

Report to The Hampshire Partnership

Date:	4 March 2015
Title:	Implications of the Community Infrastructure Levy and Changes to Section 106 for Hampshire Authorities

1. Background

- 1.1 In recent years Hampshire's local planning authorities and the County Council have worked closely together to address the challenges of infrastructure planning and delivery, as illustrated by their Memorandum of Understanding agreed in June 2013 and the establishment of a Community Infrastructure Levy (CIL) Officers Group. However, this year will witness further changes to the national planning system which will have serious implications for the ability of Hampshire's local authorities to secure funding for critical infrastructure. This report outlines those changes and the likely implications.
- 1.2 In January this year changes to the National Planning Policy Guidance (NPPG) came into effect which prevent local planning authorities from seeking affordable housing contributions and tariff-style planning obligations from self-build and small scale developments (ie up to 10 houses).
- 1.3 On 6 April 2015 the final part of the Community Infrastructure Levy (CIL) Regulations will come into force. This will change the way that local authorities use section 106 for infrastructure funding. CIL Regulation 123 will prevent authorities from both using tariff policies (standard charges for infrastructure contributions) and from pooling contributions for infrastructure from more than 5 planning obligations.

2. Implications

- 2.1 The changes to the NPPG effectively prevent local authorities from ensuring that the cumulative impact of small scale development is effectively mitigated. It has particularly severe implications for those authorities with a Special Protection Area (SPA) for which European law requires appropriate mitigation to be secured before planning permission is granted.
- 2.2 Where a CIL charging schedule is in operation local authorities do have the opportunity of collecting funding for infrastructure from all types and scales of development, subject to the details of the charging schedule. Whilst CIL is not expected to raise the same levels of funding that have historically been collected from section 106 in Hampshire, it does provide an alternative means of funding to address the cumulative impact of smaller developments in particular.
- 2.3 With respect to Affordable Housing, the prohibition on taking contributions from developments of 10 houses or fewer is likely to lead to a reduction in housing stock, as on-site provision from sites of this scale is difficult to achieve due to viability. This reduction in affordable housing stock is inevitably going to have implications for lower paid key workers in the public sector, such as domiciliary carers and health workers, who would otherwise struggle to find affordable housing within Hampshire with higher than average house prices. It may also have implications for the provision of affordable

extra care facilities which might otherwise have been provided using contributions from smaller developments.

- 2.4 A Partnership of authorities, including West Berkshire and Wokingham, have subsequently issued a legal challenge to the Department of Communities and Local Government decision about implementing this change to the NPPG on four grounds, including breach of the principles of consultation and State Aid.
- 2.5 With regard to the restriction on section 106, many authorities in Hampshire do not yet have up to date adopted local plans in place and are not therefore in a position to adopt a CIL charging schedule before the restrictions come into force. This means they will have to continue to rely on section 106 to secure infrastructure funding.
- 2.6 The prohibition on local authorities on use of tariff policies to determine the level of contributions payable, together with the restriction on pooling more than 5 obligations for any one project or type of infrastructure, will severely restrict the ability of Hampshire authorities to secure essential infrastructure funding.
- 2.7 The CIL Regulations originally specified that the restriction on section 106 would come into force on 6 April 2014, however as a result of lobbying by the County Council and other authorities this date was extended by one year in order to give local authorities more time to introduce CIL.
- 2.8 The House of Commons Communities and Local Government Select Committee published a report, entitled '[Operation of the National Planning Policy Framework \(NPPF\)](#)' on 16 December 2014 which stated that:

'So far, the number of councils choosing to use CIL has been limited. Research by Savills forecasted that 68% of councils would not have CIL in place by April 2015...We gathered that councils might be reluctant to adopt CIL because they do not consider it to be as effective a means of funding infrastructure as planning obligations...In our view, the slow adoption of CIL by local authorities speaks for itself: it is clear that some councils consider section 106 agreements a more effective means of securing infrastructure contributions from developers.'

We consider that, if councils wish to continue using section 106 they should be able to do so, without the Government placing unnecessary restrictions upon them. The Government has committed to conducting a review of CIL in 2015. In our view, it would be preferable to maintain the status quo until this review has had a full opportunity to consider the operation of CIL and its interaction with section 106 agreements.'

We recommend that the Government revoke its decision to limit to five the number of planning obligations that can contribute to a single piece of infrastructure until the proposed 2015 review of the Community Infrastructure Levy has taken place. In the meantime, local authorities should have a free choice between the use of the Community Infrastructure Levy and section 106 agreements for the funding of infrastructure.'

- 2.9 Appendix 1, attached, outlines where each of the Hampshire district, borough and city council authorities are with the local plan process and CIL. This shows that the majority of authorities in Hampshire will not be in a position to introduce CIL and therefore will be severely impacted by the Regulations.

3. Conclusion / Recommendations

- 3.4 The Hampshire Partnership is invited to consider endorsing the recommendations of the Parliamentary Select Committee and to consider writing to the Secretary of State for Communities and Local Government to ask him to review the enactment of Regulation 123 in order to permit local authorities to continue to use section 106 for a further two years, until 6 April 2017, or until such time as the local plan is in place if sooner.

Appendix 1: Update on where Hampshire authorities are with the Local Plan and Community Infrastructure Levy process

Authority	Local Plan Process					Community Infrastructure Levy Process				
	Consultation stages	Pre-submission consultation	Submission	Examination	Adoption	Preliminary Draft Charging Schedule	Draft Charging Schedule	Submission	Examination	Adoption
Basingstoke and Deane	March 2014	May 2014	October 2014 Inspector's exploratory meeting held December 2015. Changes needed – consultation on amended Plan in March 2015.	Autumn 2015	Spring 2016	January 2014	November 2014	Autumn 2015	Spring 2016	Autumn 2016
East Hampshire					July 2014	May 2014	November 2014	February 2015	April 2015	Spring 2015

Authority	Local Plan Process					Community Infrastructure Levy Process				
	Consultation stages	Pre-submission consultation	Submission	Examination	Adoption	Preliminary Draft Charging Schedule	Draft Charging Schedule	Submission	Examination	Adoption
Eastleigh	Autumn 2013	February 2014	July 2014	November 2014 Inspector's report Feb 2015 – plan not approved. New Local plan to 2036 being prepared.	Local Development Scheme not yet published	October 2013	February 2014	August 2014	On hold pending new Local Plan	
Fareham					August 2011					May 2013
Gosport	February 2013	August 2014	November 2014	March 2015	June 2015	October 2013	September 2014	November 2014	March 2015	April 2015
Hart	Autumn 2014	Autumn 2015	Winter 2015/16	Spring 2016	Summer 2016	May 2013	October 2014	Early 2015	Spring 2015	Summer 2015
Havant					March 2011					August 2013
New Forest District					October 2009					April 2015
New Forest National Park					December 2010					Decision not to adopt CIL

Authority	Local Plan Process					Community Infrastructure Levy Process				
	Consultation stages	Pre-submission consultation	Submission	Examination	Adoption	Preliminary Draft Charging Schedule	Draft Charging Schedule	Submission	Examination	Adoption
Rushmoor					October 2011	October 2012				Decision not to adopt CIL
South Downs	January 2014-2016	November 2015	June 2016	Summer 2017	Autumn 2017	March 2014	Spring 2015	Summer 2015	Summer 2015	Autumn 2015
Test Valley	March 2013	January 2014	July 2014	December 2014	June 2015	December 2013	July 2014	January 2015	Spring 2015	Spring 2015
Winchester					March 2013					April 2014