

Agenda Item No: 9.4 **Report No:** 98/16
Report Title: Community Infrastructure Levy Instalments Policy Revision
Report To: Cabinet **Date:** 4th July 2016
Cabinet Member: Cllr Tom Jones Lead Member for Planning
Ward(s) Affected: All areas of the District not lying within the South Downs National Park boundary
Report By: Nazeya Hussain Director of Business Strategy and Development
Contact Officer(s)-

Name(s): Tondra Thom
Post Title(s): Senior Strategic Policy Officer (Infrastructure)
E-mail(s): tondra.thom@lewes.gov.uk
Tel No(s): 01273 471600

Purpose of Report: To seek an endorsement from Cabinet to recommend to Full Council the publication and implementation of the revised Community Infrastructure Levy (CIL) Instalments Policy for the Lewes District Council Charging Area. To seek delegated authority for the Director of Business Strategy & Development in consultation with the Lead Member for Planning to make future amendments to CIL implementation policies as may be required to facilitate the implementation of CIL.

Officers Recommendation(s):

- 1 To recommend to Full Council that the revised Instalments Policy (Appendix 1) is adopted, published and implemented, in accordance with regulation 69B of the CIL Regulations 2010 (As Amended).
- 2 To recommend to Full Council that the Director of Business Strategy and Development be authorised to make any further amendments to the CIL implementation policies.

Reasons for Recommendations

- 1 To enable the Council to monitor and ensure the collection of due CIL payments in a more efficient and robust manner, which is compatible with the recently acquired CIL monitoring software.
- 2 To enable the Council to make future amendments to implementation policies, which respond to regulatory or practical requirements in a more expedient and efficient manner.

Report

1 Background

- 1.1 CIL implementation in the Lewes District planning authority area has been in place since 1st December 2015 and the first few CIL planning cases are being processed. To date (at time of writing) no cases have been significant enough to trigger the Council's CIL Instalments policy, which was approved by full Council, as part of the CIL adoption process, on 9 November 2015. Because the CIL Instalments Policy was approved by full Council, any amendments to it need to also be approved by Council, unless delegated authority has subsequently been provided – hence, the second recommendation of this report.
- 1.2 The instalments policy was written whilst the Charging Schedule was being prepared and prior to the purchase of software to implement CIL. The instalments policy allows for the CIL amounts generated on larger residential developments to be paid in three separate instalments as the development progresses (see Appendix 2 of this report for full details of this policy)..
- 1.3 Since CIL implementation has commenced, the Council has found that this instalments policy does not particularly lend itself to the software that the Council purchased in order to ensure the legally compliant processing of CIL cases. We have also discovered that such an instalments policy will require a significant level of development monitoring by the Council, which will not be an efficient use of officers time. It is therefore proposed to amend the instalments policy in a way that is compatible with our software and allows for the collection of payments to be undertaken in a more time efficient manner.
- 1.4 At present, once a larger scale residential development commences, the payment of CIL is triggered by the percentage of the development that has been completed. If we can use triggers relating to days post commencement then our CIL software (Exacom) can be programmed with the instalments policy and all further action in relation to payment due dates is automated. The system will then trigger the alerts when payments are due and place all the due dates in relation to a development on the CIL Demand Notice when it is generated. Thus providing clarity for the Council and developer alike and avoiding the need for on-going monitoring of larger development sites (beyond that already undertaken by the Council).
- 1.5 CIL Regulations (69B) allow for charging authorities to introduce or withdraw an instalments policy through publishing the policy (including the date on which it takes effect) or notice to withdraw a policy on its website. The Regulations also allow for a new instalment policy to be brought in at any time provided the new policy does not take effect earlier than 28 days from when the previous policy took effect.
- 1.6 We introduced our instalments policy on 1st December 2015, so we can introduce our revised policy at any time.

2 CIL Instalments Policy

- 2.1 The existing policy (Appendix 2) requires an initial (25%) payment 60 days post commencement and subsequent payments to be paid upon completion of a percentage of residential units.
- 2.2 The new policy (Appendix 1) requires an initial (25%) payment 60 days post commencement and proposes the subsequent payments are (50%) 240 days post commencement and (25%) 360 days post commencement. Although this changes the way in which the instalments policy is expressed, given the time it takes to build out developments that this policy is likely to apply to, the new policy is unlikely to significantly alter the point in which the CIL payment is made in relation to the stage of development implementation.
- 2.3 The advantages of this approach to the Council are evident in respect of CIL processing efficiency. There is also the added benefit under the new policy that the CIL instalments would not be an incentive to stall a build. Whilst the current policy does not necessarily provide motivation to stall a site part way through a build, it does allow the developer to pause a site conveniently without incurring further CIL payments.
- 2.4 If the CIL instalments are not linked to developer-led build rates then this could incentivise the completion of developments as payments would be due nonetheless.
- 2.5 The new policy would not rule out the ability for a developer to build out a site in phases, it would rely on the developer phasing the development at the outset and the phasing would be apparent in the decision notice. This way each phase of development would constitute a new charging stage and each phase could qualify for instalments.
- 2.6 Properly phased developments are preferable from a planning point of view rather than stalled sites and the new instalments policy may well provide an incentive to consider phasing from the outset.

3 Conclusion

- 3.1 We consider that the new Instalments Policy provides an efficient and fair approach to accepting staged payments against CIL liabilities. We do not feel that the new policy presents a significant departure from the intention of the existing policy, moreover it represents a refinement in its articulation that provides a greater clarity at the outset for payment due dates. There may be secondary benefits to the Council of seeing more planned phased developments and fewer occurrences of stalled sites.

4 Financial Appraisal

- 4.1 The financial implications of the recommendation to implement the revised Instalments Policy are beneficial. Less resource will be spent on monitoring payment triggers with less reliance on developers telling us when payments are due. Better financial planning should be possible with an improved schedule of due payments. Less likelihood of missing or late payments as all payments will be pre-set and automated triggers will alert us to payment due dates.

5 Legal Implications

- 4.1 The Legal Services Department has made the following comments:
- Regulation 69B of the CIL Regulations 2010 (As Amended) provides the mechanism for charging authorities to implement an instalments policy and any subsequent revisions or new instalments policies without the regulatory requirement for examination or Charging Authority Approval (in accordance with section 213 of Planning Act 2008) associated with the Charging Schedule itself.

6 Risk Management Implications

- 7.1 The risk assessment checklist has been completed; no new risks will arise if the recommendation is implemented.

7 Equality Screening

- 8.1 An Equalities screening was carried out for the Adoption of the Community Infrastructure Levy, which included the implementation of an Instalments Policy. As there are not proposed to be any changes to the Levy or substantive changes to the policy it was not considered necessary to undergo further equalities assessment in this instance. No significant negative or positive outcomes have been identified.

8 Background Papers

- 9.1 The following documents provide background to this report.

Adoption of the CIL Charging Schedule Cabinet Report 24th September 2015

<https://lewes.cmis.uk.com/cm5/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/505/Meeting/604/Committee/190/Default.aspx>

10 Appendices



Lewes District Council

Lewes District Council CIL Instalments Policy 2016

This instalment policy comes into effect on **2nd August 2016**.

Lewes District Council will allow the payment of CIL by instalments as set out below:

- **Where the chargeable amount is less than £50,000 full payment is required within 60 days of commencement**
- **Where the chargeable amount is £50,000 or greater the instalments are as follows:**
 - **First instalment representing 25% of the chargeable amount is payable within 60 days of commencement**
 - **Second instalment representing 50% of the chargeable amount is payable within 240 days of commencement**
 - **Third instalment representing 25% of the chargeable amount is payable within 360 days of commencement.**

The instalments relate to the amount payable (the chargeable amount) as indicated on the Demand Notice. The commencement date will be the Commencement Notice date as advised by the developer under CIL Regulation 67.

Where outline planning permission permits development to be implemented in phases, or where phasing is clearly identified within the planning application each phase of the development, as agreed by Lewes District Council, can be treated as a separate chargeable development. The approved instalment policy will, therefore, apply to each separate phase of the development and its associated separate chargeable amount.

Circumstances where the Instalment Policy will not apply

In accordance with the CIL Regulations 2010 (as amended 2011) this Lewes District Council CIL instalment policy will **not apply** in the following circumstances:

- a) Where a Commencement Notice has not been submitted prior to commencement of the chargeable development,
- b) Where nobody has assumed liability to pay CIL for the chargeable development on the intended day of commencement;
- c) An instalment payment has not been made in full within 30 days of the due date for the instalment payment
- d) A person has failed to notify Lewes District Council of a disqualifying event within 14 days of a disqualifying event occurring. (Disqualifying events relate to when CIL relief has previously been granted and circumstances subsequently change).

Where the instalment policy does not apply, **the chargeable amount must be paid in full within 60 days** of the notified or deemed commencement date of the chargeable development or the date of the disqualifying event, whichever is the earliest. Surcharges may also apply for failure to submit Assumption of Liability Forms or Commencement Notices.



Lewes District Council CIL Instalments Policy 2015

This instalment policy comes into effect on **1st December 2015**.

The CIL instalments policy will only apply where conditions of Regulation 70 (CIL 2010) are met:

- Council received Assumption of Liability prior to commencement
- Council received CIL Commencement Notice prior to commencement

The Community Infrastructure Levy for residential development will be payable by instalments as follows:

- Where the chargeable amount is less than £50,000 (up to 6 dwellings approximately)
 - Full payment will be required within 60 days of the commencement date
- Where the chargeable amount is £50,000 - £250,000 (6-31 dwellings approximately)
 - First instalment representing 25% of the chargeable amount will be required within 60 days of commencement date; and
 - Second instalment representing 25% of chargeable amount will be required on completion of 50% of the dwellings; and
 - Third and final instalment representing 50% of the chargeable amount will be required on completion of 75% of the dwellings.
- Where the chargeable amount is over £250,000 (more than 31 units approximately)
 - First instalment representing 25% of the chargeable amount will be required within 60 days of commencement date; and
 - Second instalment representing 25% of the chargeable amount will be required on completion of 25% of the dwellings; and
 - Third instalment representing 25% of the chargeable amount will be required on completion of 50% of the dwellings; and
 - Fourth instalment representing 25% of the chargeable amount will be required on completion of 75% of the total number of dwellings

Note: the percentage of dwellings will be rounded up where exact dwelling numbers are not possible

Commercial developments by their nature do not lend themselves to the same approach used for residential development. Therefore it is proposed that phasing will be based on timescales and still related to the size of the development. The charge will be payable by instalments as follows.

- Where the chargeable amount is less than £50,000;
 - Full payment will be required within 60 days of the commencement date
- Where the chargeable amount is £50,000 - £250,000;
 - First instalment representing 50% of the chargeable amount will be required within 60 days of the commencement date; and
 - Second instalment representing 50% of the chargeable amount will be required prior to completion/opening of any part of the development
- Where the chargeable amount is over £250,000;
 - First instalment representing 25% of the chargeable amount will be required within 60 days of the commencement date; and
 - Second instalment representing 25% of the chargeable amount will be required within 120 days of the commencement date; and
 - Third and final instalment representing 50% of the chargeable amount will be required within 360 days of the commencement date or prior to completion/opening of any part of the development, whichever is sooner.

In calculating individual charges for the levy, the Council will be required by the Regulations to apply an annually updated index of inflation to keep the levy responsive to market conditions. The index will be the national All-In Tender Price Index of construction costs published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors.