



Norfolk County Council at your service

Community Infrastructure Levy (CIL) - Neighbourhood Funding

Parish & Town Council ability to Fund Infrastructure

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**Prepared by Stephen Faulkner BA(Hons),MSc, DipTP, MRTPI; CiLCA
Principal Planner
Norfolk County Council**

Preface

The officer-level comments below are made on a without prejudice basis and therefore individual planning authorities / charging authorities may wish to seek further clarification either from the Department of Communities and Local Government (DCLG) or their own legal teams before advising their parish/town councils. DCLG have, however, broadly supported the approach to neighbourhood spending set out below.

1. Introduction

- 1.1 The purpose of this note is to set out what parish and town councils can spend their CIL receipt on. Under the CIL amended Regulations (April 2013)(Reg 59A) neighbourhoods will now be passed 15% of CIL revenue received by the charging authority where development has taken place. The figure rises to 25% where the town/parish council has an adopted Neighbourhood Plan in place.
- 1.2 The 15% figure is capped to £100 per existing council tax dwelling which can be passed on to a parish or town council to be spent on "local priorities". No cap applies where the Parish Council has an adopted Neighbourhood Plan. A full explanation of how the capping process works is set out in the Department of Communities and Local Government (DCLG) – Community Infrastructure Levy Guidance (April 2013) (see paragraph 108).
- 1.3 Paragraph 117 of the DCLG Guidance indicates that where money is not used to support development of the area within 5 years of receipt, or used for other purposes, the regulations give Charging Authorities (CAs) the power to recover

those funds.

2. Infrastructure

2.1 Infrastructure for the purposes of CIL is taken from the s. 216 (2) Planning Act 2008 as defined:

“infrastructure” includes—

- (a) roads and other transport facilities,
- (b) flood defences,
- (c) schools and other educational facilities,
- (d) medical facilities,
- (e) sporting and recreational facilities,
- (f) open spaces, and
- (g) affordable housing (being social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008 (c. 17) and such other housing as CIL regulations may specify). NB Affordable housing currently lies outside the CIL Regulations and will need to be delivered through a S.106 agreement.

2.2 The above list is the default position of what CIL will fund where the Charging Authority (CA) has not published their CIL Reg 123 list (infrastructure items to be funded through the use of CIL).

3. Spending the Neighbourhood Funds

3.1 **Background** – The Community Infrastructure Levy (Amendment) Regulations 2013 (Amendment to Part 7 – application of CIL)

Application of CIL by local councils

Regulation 59C. A local council must use CIL receipts passed to it in accordance with regulation 59A or 59B to support the development of the local council's area, or any part of that area, by funding—

- (a) the provision, improvement, replacement, operation or maintenance of infrastructure; or
- (b) anything else that is concerned with addressing the demands that development places on an area.

3.2 Paragraph 116 of the Guidance indicates that “the wider definition means that the neighbourhood funding pot can be spent on things other than infrastructure (as defined in the CIL Regulations). For example the pot could be used to fund affordable housing where it would support the development of the area by addressing the demands that development places on the area.”

- 3.3 The above guidance would suggest that parishes can potentially spend CIL funds on a wide range of infrastructure, including for example local schools, highway/transport infrastructure and other strategic infrastructure, as well more traditional parish items such as village halls, allotments, play areas; bus shelters; street lighting; provision of public toilets; provision of litter bins; etc (see Appendix 1 setting out those capital works/infrastructure and maintenance items where the Parish Council has the statutory powers and duties to deliver.
- 3.4 Parishes / communities have a period of 5 years within which to spend their CIL money. The LPA can request that unspent monies are repaid after this time, or if it believes that CIL has been spent on illegible items. CIL Guidance 2014 indicates *inter alia*:

If a parish, town or community council does not spend its levy share within 5 years of receipt, or does not spend it on initiatives that support the development of the area, the charging authority may require it to repay some or all of those funds to the charging authority (see [regulation 59E\(10\)](#) for details).

3.5 Restrictions on neighbourhood spending -

- 3.6 However, unless the parish or town council has a General Power of Competence (GPC) as outlined in the Localism Act (ss1 - 8)(see Appendix 2), then they will not have the statutory powers or duties to spend CIL money beyond their existing remit (as set out in the various Local Government Acts - see Appendix 1). The list of infrastructure, or maintenance of infrastructure, which a parish council has the statutory powers or duties to provide is quite extensive, but without the General Power of Competence (GPC) Parish Councils will not be able to spend their CIL receipt on the wider strategic infrastructure.

4. Parish Council with GPC – Spending CIL Funds

- 4.1 Where a Council has a GPC then they will be able to use CIL on those items in Appendix 1 (both infrastructure and non-infrastructure) where they have a statutory power and duty to provide as well as on more strategic/wider infrastructure items, such as providing new or extended schools; new roads; new or extended libraries; doctors surgeries etc. The use of CIL by parish councils is not confined to those items on the LPAs/CA's Reg 123 list. In addition it would be possible for Councils under Paragraph 107 (b) (non-infrastructure) and 116 of the CIL Guidance to spend CIL funds for providing, for example, affordable housing; a village shop; opening a village gym; or village café etc. These potential uses of CIL funds would need to comply with other statutory regulations such as planning, health & safety, employment law etc.

5. Parish Councils without GPC - Spending CIL Funds

- 5.1 Where a parish or town council does not have a GPC, this will restrict them using their CIL funds to those items set out in Appendix 1 (i.e. where they have a statutory power or duty to provide or maintain the specific infrastructure item - NB this covers not just infrastructure items).

5.2 The only way that neighbourhood funds from CIL could be used more strategically would involve the Charging Authority (CA) working closely with the parish council to agree infrastructure priorities (i.e. as set out in a Local Investment Plan and Programme), and where agreement can be reached, the CA could “retain” the neighbourhood funding to spend on specific agreed infrastructure item/s. This could include infrastructure outside the parish council’s statutory remit and/or outside the council’s geographic boundary e.g. supporting schools and roads etc.

6. Other Issues relating to spending CIL

6.1 Parish and town councils do have the ability to spend money widely under Sections 111 and 137 of the Local Government Act 1972. However, under s.111 the Local Authority only have the power to spend on anything which is conducive or incidental to the discharge of any of their functions. This would prevent parish and town council spending beyond their statutory powers and duties (unless they have a GPC).

6.2 Section 137 allows parish councils to incur expenditure for certain purposes not otherwise authorised. However this expenditure is capped (£7.20 per elector 2013/14) and has to be used by the parish council “.... In their opinion is in the interests of (and will bring direct benefit to) their area or part of it or all or some of its inhabitants..”. It should be noted that the “direct benefit” accruing to their area or any part of it or to all or some of the inhabitants of their area must be commensurate with the expenditure to be incurred.

6.3 Therefore neither s.111 or s.137 above would allow non GPC parish councils to spend CIL unrestrained.

7. Summary

7.1 Parish and town councils can spend their CIL receipt on a range of infrastructure and maintenance projects providing they are compliant with their statutory powers and duties. These powers and duties are quite wide ranging and are set out in Appendix 1.

7.2 For Councils to spend beyond the provisions set out in Appendix 1 (i.e. where they have a statutory power or duty to provide or maintain the specific infrastructure item) they will need to have either:

- (a) gained a General Power of Competence (see Appendix 2) giving them wider powers to spend money (NB projects can go beyond those in the LPAs Reg123 list); or

- (b) entered into an agreement with the Charging Authority (CA) agreeing that some or all of their CIL monies can be retained by the CA and spent on agreed/specified infrastructure projects. These projects would need to be compliant with the Reg123 list.

7.3 For most Councils given the scale of CIL funds they are likely to receive and the long list of potential infrastructure items in Appendix 1, where they have a statutory power or duty, spending CIL should not present too many difficulties

Appendix 1

Infrastructure items which can be provided or maintained by Parish Councils
(The list below is not exhaustive)

| Infrastructure Type | Power & Duty | Statutory Provision |
|---|--|---|
| Allotments | Provision of allotments | Small Holding and Allotments Act 1908 s.23 |
| Burial Grounds; cemeteries and crematoria | Power to acquire and maintain; Power to provide Power to agree to maintain monuments and memorials | Open Spaces Act 1906 ss.9 & 10; Local Government Act (LGA) 1972 s.214 Parish Councils and Burial Authorities (Miscellaneous Provisions) Act 1970, s.1 |
| Bins | Provision of litter bins | Litter Act 1983 ss. 5,6 |
| Bus Shelters | Power to provide | Local Government (Miscellaneous Provision) Act 1953 s.4 |
| Clock | Power to provide public clock | Parish Councils Act 1957, s.2 |
| Closed Church Yards | Power to maintain | LGA 1972 , s.215 |
| Commons and common pastures | Power in relation to inclosure, regulation and management and providing common pasture | Inclosure Act 1845; small Holdings and Allotments Act 1908, s.34 |
| Conference facilities | Power to provide | LGA 1972 s.144 |
| Community Centres | Power to provide and equip building for use of clubs (sport/social/educational); Power to acquire, provide and furnish community building | Local Government (Miscellaneous Provisions) Act 1976 s.19 LGA 1972, s.133 |
| Crime Prevention | Power to spend money on crime prevention | Local Government and Rating Act 1997, s.31 |
| Drainage | Power to deal with ponds and ditches | Public Health Act 1936 s.260 |
| Entertainment and the Arts | Provision of entertainment | LGA 1972 s.145 |
| Highways | Power to repair and maintain public footpaths and bridleways | Highways Act 1980 ss.43 & 50 |
| | Power to light roads and public places | Parish Councils Act 1957 s.3; Highways Act 1980, s.301 |
| | Power to provide parking places for vehicles, bikes, and motorbikes | Road Traffic Regulations Act 1984 ss.57,63 |
| | Power to enter into | Highways Act 1980 ss.30 , |

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| | agreement as to dedication and widening | 72 |
| | Power to provide roadside seats and shelters and bus shelters | Parish Councils Act 1957 s.1 |
| | Power to provide certain traffic signs and other notices | Road Traffic Regulations Act 1984 s.72 |
| | Power to plant trees and maintain roadside verges | Highways Act 1980 s.96 |
| | Traffic calming – powers to contribute financially to such schemes | Local Government and Rating Act 1997 s.30 |
| | Community Transport – power to spend money on community transport schemes | Local Government and Rating Act 1997 ss.26-29 |
| | | |
| Land | Power to acquire and dispose of land | LGA 1972 ss.124; 126; 127 |
| Mortuaries and post mortem rooms | Power to provide | Public Health Act 1936 s.198 |
| Open Space | Power to acquire land for public recreation | Public Health Act 1875 s.164 |
| | Power to acquire and maintain land for open spaces | Open Spaces Act 1906 ss.9 and 10 |
| Public Buildings and village hall | Power to acquire and provide buildings for public meetings and assemblies | LGA 1972 s.133 |
| Public Toilets | Power to provide | Public Health Act 1936 s.87 |
| Recreation | Power to acquire land for recreation grounds; public walks; pleasure grounds and open space; and to manage and control them. | Public Health Act 1875 s.164; LGA 1972 sch.14 para27; Public Health Acts Amendments Act 1890 s.44; Open Spaces Act 1906 ss.9 and 10 |
| | Power to provide a wide range of recreational facilities | Local Government (Miscellaneous Provisions) Act 1976 s.19 |
| | Provision of boating pools | Public health Act 1961 s.54 |
| War Memorials | Power to maintain, repair, protect and adopt | War Memorial (Local Authorities' Power) Act 1923, s.1; as extended by Local Government Act 1948 s.133 |
| Water Supply | Power to utilise well or spring and to provide facilities for obtaining water from them | Public Health Act 1936 s.125 |
| | | |

General Power of Competence

Background

The GPoC was brought in by the Localism Act 2011¹ and it allows councils to: carry out any lawful activity; undertake any lawful works; operate any lawful business; and enter into any lawful transaction. This power does not remove any duties from LAs and they will continue to need to comply with duties placed on them. It is a power of first resort.

Criteria for eligibility

Under a statutory instrument² the Council must resolve clearly at a full council meeting that “at the time of resolution³” it meets the criteria. This has to be confirmed again at each relevant annual parish council meeting after the ordinary election that normally takes place every four years. The following criteria must be met:

- (a) At least 2/3 of councillors must be elected (i.e. elected or stood for election) at the last election;
- (b) The clerk must be qualified⁴;
- (c) The clerk has completed the GPoC training.

A Council that has adopted the GPoC cannot use S137⁵.

¹ Localism Act 2011 ss.1- 8

² Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012 No. 965 – Schedule Conditions of eligibility

³ Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012 No.965

⁴ the clerk must hold one of the following qualifications – Certificate in Local Council Administration (CiLCA); or Certificate of Higher Education in Local Policy; or the Certificate of Higher Education in Local Council Administration; or the First Level Foundation degree in Community Engagement and Governance awarded by the University of Gloucestershire or its successor qualification; and the clerk has completed the relevant training.

⁵ Local Government Act 1972 s.137 as amended by the Local Government and Housing Act 1989 s.36