

POS Enterprises

CONFIDENTIAL

Final Report

West Berkshire Council

The customer journey relating to the Community Infrastructure Levy

April 2024

Summary
Selected
Pages

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1. Introduction and summary of findings and recommendations

- 1.1 POS Enterprises, the operational arm of the Planning Officers Society, was appointed by West Berkshire Council to undertake a review of the customer journey relating to the Community Infrastructure Levy (CIL). The Review was commissioned by the Council who acknowledged the need for change and improvement and recognised an external independent review was necessary as the catalyst to initiate the necessary action.
- 1.2 Throughout the process the staff have been helpful, open and constructive in their comments. The consultants wish to highlight this and thank all involved for their positive attitude to the entire review process.
- 1.3 The Review identified a number of areas which, in the opinion of the Review Team, should be the focus for the authority, and recommendations are included for consideration. This summary covers the main findings and recommendations. There are further recommendations in the report where there is room for improvement, but these are not considered to be of the same priority or are subsidiary to the main recommendations. In this respect it is important that the whole report is read together to understand the context, the inter-relationships and the relative importance of the recommendations. Following consideration of the report, the authority should prepare an action plan with clear priorities and timescales, in consultation with the staff.
- 1.4 During the course of the review both positive and negative factors of West Berkshire's CIL operation came to light. Both have been highlighted and recommendations are included throughout the report where there is scope for improvement. Some of the recommendations are specific, some recommend further examination by the authority, and some are dependent on actions from outside the service and outside the authority. An improvement plan that has too many priorities has no priorities, and the authority needs to be realistic in determining actions and timescales moving forward.
- 1.5 It is a characteristic of the review process that there is an emphasis on the negatives as these are where the service is not performing to the levels that could be expected. This is always the case and does not indicate a failing service, more that there is scope for improvement.
- 1.6 The Review Team found an Authority which had adopted CIL in 2015 and had secured funds of over £19.49m. Over £3.6m of this sum had been passed on to parish and town councils. The evidence showed that the CIL funds were being used expeditiously to provide much needed infrastructure to support development within the district with £13.55m spent to date.
- 1.7 CIL legislation is drafted to ensure that CIL liabilities are paid. The amount to be paid is set through a formula contained in the authority's charging schedule and is not negotiable. In this respect the process is very different from the planning system and many planning participants have struggled to appreciate this difference. This can result in unexpected CIL liabilities which cannot be negotiated retrospectively often to the dismay of those involved. West Berkshire is not alone in this respect: It is an issue in the majority of CIL charging authorities.

1.8 The CIL Team has sought to enforce the regulations and the Review Team found no evidence that they had gone beyond their legal powers. However, the brief was to look forward not backwards and the focus has been to put forward recommendations which would promote more constructive engagement with the customers. There are recommendations throughout the report which can be broadly grouped into 3 categories

- Provision of clear and well-signposted information and advice at an early stage, where possible before applications are submitted, explaining CIL and its implications;
- Recommendations which should make the process more transparent and customer friendly;
- Specific recommendations which would allow the authority to exclude more householder applications from the system.

1.9 Having a more customer friendly approach to CIL should not have a significant impact on the Council's CIL income. Many of the householder applications which are currently processed through the system involve a considerable workload but produce little or no income. Throughout the report the Review Team have drawn upon knowledge of how CIL is administered in other authorities throughout England.

1.20 The Review Team considers that the following recommendations should be the highest priorities for the Authority

Para 5.7

As a matter of urgency, a prominent note should be posted on the website, clarifying that the exemptions set out in the Charging Schedule must be applied for by the applicant as per the regulations, and spelling out the repercussions of not doing so.

Para 5.13

Report to Executive on the benefits of not processing CIL liable domestic extension applications, taking account of the risks for the Authority of non-compliance with the regulations



Para 5.16

Report to Executive on taking a more lenient approach to self-build claims for genuine self-builders

Paras 6.5, 9.2, 9.3 and 9.4


Review the current website content to give CIL matters better signposting and greater prominence for residents and applicants

Paras 6.8, 7.5, 8.5 and 8.10

Introduce a training programme for officers, members, parishes and agents to improve the understanding and implications of CIL

- 5.6 The need to apply for exemption and the ramifications of not doing so are not explained in the Charging Schedule, and for someone not familiar with CIL they could be misled into thinking that if their proposed development fell into one of the categories they would be exempt and not have to do anything further. Customers are notified following the grant of permission of the potential CIL liability and the exemption procedures, but having read the Charging Schedule they could assume that the process did not apply to them. This is to some extent reinforced by CIL Form 1 (see Annex D), a national form which applicants are asked to submit with their planning application. This has questions at part 5c and 5d asking whether the applicant wishes to claim either self-build or annexe or extension exemption. In both cases the applicant is asked to tick a box 'yes' or 'no'. The form does go on to explain that in both instances applicants will need to complete further forms to make their claim, but again on a cursory first reading applicants could make the mistake of thinking that they had applied for an exemption by ticking the appropriate box.
- 5.7 Unfortunately changing a charging schedule involves a statutory process as outlined in Section 4 above, so amending the wording to correct this misleading content is not straightforward. A revised schedule would be subject to consultation, examination and adoption according to the procedures set out in the regulations and there is no provision for 'minor' amendments in the form of changes to wording or clarifications. However, to ensure as far as possible that the customer is aware of the legal position it is the Review Team's recommendation that there should be a prominent note posted on the website as a matter of urgency clarifying that the exemptions set out in the Charging Schedule must be applied for and spelling out the repercussions of not doing so. It should also be noted that the Council's officers have been consistently following the correct legal procedures in applying the regulations for exemptions.

Householder Exemptions

- 5.8 Householder is not a word defined in the CIL regulations. Using it in its normal sense it would apply to developments proposed by the owners of a house and/or relating to the development of their property. In CIL terms these would include proposals for extensions, annexes and for self-build developments (which could include extensions and annexes and building a house for their own occupation). In a West Berkshire context, householder developments have been the subject of most complaints and controversy. To understand the situation and how the Council could respond in a more customer focussed way it is necessary to appreciate the different regulations that apply to these developments.
- 5.9 **Minor development:** Development less than 100 sq m is not CIL liable unless it comprises a single dwelling house. Not liable means that the Charging Authority (CA) does not need to consider it at all, except perhaps checking the floorspace calculation where there is any doubt.
- 5.10 **Residential extensions:** Extensions of less than 100sqm are not CIL liable as they would be below minor development threshold as set out above. 
- 5.11 If an extension exceeds 100sqm it would be CIL liable but the applicant can apply for an exemption. According to the regulations, exemption must be applied for (on the appropriate form) and the CA will grant if it complies with the criteria. If the owner does not apply for an exemption and commences work they become liable for the appropriate CIL charge as set out for residential development in the Charging Schedule. If they do

apply for an exemption and have not had confirmation from the authority the position is confused. There are contradictory regulations which, in one place, say that there is no requirement to submit a commencement notice (reg 67), and the Government CIL guidance specifically states that 'there is no requirement for a commencement notice to be submitted in regard to a residential extension'. However, some authorities rely on regulation 42B(6) which is the general regulation requiring a commencement notice. On the basis of the regulation 67 and government guidance, the Council can be confident that a commencement notice is not required for residential extensions and therefore if an application for exemption has been properly applied for and granted there is no penalty for not submitting a commencement notice.



- 5.12 Once the Council has granted an exemption for a residential extension it cannot be lost and the absence of a requirement to submit a commencement notice means that no surcharge should be payable. NB. IT IS IMPORTANT TO UNDERSTAND THAT THIS CHANGE IN THE 2019 REGULATIONS ONLY APPLIES TO CASES WHERE AN EXEMPTION HAD BEEN APPLIED FOR AND GRANTED. It also does not apply to developments approved before 2019. Where no exemption had been applied for, or had been applied for and not granted, the development remains CIL liable.
- 5.13 There are a number of authorities which exclude all residential extensions from CIL. This is by no means a universal practice and can be considered as contrary to the regulations which do not give this option. The justification for not dealing with them at all is that going through the processing of CIL liability and applying for and granting exemptions for extensions is costly, time consuming and bureaucratic, and, in the overwhelming majority of cases, produces no income. There is considerable officer time (and applicant time) spent on a bureaucratic process which produces little or no income to the authority. It is a wasteful use of scarce resources at a time when the staff are under great pressure and could be used much more productively in responding more effectively to the applications which do produce CIL funds. However, if the authority were to consider adopting this approach it would need to recognise the legal position and the potential risks of challenge and make a formal decision taking all these factors into account.
- 5.14 **Residential annexes:** Here the position is different. As before, if an annexe is less than 100sqm it is not CIL liable (through the minor development exemption). If it is more than 100 sqm exemption is possible, if it complies with the criteria but, as with extensions, the regulations require that exemption must be claimed by the applicant and granted by the Council. If exemption is not claimed and granted, the development remains CIL liable. Unlike for extensions, where exemption has been granted for an annexe by the Council the applicant must still submit a commencement notice before starting any work. Failure to submit a commencement notice will attract a surcharge of £2500 or 20% of the CIL charge, whichever is the lower amount. What has changed since the 2019 amendments is that the applicant will still retain their exemption. The other significant difference between extensions and annexes is that there is a clawback clause for annexes whereby CIL will be payable if a disqualifying event (such as letting the annexe as a separate dwelling) occurs within 3 years. There are no clawback provisions for extensions.
- 5.15 **Self-Build Exemptions:** These are a different proposition. The 2019 amendments apply as for extensions and annexes and therefore where exemption has been granted it is no longer lost as a result of not serving a commencement notice, but a surcharge may be imposed. The criteria for self-build relief are more stringent, to deter abuse of the