

# Appendix 1 Community Infrastructure Levy (CIL) Background and Position Paper

## Background

1. This paper describes how the current CIL system operates and outlines the progress made in implementing a CIL by Fylde Council. CIL can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities. It cannot be used to fund affordable housing. An updated Draft List of Infrastructure Projects that could be paid for by a CIL is included at Appendix 2.
2. Where all or part of a development is within the area of a parish council, a proportion of CIL receipts would have to be passed to the Parish Council, if there is a Neighbourhood Plan in place 25% of the relevant CIL receipts must be passed to the Parish Council. Fylde Council does collect considerable amounts of Section 106 payments and a comparison of Section 106 and CIL payments is provided. An estimate of the amount of money that could be generated by CIL is included, this is for the period up until 2032.
3. The evidence base for a CIL charging schedule is examined in public prior to the adoption of the CIL. The charging authority should have regard to the actual and expected cost of infrastructure, the viability of development, other actual or expected sources of funding for infrastructure and the actual and expected administrative expenses in connection with the CIL.
4. A Draft List of Infrastructure Projects (Appendix 1 ) sets out what infrastructure the CIL could pay for. An estimate of the amount of CIL that could be raised by the end of the plan period is included. The appendix also includes a comparison of CIL and 106 payments. The Council already collects considerable amounts of 106 payments, as evidenced by the Infrastructure Funding Statement. Both the Planning Advisory Service and external consultants appointed to advise the council on the progression of a CIL, advise that expecting CIL to deliver considerably more funds in addition to those currently realised through 106 payments could jeopardise the viability of development. The original purpose of writing this Report was to investigate whether or not Fylde Council should progress towards the adoption of a CIL. However, on the 11<sup>th</sup> May 2022 the Government started to progress the Levelling Up and Regeneration Bill which proposes the abolition of the current CIL arrangements and the introduction of a new Infrastructure Levy (IL).

## **Progress Made on the CIL and Changes to Requirements**

5. Fylde Council had progressed a CIL, with the assistance of viability consultants, in parallel with the Fylde Local Plan to 2032. A Preliminary Draft Charging Schedule (October 2015) and draft 'Section 123' list were published with a Community Infrastructure Levy Addendum Report [Community Infrastructure Levy \(fylde.gov.uk\)](https://www.fylde.gov.uk). However, at that time it was acknowledged that the development of the CIL was delaying the production of the Local Plan. The CIL documents were submitted as Submission Evidence Documents in 2016. Work on the Fylde Local Plan to 2032 (incorporating Partial Review) commenced immediately after the adoption of the Fylde Local Plan to 2032.
6. In 2019 the CIL Regulations were amended to remove the requirement to consult on a preliminary draft charging schedule, remove the pooling restriction, replace the Regulation 123 list with an annual Infrastructure Funding Statement, allow CIL and Section 106 payments to be

combined to fund a particular infrastructure project, allow charges to be made to cover the cost of monitoring and simplify indexation, commencement procedures and payment of CIL with respect to developments that are revised as a result of amended planning permissions.

7. Charging authorities must identify the total cost of infrastructure they wish to fund wholly or partly through the CIL. In doing so they must consider what additional infrastructure is needed in their area to support development, and what other sources of funding are available, based on appropriate evidence. Information on the charging authority area's infrastructure needs should be drawn from the infrastructure assessment that was undertaken when preparing the relevant plan and its CIL charging schedule. In Fylde's case this is in the Fylde Local Plan to 2032 (incorporating Partial Review).
8. From December 2020, local authorities must publish an Infrastructure Funding Statement (IFS), and information must be drawn from this. The IFS should identify infrastructure needs and costs, anticipated funding from developer contributions, and the choices the authority has made about how these contributions will be used. This process will help the charging authority to identify the infrastructure funding gap and a CIL funding target. Any significant funding gap should be considered sufficient evidence of the desirability of CIL funding, where other funding sources are not confirmed.
9. Fylde Council has published an IFS however, because a CIL was not in place it reports solely on Section 106 payments [Infrastructure-Funding-Statement-2020\\_21-1.pdf \(fylde.gov.uk\)](#). A draft list of Infrastructure Projects that could be funded by CIL if a CIL were introduced has been produced and included at Appendix 1. The work included a review of the existing Infrastructure Delivery Plan, the original Draft 123 List and recent liaison with Lancashire County Council Highways and Education Departments. The IFS would need to be redrafted to incorporate the updated list and submitted for Examination in order to progress a CIL.
10. The Council would also need to procure an up-to-date Viability Assessment. The Viability Assessment will show the potential effects of the proposed CIL rate or rates on the viability of development across the authority's area. As background evidence, the charging authority should also provide information about the amount of funding collected in recent years through Section 106 agreements. This should include information on the extent to which their affordable housing and other targets have been met. Both the Planning Advisory Service and the council's consultants advise that existing levels of Section 106 payments should be used as a guide to the level of CIL that could be charged. That is the total amount that could be raised by Section 106 payments combined with CIL could not be significantly more than the amount currently being raised from Section 106 payments alone.
11. A Draft Charging Schedule would also need to be prepared by Fylde Council which would set out the Council's proposals for the CIL. It should be based on evidence about the infrastructure needs of the area and the ability of development in that area to fund infrastructure in whole or in part (the aggregate funding gap). It is subject to public consultation before going forward for a formal independent examination.
12. Research has been undertaken into the current CIL Regulations via the Planning Practice Guidance and the advice on the Planning Advisory Service website. The consultants who worked on the original CIL have also provided advice. An up-to-date Draft List of Infrastructure Projects (Appendix 2) has been produced as the Council has to provide evidence of an aggregate funding gap. An approximate projection of the funds that could be generated by a CIL has been calculated. The Council continues to collect Section 106 payments and analysis of the pros and cons of the two types of payments is presented in this report.

## Spending the CIL

13. The CIL can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities. This definition allows the CIL to be used to fund a very broad range of facilities such as play areas, open spaces, parks and green spaces, cultural and sports facilities, healthcare facilities, academies and free schools, district heating schemes and police stations and other community safety facilities. It cannot be used to fund affordable housing. The CIL can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure if that is necessary to support development.
14. Where all or part of a chargeable development is within the area of a parish council, the Council would have to pass a proportion of the CIL receipts from the development to the Parish Council. The parish council must use the CIL receipts to support the development of the parish council's area by funding the provision, improvement, replacement, operation or maintenance of infrastructure; or anything else that is concerned with addressing the demands that development places on the area.
15. Where this development is also within an area that has a neighbourhood development plan in place, or the development was granted planning permission by a Neighbourhood Development Order (including a community right to build order), the charging authority must pass 25% of the relevant CIL receipts to the parish council for that area. Where all or part of a chargeable development is within the area of a parish council but there is neither a neighbourhood development plan nor a neighbourhood development order, up to 15% of the relevant receipts must be passed to the parish councils in which the development took place.

## Relationship between the CIL and Neighbourhood Plans in England

Parish Council	Neighbourhood Plan	CIL
Yes	Yes	25% uncapped, paid to the parish each year
Yes	No	15% capped at £100/dwelling (indexed for inflation) paid to parish each year
No	Yes	25% uncapped, local authority consults with community about how funds can be used, including to support priorities set out in neighbourhood plans
No	No	15% capped at £100/dwelling (indexed for inflation, local authority consults with community to agree how best to spend the neighbourhood funding

16. If charging authorities collect the CIL, they can use funds from the CIL to recover the costs of administering the CIL. 5% of the total CIL receipts can be spent on administration expenses. This is to ensure that the majority of the revenue from the CIL is directed towards infrastructure provision.

## How does the Community Infrastructure Levy relate to other developer contributions?

17. Developers may be asked to provide contributions for infrastructure in several ways. This may be by way of the CIL, planning obligations in the form of Section 106 agreements and section 278 highway agreements. There is still a legitimate role for development specific planning obligations, even where the CIL is charged, to enable a local planning authority to be confident that the specific consequences of a particular development can be mitigated.

18. Local Authorities should ensure that the combined total impact of such requests does not undermine the deliverability of the plan. Fylde Council already collects considerable amounts of 106 payments and has been advised by Keppie Massie that the current 106 payments received give an indication of the total amount of developer contributions that could be requested (including CIL). It will not be possible to dramatically increase total contributions by setting up a CIL.
19. Authorities can choose to use funding from different routes to fund the same infrastructure, they should set out in Infrastructure Funding Statements which infrastructure they expect to fund through the CIL and which through planning obligations. For example, a local authority may set out in their plan that they will use Section 106 planning obligations to deliver a new school to serve additional pupils arising at a new development on a strategic site. The local authority may also use CIL funds to deliver the school and support development elsewhere in the area.

#### **A Comparison of the Pros and Cons of Section 106 and CIL Payments**

20. The Local Government Association looked at the advantages and disadvantages of the CIL, compared to Section 106 payments and concluded as follows:

##### **Advantages**

- The CIL is generally fairer because it widens the contributions base, catches the developments that don't pay Section 106 payments and requires almost all developments to contribute.
- More specifically it is fairer on larger developments which, where they are first in or last out of an area tend to over-pay.
- It is more certain because the charging schedule combined with the planning permission will determine the amount payable reasonably precisely.
- It is faster because it removes the element of individual negotiation around the amount paid.
- It funds sub regional infrastructure which is more difficult to fund through traditional Section 106 payments.

##### **Disadvantages**

- The CIL is inextricably bound up with the development plan system so there are likely to be delays in setting a CIL, the existing CIL documents would need updating.
- The CIL therefore lacks flexibility and will be difficult to amend quickly as market conditions change.
- The CIL is mandatory with very few exceptions. As a consequence sites which have marginal viability and are unable to bear the burden of the CIL will not be developed.
- The arrangement breaks the link between development and related infrastructure. There is no opportunity for any direct agreements between the charging authority and the developer, to encourage the timely provision of infrastructure. Instead, it is said that the CIL is simply a cash collection system which makes insufficient provision for delivering necessary infrastructure.

Basically, the CIL brings in the money from the developer and requires the public sector to spend it. It is also widely acknowledged that the CIL is a complicated system to administer. The Regulations are complex and it is usually administered by the Council Tax Service as it is

collected as a tax.

### **What Could Fylde Realistically Raise through the Operation of a CIL?**

21. Most of the strategic sites in Fylde Local Plan to 2032 (including Partial Review) have planning permission. The Planning Advisory Service have confirmed that it is not possible to revisit planning consents where the CIL was not originally changed and amend them to require CIL payments. Nor is it possible to revisit planning consents that are not paying Section 106 payments and require them to pay the CIL. Therefore, the CIL could only be charged on 'new' planning permissions granted after the CIL has been introduced. Evidence documents need updating, the Council would need to formally agree what projects the CIL would fund and the Infrastructure Funding Statement would need to be updated. The CIL would have to be examined. Staff would need to be appointed to administer the CIL. It is likely that this would take at least one year leaving nine years until the end on the plan period of 2032.
22. This would leave nine years of the plan period to 2032 in which to charge CIL. It has been recommended by Keppie Massie that an estimate of the money that could be generated would be obtained by taking an average dwelling size of 100 square metres. The CIL is then charged at £70 per square metre, so £7000 per dwelling. The CIL could only be charged on the 40 dwellings per annum windfall allowance plus the remaining pieces of land (allocations) in the Local Plan which have not yet received planning permission and minded to approve applications which could be revisited to require the CIL to be charged.
23. This gives an estimate of the amount of CIL that would be paid which can then be divided by the number of years left in the plan period to give an annual figure. The housing delivery figures are taken from the Five Year Housing Land Supply Statement December 2021.
24. The windfall allowance allows for 40 dwellings per annum to be completed per year to 2032 . That is 40 dwellings x 9 years x 100m<sup>2</sup> x £70 = **£2,520,000**. The allocations provide for 371 dwellings to be commenced before the end of 2032. CIL charged would total 371 x 100m<sup>2</sup> x £70 = **£2,597,000**. Finally, the minded to approve applications which total 723 dwellings. 723 x 100m<sup>2</sup> x £70 = **£5,061,000**.
25. This gives a total of **£10,178,000** which when divided by the nine remaining years of the plan period provides approximately £1,130,890 per annum. It is difficult to compare this with Section 106 payments. In 2020/2021 the Council received a total of £259,316.13 in Section 106 payments with £223,826.64 being spent in this period. This figure was most likely impacted by Covid. In March 2021, a total of £5,361,269.44 (Section 106 monies) was available to fund public open space, highways, bus stops and transport, affordable housing, education and public realm projects within Fylde. It should be noted that developers may be able to demonstrate that the charging of CIL would have to result in an equivalent reduction in Section 106 payments in order for developments to remain viable. In conclusion, this would likely result in the overall funding realised from the CIL being similar to that paid currently through Section 106 payments.