

Rother District Council

Report to: Community Infrastructure Levy Steering Group

Date: 6 July 2020

Title: Community Infrastructure Levy Instalment Policy Review

Report of: Head of Strategy and Planning

Cabinet Member: Councillor Vine-Hall

Ward(s): All

Purpose of Report: To amend the Community Infrastructure Levy Instalment Policy in light of the COVID-19 pandemic.

Decision Type: Non-Key

Officer Recommendation(s):

It be **RESOLVED**: That the report be noted.

Introduction

1. The COVID-19 pandemic has placed enormous pressure on the economy and so to assist with the recovery the Government has put in place a number of measures to help businesses. One of those sectors is the construction industry and the application of flexible arrangements with regards to the Council's current Community Infrastructure Levy (CIL) Instalment Policy.

Current Instalment Policy

2. The Council adopted an Instalment Policy on the 7 December 2015 (Minute CB15/52 refers) which requires for payments to be made at set times following commencement of the development. Failure to pay on time means the Applicant will forfeit their right to pay in instalments, where applicable, and will be required to pay the full liability immediately.
3. CIL collecting authorities (local councils) also have the ability to impose surcharges on a person that has not paid CIL, however the imposition of these surcharges is at the discretion of the authority. In addition, the current regulations provide that mandatory late payment interest accrues automatically starting from the day after the day payment was due.

The table below sets out the Council's current CIL Instalment Policy:

| Amount of CIL Liability | Number of Instalments | Payment Periods and Amounts |
|----------------------------------|-----------------------|--|
| Any amount less than £50,000 | 1 | <ul style="list-style-type: none"> • 100% payable within 60 days of commencement |
| Amounts from £50,000 to £300,000 | 2 | <ul style="list-style-type: none"> • 50% payable within 120 days of commencement • A further 50% payable within 360 days of Commencement (or upon completion of development if earlier). |
| Amounts over £300,000 | 3 | <ul style="list-style-type: none"> • 30% payable within 60 days; • A further 35% payable within 420 days, and • The final 35% payable within 660 days (or upon completion of development if earlier). |

Coronavirus and CIL Guidance

4. To assist with the recovery of the construction industry, the Government proposes to amend the CIL regulations in due course to give authorities more discretion to defer payment for small and medium sized developers without having to impose additional costs on them. In the meantime, the Planning Practice Guidance (PPG) has been updated by the Ministry of Housing, Communities and Local Government (MHCLG) insofar as to confirm that the CIL Regulations 2010 (as amended) provide some flexibility for local authorities to defer the payment of CIL.
5. The PPG indicates that CIL charging authorities have the power under the relevant regulations¹ to allow those liable to CIL to pay the charge in one or more instalments and can set the date(s) on which each payment is due. CIL charging authorities can bring into effect a new Instalment Policy at any time. Although it should be noted that, any new Instalment Policy will only apply to chargeable developments commencing after the new Instalment Policy comes into effect. CIL is therefore payable in accordance with the Instalment Policy that was in place at the time of commencement of the chargeable development. For phased development, as each phase is a separate chargeable development, later phases that have not yet commenced could be subject to a new Instalment Policy.
6. As such, any changing of the Instalment Policy should be considered promptly to help stimulate new development starts on yet uncommenced sites with planning permission comprising of CIL chargeable development. It should be noted that a small number of requests have come in to the Council requesting a delay to CIL payments. Without a change in the Instalment Policy this cannot be authorised.

¹ Regulation 69B

7. It is noted that the Executive Director along with the Portfolio Holder for Strategic Planning have delegated authority to change the Instalment Policy (Minute CB15/52 refers).

Conclusion

8. In response to the spread of coronavirus (COVID-19), the MHCLG has published guidance for local authorities on CIL matters. The CIL Regulations 2010 (as amended) provide some flexibility for local authorities to defer the payment of CIL. However, under the current regulatory regime, delaying payment would result, in some cases, in mandatory interest charges for the late payment of CIL. The Executive Director and Portfolio Holder have delegated authority to amend the Instalment Policy to ease the burden on developers. It is proposed that small and medium sized developers are offered to apply to defer payments of CIL upon completion of their site if this helps with commencement of their development.

Implications

Financial Implications

9. Deferring of CIL payments may result in a longer period to collect CIL payments to fund infrastructure to support development within the District, however this should be weighed against development not coming forward (and no CIL being collected by RDC) if CIL is seen as a barrier to chargeable sites commencing in the District.

Legal Implications

10. Regulation 69B of the CIL Regulations 2010 (as amended) set out the requirements to introduce, amend and withdraw an instalment policy.
11. The regulations require the instalment policy to be published on our website and state:
 - The date it will take effect, which must be at least one day after being published on our website
 - The number of instalment payments required
 - The amount or proportion of CIL payable in any instalment
 - The payment periods calculated from the commencement date
12. Paragraph (4) specifies that a new instalment policy can be introduced at any time after the period of 28 days beginning with the date on which the previous instalment policy took effect. The previous instalment policy took effect on the 4 April 2016.

Human Resources Implications

13. None.

Other Implications

| Other Implications | Applies? | Other Implications | Applies? |
|--------------------|----------|--------------------------|----------|
| Human Rights | No | Equalities and Diversity | No |
| Crime and Disorder | No | Consultation | No |
| Environmental | No | Access to Information | No |
| Sustainability | No | Exempt from publication | No |
| Risk Management | No | | |

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|-------------------------|--|
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| Appendices: | |
| Background Papers: | |
| Reference Documents: | Paragraph: 001 Reference ID: 25-001-20190901 – Planning Practice Guidance Paragraph: 144 Reference ID: 25-144-20190901 – Planning Practice Guidance Regulation 69B – The Community Infrastructure Levy Regulations 2010 (as amended) |