Introduction

This case study looks at the experience that 10 authorities have had in developing and adopting a Community Infrastructure Levy (CIL) charge. This will highlight what those authorities have felt represent the important things to be thinking about and actioning throughout the process.

It should be seen as a starting point, offering ideas and options to be considered, rather than a rulebook to follow. There is no single correct way of developing a CIL charge, despite the clear viability principles that must be adhered to.

The case study authorities are:

- Bristol City Council
- Elmbridge Borough Council
- Havant Borough Council
- London Borough of Croydon
- London Borough of Redbridge
- London Borough of Wandsworth
- Newark and Sherwood District Council
- Plymouth City Council
- Shropshire Council
- Wycombe District Council.

Key things to consider in developing and adopting a CIL

The key things to consider when developing and adopting a CIL are:

- brief and involve members from the outset
- take time to plan
- consider carefully how best to use consultant support
- don’t have preconceived ideas about a CIL charge
- gather and manage evidence carefully
- allow time at preliminary draft and draft charging schedule stages
- don’t fear examination – be prepared
- think about a joint local plan/CIL examination.

Brief and involve members from the outset

When starting out on preparing a CIL, one of the key requirements identified by all the case study authorities was the importance of members being clearly briefed. CIL has been in the press a lot and obviously represents a major opportunity. However, the regulations clearly put in place certain rules regarding CIL and everyone must be clear on what those rules are.
Jim Cliffe, Obligations Manager at Bristol City Council, says that simple advice such as “you can’t have a charge for Tesco” helps to provide clarity for all. Most of the case study authorities reported that they had large funding gaps – as is common – and so with CIL being a new charge, providing clarity on the rules helps to make the point that CIL cannot represent the funding solution that can fully bridge the gap. Failure to have these principles established in everyone’s minds early on can create problems when it comes to securing collective agreement within a council on the charging schedule and its potential revenue stream.

Councillor Roger Blaney, leader of Newark and Sherwood District Council, felt that the secret for him was continuity of member involvement and officers he could trust. Blaney explains, “I had responsibility for both the Core Strategy and the CIL which helped to provide a consistent approach from the councillor perspective. I also had good officers who really understood CIL and so I knew I could trust them to produce the right charge.”

Take time to plan

On a similar note, a common piece of advice was to allow plenty of time to get the CIL charge right. Practically, this starts by thinking about the area and the type of growth that is proposed. Jim Cliffe from Bristol considered that CIL was “made for somewhere like Bristol” which is a tightly bounded authority with significant amounts of residential development, yet none on large, urban extensions. This has made setting and justifying the charge quite straightforward because development is relatively homogenous. In areas which are proposing growth on urban extensions, this represents a different quantum of development so has to be managed more carefully. Thinking about this and providing a clear brief to viability consultants will help them to reflect the right type of charge for the district’s particular needs.

Also factor in how well the viability consultants know the area. In Wycombe, the consultants were new to the area so took longer to collect evidence on rents, values, etc, than others might have. The result was that they struggled to meet the district council’s deadline. However, as Gerard Coll, its Development Contributions Officer noted, out of this negative situation came a positive side-effect; it gave the council time to think about its approach and for the consultants to gather the appropriate and vital evidence. By contrast in Bristol, the consultants had worked on the city council’s affordable housing viability study so were able to turn the work round in a matter of weeks. There is no right approach but it is important to be aware of the implications of choices made when timetabling a CIL work programme.

Consider carefully how best to use consultant support

Whilst most authorities do not have the in-house expertise to undertake the viability assessments, there are many that do. Plymouth City Council is one such authority that has a Viability Development Officer with the technical experience to undertake an assessment. In light of this the city council chose to commission consultants to provide market evidence to underpin the viability assumptions, with the council then undertaking the assessments in-house. But this did have difficulties as Peter Hearn, Planning Officer at the city council concedes. “We appointed our consultants off a framework panel without the need for a full proposal. As a result there was a lack of clarity over the respective roles of the city council and the chosen consultants. This caused difficulties when the city council wanted to undertake the in-house appraisals.”
A further issue raised by Plymouth was that it is important to appoint consultants that have both valuation expertise and a thorough understanding of CIL procedures. In their case, the chosen consultants had to ultimately resource these two aspects of the work from two different offices, which resulted in time being lost due to the handover between the two sets of consultants.

It is also possible to reuse recent consultant reports. Elmbridge Borough Council chose to appoint the same consultants that had undertaken its 2008 affordable housing viability study and to effectively update this in respect of its residential rates. Similarly, the London Borough of Wandsworth had already commissioned a significant amount of work relating to the viability of development in the Vauxhall Nine Elms Battersea (VNEB) area as well as the affordable housing viability work that had informed its recently adopted Core Strategy. As a result, it did not feel the need to commission any further viability work on residential uses in the early stages.

Whether you choose to use consultants or not, it is necessary to collect evidence from the marketplace. And this entails engaging with the very developers who are going to be paying the charge. Whilst this can create difficulties, it is of benefit to both parties that robust evidence is gathered on the assumptions that are fed into the viability appraisals. Those with developer panels felt that this was a helpful forum to gather evidence and to then get collective feedback on results. Such panels were used by Elmbridge, the London Borough of Croydon and Shropshire in developing their charges.

Developer forum case study: Develop Croydon

Develop Croydon is a private sector-led body promoting development and economic renewal in Croydon. It has a Forum which provides a collaborative, private sector-led approach to promoting the London Borough of Croydon and encouraging inward investment. It represents Croydon companies, in both the private, public and third sector, who want to realise the regeneration and economic renewal of the borough. One of its objectives is to actively engage and consult with Croydon Council.

It has approximately 17 members, including some of the most prominent developers in the UK. These cover a range of development sectors including housing (Barratt Homes), office (Canmoor), retail (Westfield Group) and leisure (Hilton Croydon Hotel). It also includes the council and the Croydon Town Centre Business Improvement District (BID) Company.

The Forum has a committee that oversees its activities. One of these is a quarterly DC Forum meeting where development proposals can be discussed. This maintains an ongoing dialogue between the council and key stakeholders in the area which is ideal for when a CIL charge is being proposed.

When Croydon was developing its CIL charge, the Preliminary Draft Charging Schedule proposed a charge of £20/m² for B-class uses within the central Metropolitan area. The consultation with Develop Croydon enabled a dialogue with developers which highlighted that they considered the economic climate for B-class uses to be better than presented. This resulted in the council commissioning further viability work on the B-class uses in the Metropolitan Centre which led to the charge for such uses increasing to £120/m² in the Draft Charging Schedule. This is that rate that has been carried through to the adopted charging schedule.
Don’t have preconceived ideas about a CIL charge

It was notable that few of the case study authorities went into the preparation of their CIL charge with a totally preconceived idea about what it should look like. One could argue ‘they would say that, wouldn’t they?’ but as Front Runners they did not have the wealth of evolving draft charging schedules and growing experiences at examination to compare their work to. In this context, the case study authorities have been very diligent in thinking extremely carefully about what might be best for their authorities, even if this now does not follow the trend.

Havant Borough Council and the London Borough of Redbridge did take the approach of testing a certain CIL charge level for residential uses which was equivalent to what they were achieving through Section 106. However, certainly in the case of Havant, it was felt that, with hindsight, this wasn’t the best approach as it lacked transparency regarding the justification for the charge. For Redbridge, the experience was more positive because they tested alternative scenarios ‘high’ and ‘low’ scenarios as well as a CIL level equivalent to their past Section 106 receipts. Wycombe District Council did benchmark its draft charges against past Section 106 receipts, but this was only done as an internal exercise to help the decision-making process on the final level of charge proposed, rather than an explicit approach with such a level as the starting point.

Two particular examples of CIL charges that few others have included stick out. The London Borough of Redbridge has a £70/m² charge for all types of development. So wouldn’t this render some community facilities unviable? No argues Ian Rae, Planning Policy Team Leader at the council. He notes that the system of charitable relief helps a lot. Also, any development relating to the council has a system in place whereby the CIL money is recycled back very quickly to the project if it is supporting growth in the area.

So for example, if the council is building a school, then the demand notice includes a council cost code so that the education department can recoup the outlay on CIL charges very quickly from the CIL monies collected. This is further supported by the fact that providers are told to factor CIL into their bids as a fixed cost when seeking capital funding for projects. Clearly this is more straightforward in single tier authorities than in a two tier area.

The second example relates to having a zero charge for affordable housing. Officers at Shropshire Council are amazed that no other charging authority has chosen to do this. The advantage of doing this, as pointed out by Helen Howie, the council’s Principal Policy Officer for Housing, is that they never have to give social housing relief. This enables them to give their own definition of what the council means by ‘affordable housing’ – Shropshire has a wider definition than the standard affordable housing definition in order to ensure that no schemes get caught by CIL. As Howie says, “it is very easy to demonstrate that affordable housing is unable to afford any CIL contributions and so justify a zero charge”.

Perhaps the most succinct advice came from Mark Behrendt, Acting Planning Policy Manager at Elmbridge Borough Council - “Where possible, keep it simple and keep it safe”. In their case they had a variable charge for retail but changed to a single charge prior to submission because ultimately it was felt that the complexity simply was not worth what could have been a hard road through examination. Behrendt stated that, on reflection, he wished they had started with the approach that a single retail charge was best - “We never questioned enough whether it was worth it” has says.
This is not to say that a certain element of complexity should automatically be discounted. It depends on your individual circumstances. Newark and Sherwood is a geographically large and diverse district. It has towns such as Southwell where residential values are comparatively high and then several former coal mining communities where values are substantially lower. Councillor Roger Blaney, leader of the council, felt that without having multiple residential zones, “the CIL would have encouraged more development in the higher value areas and discouraged development in the lower value areas. We undertook lots of viability work but it was worth it.”

Gather and manage evidence carefully

Havant Borough Council identified an issue relating to how a lack of transactional evidence is dealt with. It wanted to propose a charge for hotels in its Preliminary Draft Charging Schedule (PCDS). However, a lack of local transactions meant that there was insufficient evidence from within the borough to justify such a charge. The council’s solution was to look wider for its evidence. This is acceptable within the Regulations provided that the areas where you source evidence from are similar. In the case of Havant, it looked for evidence in Worthing, the nearest location where the hotel market was active.

This solution however did not have the intended outcome. Comments back on the PDCS made clear that consultees considered Worthing to be a very different market to Havant, with a greater emphasis on tourist hotels as opposed to Havant’s expectation that hotels more geared at the business market would be coming forward. As a result, the borough council conceded that it did not have enough local evidence and dropped the charge. This signals a clear need to think carefully about the applicability of evidence used from equivalent markets further afield to justify any charge.

On a slightly different matter, retail differentiation was an issue raised regularly by the case study authorities. In particular, the justification for differentiating between different retail uses by virtue of their size has been a controversial issue first raised during the examination of Poole’s CIL. Wycombe District Council successfully put in place a CIL charge which differentiated retail uses by size. As Gerard Coll, Developer Contributions Officer at the council explains, the recipe for success was simply to do the necessary homework. “We did a lot of work to demonstrate the differences between supermarkets and other retail uses in terms of their users, what these people are buying, etc” says Coll.

The council also used reports from the Competition Commission and the Office of Fair Trading into the supply of groceries in the UK to show that out-of-town retail was different to other uses, a fact that had been supported by the retail industry at a Competition Commission inquiry. This underpinned the application in their CIL of a 280m² threshold to which the Sunday Trading Act applies. Coll was also able to demonstrate that all the smaller shops (which were shown to have marked viability differences to the larger supermarkets) developed in the last ten years in the district were being developed at or below the 280m² threshold. All of the other shops that were developed over the same period were far in excess of this threshold.

The views regarding retail size thresholds are divergent at present but the important message is that there is a need to provide evidence proportionate to the importance of the issues that you are trying to address.
Allow time at preliminary draft and draft charging schedule stages

As Front Runners, many of the case study authorities noted how few responses they received to their Preliminary Draft Charging Schedule (PDCS) and Draft Charging Schedule (DCS) consultation stages. Most of the responses they did receive were simply not relevant, focusing on what the CIL money should be spent on or questioning certain requirements when these are mandatory under the CIL Regulations. Very few were addressing matters of viability.

Yet there was a feeling that the development industry is fast waking up to CIL. In this respect, it was felt that time was needed to go carefully through the responses as increasingly these are addressing matters pertinent to viability so there is less likelihood, as one case study authority noted, of being able to simply write “not relevant” or “no comment” next to almost all of the representations submitted.

Sarah Hains, Policy Planner at Havant Borough Council feels that it was very beneficial to sit down face-to-face with the party that submitted the main representations on their CIL. She explains, “We went through their comments point-by-point and dealt with most of them, but by meeting face-to-face we were able to address the rest of their issues. As a result, they raised no significant objection and the CIL was examined by written representations”. Equally, Shropshire was able to address matters effectively through its Developer Panel.

So the advice is, take the time needed to address issues at the PDCS and DCS stage with interested parties in order to make the process of examination more straightforward. This includes the potential need to commission further viability work from consultants.

As Steve Dennington, Plan Making Team Leader at the London Borough of Croydon noted, despite being on a tight timescale the decision to commission further work on the viability of B-class uses in the Metropolitan Centre following representations made by the development industry, was a sensible one. “There was no resistance from leading Members to the changes made because they recognised that viability considerations would be key at the Examination” observed Dennington.

Don’t fear examination – be prepared

As Front Runners, several of the case study authorities held their breath when they took their CIL charging schedules to examination. This wasn’t because they necessarily thought that their charging schedule would be found to have failed the CIL tests but because they were often heading into the unknown. Several commented that the CIL Regulations, which even as Front Runners they were repeatedly referred back to by the Department of Communities and Local Government (DCLG), were ‘impenetrable’ and often didn’t provide much comfort on certain matters relating to their particular approach.

This feeling was greatest when zero charges were proposed. As Martin Howell, Group Planner for Policy and Information at the London Borough of Wandsworth noted, his greatest concern related to their proposed zero charge for residential uses in Roehampton. However, the fact that nobody had suggested that, based on this zero charge, there should be zero charges for other areas, meant that it was barely covered by the Inspector at the examination.
The experience of others was similar, with many noting that when they had an examination by way of a public hearing, there were few parties represented around the table and comparatively little challenge by the Inspector. The message clearly is that if you get the preparation of the CIL right, then its Examination should not be too painful.

Think about a joint local plan/CIL examination

As local authorities start to feel the pressure to get their Local Plans in place and then need to be charging CIL as quickly as possible after this, the possibility of a joint Local Plan and CIL examination must be considered. Steve Dennington, Plan Making Team Leader at the London Borough of Croydon is an advocate of this approach. Explains Dennington, “Although we were subject to two service level agreements with PINS (the Planning Inspectorate), we were able to have the same Inspector and Examiner. This helped greatly with his understanding of infrastructure planning and viability across the borough. Also this approach was a more efficient use of resources; we were able to collectively conduct the examinations and have a single programme officer.”

However, Dennington also sounds a word of warning. “Your evidence for the Local Plan and the CIL has to be in line. This is particularly important in the relationship between CIL and affordable housing policy viability.” The latter is a point that has been highlighted in some recent CIL examiners reports. Lastly Dennington notes that there is inevitably a tension between the big funding gap that has to be demonstrated for CIL versus the deliverability of the Local Plan. “The need to prioritise critical infrastructure to deliver the Local Plan is paramount” says Dennington.