On your marks, get set, go! Implementing the CIL

Introduction

This case study looks at the experience that 10 authorities have had in implementing a Community Infrastructure Levy (CIL) charge. This will highlight what those authorities have felt represent the important things to consider 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 implementing a CIL charge but there are several important principles that these case studies have highlighted.

- 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 when implementing a CIL

- Start preparing as early as possible.
- Allow plenty of time before commencement of charging.
- Information, information, information.
- Make CIL information a validation requirement of a planning application.
- Involve services across the council – this is a corporate project.
- Training is time consuming.
- Structure the CIL implementation team carefully.
- IT is often where the teething problems occur.
- Ensuring consistency.

Start preparing as early as possible

All of the case study authorities observed that it is never too early in the process to start thinking about implementation. Andy Norton, Section 106 and Infrastructure Officer at Newark and Sherwood District Council says that this should be started as early as the preliminary draft charging schedule stage. This will allow time for the various monitoring and implementation procedures to be put in place and ensure that everything is in place when the charging schedule comes into effect.
On a similar note, it was felt important by most of the case study authorities to give applicants as much notice as possible of the intended start date of CIL. It was noted that many 'jobbing builders, one-man band architects and agents’ still do not understand CIL and so a CIL demand notice can come as a nasty shock to them. Helen Howie, Principal Policy Officer for Housing at Shropshire Council pointed to the "80-20 rule", namely that whilst most developers are reached by the council’s publicity (80 per cent of the gain from 20 per cent of the effort) there are a significant number of mostly smaller developers that do not fully understand what CIL means for them, and reaching them takes much more effort (20 per cent gain requires 80 per cent of the effort).

Letting everyone know as early as possible that a CIL charge is coming into force, so cannot simply be ignored, minimises the pain. Indeed, Bristol City Council took the step of telling everyone the intended start date of its CIL charge before it had gone to examination – fully ten months’ notice.

The London Borough of Redbridge highlights what may be necessary if limited notice is given. The council passed a resolution to start charging CIL in November 2011 and then formally brought the charge in on 1 January 2012.

Ian Rae, Planning Policy Team Leader, said that this left them with a bit of a headache. “There were something like 100 outstanding Section 106 agreements that we had a duty to try and get signed before the CIL charge came in. In November and December 2011 alone, we dealt with 80 of these which was pretty impressive. However, in order to achieve this we had to outsource some of the legal casework to Kent and Essex County Councils.”

Elmbridge Borough Council has been very explicit in saying when applications in the lead-up to the start date for CIL charging will be liable for CIL. Its charge came in on 1st April 2013 and the council applied a seven-week cut-off for applications. In other words, all applications registered after 11th February 2013 were liable for CIL. Initially an eight-week period was used, following the timescale for handling of smaller applications, but an extra week’s grace was given in order to provide a bit more flexibility for those with applications coming into the system.

Other case study councils agreed that it is only right to give current applicants in the system a fair chance to complete their Section 106 agreements before the CIL charge comes into force; leaving a longer period of time between adoption of the CIL and the start date for charging will make this easier. It also helps in publicising the fact that the charge is definitely coming in, which will help those jobbing builders.
Information, Information, Information

Several of the case study authorities are seeing the introduction of CIL as an opportunity to review systems, both internally and with their customers, i.e. developers and the general public. For Conor Frehill, Elmbridge Borough Council’s Infrastructure Delivery Coordinator, “the mantra has been ‘improved customer service’.” Part of this has been using every possible method to get across information about CIL. The borough council produced a simple advice note with answers to all the fundamental questions. Developers responded to this positively, saying it was good because it was simple and got to the heart of the uncertainties they had.

This is being followed up by the council producing short videos which it is placing on its website. These cover the general principles of CIL but also some real fundamentals, such as how to fill certain forms in. It is then following this up with drop-in training days particularly aimed at local agents, architects and developers for whom CIL is maybe not on their radar.

There is no substitute for telling people about something and then telling them again and again.

Providing simple, succinct advice – Elmbridge Borough Council

Officers at Elmbridge Borough Council looked at the various advice notes produced by other authorities regarding CIL and quickly realised that many of their applicants were unlikely to read them. The reason for this was the length of the documents; in seeking to reflect all the complexities of CIL, many advice notes were very long documents. Elmbridge knew that busy developers would be unlikely to read such documents so set out to produce a short document, no more than six pages long.

The ‘Interim Advice for Planning Applicants’ document takes a Q&A approach to providing clear, simple advice. It is aimed at those with a limited understanding of CIL and seeks to provide answers to the questions that are being asked. The document collates the questions raised by potential applicants when they have contacted the council. As new questions arise then they are added to the document, whilst trying to ensure that this does not unduly lengthen the document.

The document also gives commonly expected scenarios and explains whether development would be liable for CIL and what the chargeable area would be in each scenario. It also gives a simple guide as to how an applicant should calculate CIL. Feedback from developers and other users has been extremely positive.

The Advice Note can be downloaded here. This is part of a wider drive by Elmbridge Borough Council to always seek the most effective way to disseminate information. Where this can involve minimising the amount of written advice, it is seen as a positive step. The council is currently producing a series of short videos which it is placing on its website to answer simple planning questions. Videos explaining what CIL is and how one fills out a CIL charge sheet are to be added shortly.
Make CIL information a validation requirement of a planning application

Even if people are told multiple times about CIL, there is still a lot of misunderstanding at first. This is particularly the case for small developments. As Gerard Coll, Developer Contributions Officer at Wycombe District Council notes, “we have had a number of applications for residential extensions of more than 100m²” which would attract CIL, often to the applicant’s surprise.

Several authorities, including Shropshire, Bristol, Wandsworth and Elmbridge, specifically require information pertinent to CIL as part of any planning application. If this is not provided then it is not validated. As Dan Corden, Policy and Projects Officer at Shropshire Council notes, “financial issues are a material consideration so you can justify this as a validation requirement.” To do this, authorities need to amend their local planning application requirements following the procedure set out in the DCLG guidance on validation.

Officers at both Shropshire Council and the London Borough of Wandsworth noted that the existing 1APP planning application form on the Planning Portal website is not fit for this purpose. The Planning Portal includes a Planning Application Additional Information Requirement form. Local authorities can request that the Planning Portal to make this a mandatory requirement when applications are submitted. Further changes to this form have recently been agreed by the Department of Communities and Local Government and an updated form, including all the necessary additional questions to calculate CIL liability, should be available on the Planning Portal shortly. In the longer term it is recognised that it would be beneficial if CIL information was integrated into the main 1APP forms, however this has not been possible due to budgetary considerations.

Elmbridge Borough Council, as part of its validation requirements, asks applicants to provide a lot of CIL-related information which is technically only required on commencement. This has prompted some queries from developers but it has been explained to them that, with the requirements being quite onerous in what is a new system, such an approach helps to avoid nasty surprises in terms of penalties and charges later down the line. The development industry in Elmbridge has responded positively to this.

Involve services across the council – this is a corporate project

The process of charging CIL involves people from many different departments in a local authority. Along with the Section 106/policy officers, there is also usually Development Management, Planning Administration, Finance, Legal, Enforcement and IT. All need to be on board and involved early on in the process.

The ability to get all of the respective departments and their staff to understand about CIL and what is required of them is vital. As Steve Dennington, Plan Making Team Leader at the London Borough of Croydon says, “you are adding to people’s day job so need to get strong backing from the top of the Authority.” In his case, he says that the response was fantastic. Through the support of the council’s Corporate Management Team (CMT), he set up a CIL Implementation Group. Dennington met with every department in advance of formally establishing the CIL Implementation Group and felt that this was important in ensuring a positive response without the need to use CMT leverage. But having that leverage if necessary certainly helps.
Training is time consuming

Providing training to the staff from each of the departments that are going to be dealing with CIL takes time. The London Borough of Croydon’s CIL Implementation Group started meeting on a fortnightly basis eight months prior to the commencement of charging of the London Mayor’s CIL in April 2012.

As Steve Dennington notes, “there has to be strong accountability on actions from the previous meeting. This cannot be a talking shop - no department can afford to drop the baton.” He felt that he was certainly very fortunate as the morale of his group was superb. Interestingly, he felt that this had the added benefit of increasing corporate awareness. Some people in the Exchequer Services had never really got involved with the Planning team, so cultivating these relationships was felt to have wider benefits.

But it still takes time. In particular, planning administration teams often have to take on the greatest burden in terms of calculating the level of CIL, preparing liability notices, etc. Elmbridge Borough Council, in seeking to understand how CIL will work in practice for each staff member involved, has produced ‘process maps’. These maps try to assist in examining as many of the ‘what if?’ scenarios as possible. So, for example, what if someone submits the wrong form? Who is expected to deal with that? This ensures that the council is ready for all the inevitable difficulties that arise when applicants are dealing with a new system.

The London Borough of Redbridge has developed a manual to help understand the process of introducing and implementing a CIL. It can be downloaded from the PAS website.

Structure the CIL implementation team carefully

The internal experience of positive cross-departmental working at the London Borough of Croydon is unlikely to be the same across all CIL charging authorities. In London, the boroughs have to collect the Mayoral CIL as well as their own CIL charges and inevitably, the number of applications in a metropolitan area will be higher than in more rural districts. So it is important to create a system that works best for the circumstances of the individual authority.

Bristol City Council has taken the decision to keep the CIL collection work with just two officers, one of whom works part-time. This is borne out of historical experience. Jim Cliffe has been Planning Obligations Manager at the council for over ten years and during this time the Planning Obligations section has always done all the work chasing and collecting Section 106 monies, sending reminders, instructing the legal department, etc. It has only been the point at which money has to be banked and coded that he has handed over responsibility to the finance department. With CIL, the planning administration team will deal with CIL up to the point of issuing the CIL liability notice, after which responsibility passes to the Planning Obligations section to deal with relief, reviews, appeals, demand notices and subsequent collection of CIL receipts. As Cliffe notes, this will require inputs from a relatively small number of parties – just planning administration, himself and his support officer and a limited amount of input from the finance department.
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This might not work for all but it does serve to keep costs down. In the case of Cliffe and his colleague, most of the costs they incur in monitoring and enforcing planning obligations have been covered in the past by a Section 106 administration fee charged on all relevant applications. Now with CIL, the council will be able to use the 5 per cent allowance for administration of the CIL charge to cover these costs. “And this is not expected to use up anything like all of the 5 per cent allowance” notes Cliffe.

IT is often where the teething problems occur

Many of the case study authorities, as Front Runners, have been facing the issue of how to integrate CIL into their IT systems before the providers of those systems have thought about this. They have had to be patient as the providers such as Exacom and IDOX design the software. Most providers now have a CIL addition to their systems but this doesn’t mean that there won’t be teething problems. Even now it was observed by many officers that these new systems don’t do everything that they would like them to.

For example, none of the systems used by the case study authorities will automatically generate demand notices, these have to be done by hand and this puts an extra burden on planning administration staff. This was a point raised by the London Borough of Croydon as significant, particularly for London authorities where not only are there lots of applications to deal with, but there are also two charges with the Mayor’s CIL charge and the borough CIL charge.

Most of the case study authorities which use such systems commented that it takes time to bed these bolt-ons into their existing systems and there needs to be a lot of testing before they are working well enough to be formally used. Also, whilst the software providers will update the programmes over time following feedback from user authorities, there was a question raised by Plymouth City Council as to the financial implications of subsequent changes in the CIL Regulations. If such a change means that adaptations have to be made to the software because, for example, it would calculate the CIL liability incorrectly, then the council wondered whether this would result in additional charges being placed onto subscriber authorities if they wanted access to these upgrades.

It is necessary at an early stage to understand whether software bolt-ons will be permitted to work with other in-house council IT systems. With any planning IT system now having a CIL element, it ideally requires an explicit link into the finance systems of a council in order to ensure correct invoicing, etc, of CIL liabilities. But for many authorities, the concern over computer viruses is sufficient to prevent any external IT software from being able to access the council’s in-house systems. This would prevent such a system from being an option right at the start of CIL charging, so it is important to check with the finance and IT departments as to how they would view such an interface.

Elmbridge Borough Council took the decision to devise a simple in-house system using Microsoft Excel. As Conor Frehill from the borough council noted, “if there is a problem, we can deal with it internally rather than having to go to an external software house.” Likewise, the London Borough of Wandsworth produced a Microsoft Access database and supported this with a procedures manual.

The London Borough of Croydon took a similar approach. It saw the need for three existing systems within the council to ‘talk’ to each other – land charges, finance and planning. It was not possible for this to happen, so it set up a system called SharePoint, an electronic folder all of these departments can access and transfer information from each IT system onto a main spreadsheet. It was recognised that this is not ideal but this interaction was seen as preferable to a new IT system.
There are also very practical CIL requirements to be thinking about. One relatively simple tool for planning administration staff was brought in by the London Borough of Wandsworth. As Martin Howell, Group Planner for Policy and Information at the council recounts, “Everyone in Development Management was given a copy of Adobe Professional on their computers. This enabled them to mark up electronic copies of plans which could then be passed on to colleagues in the CIL Administration team who have to confirm what the CIL charge is. These can be stored electronically and checked by the CIL team without the need for the CIL team to re-measure drawings.”

**Ensuring consistency**

One of the big concerns of the case study authorities is the need to ensure consistency in approach. Much of this comes down to the lack of clarity that the CIL Regulations provide on certain issues. Peter Hearn, Planning Officer at Plymouth City Council gives an example. “We want to know whether mezzanine floors are liable for CIL. The Regulations are not absolutely clear on the matter, and there is no explanation behind the conclusion some people seem to have reached that they’re not liable for CIL. We don’t want to start applying one approach and then change.”

This highlights a reality of the CIL Regulations. Inevitably such Regulations are unable to cover every single eventuality and there will also be unforeseen issues that arise as the system beds in. But as Hearn notes, whatever the approach taken, an applicant is rightly going to want justification from the authority for the selected approach. Simply saying that this is what’s stated by the majority of contributors to an internet planning forum is unacceptable.

Local authorities will want to be able to point applicants to particular regulations or guidance but this may not always be possible.

A point picked up by Jim Cliffe, Planning Obligations Manager at Bristol City Council, is that we can’t learn from rulings made by the Valuation Office Agency (VOA) because these appeal decisions are not put in the public domain unless the applicant chooses to make them available. This is therefore one potential source of resolution that may not be possible to use.

As with many other matters, sharing experiences is likely to be the pragmatic way forward. Martin Howell, Group Planner for Policy and Information at the London Borough of Wandsworth feels that authorities in London have benefitted from sharing experiences with all the other London boroughs. In Wandsworth’s case, the London TfL (Transport for London) Group is an established forum where officers from the London boroughs can come together and discuss potential issues and how they may be resolved. This provides the authorities with an understanding of what others are doing.

Ultimately the individual local authority has to make its own interpretation and then stick to it, only changing from this approach when told otherwise. But particularly in a large, multi-authority area such as London, the correct balance needs to be achieved. As Howell notes in respect of the way they measure the size of schemes, he fully expects developers working across London to be very quick to point out that ‘so-and-so authority doesn’t measure it like that’. By sharing information across authorities there is a greater chance that a common approach is taken which will minimise the frequency that such issues arise.