.

- 6.4 Outputs from the Short Focussed Inquiry on developer contributions and contributions towards the published County Council Networks report on the Levelling Up and Regeneration Bill are examples of how the County Council continues to seek to influence policy, highlighting the shortfalls of the current planning system in respect of mitigating the impacts of growth.
- 6.5 Ongoing strong partnership working with the CIL districts is imperative so that the limitations of CIL to mitigate impacts of high value infrastructure such as education can be addressed. Steps to reduce funding gaps are best sought through influencing Local Plan or CIL strategy reviews, direct negotiation or working collaboratively to influence national policy.

7. Recommendation

8.1 Recommendation

The Committee is asked to note the contents of the report and make any recommendations to the Cabinet Member.

9. Background Documents

KCC 2023 Infrastructure Funding Statement.

10. Contact Details

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