UPDATE BRIEFING: CIL for Broadband in Hannington and the wider community in B&DBC

Cllr Janusz Hertz
28/08/2015


Dear Councillors,

The ‘idea’ is to use the Community Infrastructure Levy (CIL) to finance broadband infrastructure in our surrounding communities . . .

The summary below is based upon my conversations and emails with Alison Young, Senior Planning Officer – Infrastructure, B&DBC.

Background.

The Hampshire Broadband Superfast Programme does not include the Ibworth, North Oakley and White Lane communities. Therefore, leaving folks and businesses without superfast broadband.

It is unlikely that HCC will continue to invest in superfast broadband in the current economic climate without significant government funding to eventually provide broadband infrastructure to these communities.

Can the parish raise broadband funds?

In April 2016, the move from Section 106 to using the Community Infrastructure Levy (CIL) is scheduled to occur within the Basingstoke and Deane Borough Council area. The new rules mean that all the Parish Councils will be eligible to receive 15% (or 25% if they have a Neighbourhood Plan) of the CIL payment made by the developer to the collecting authority B&DBC for any new developments within their parish boundary.

The answer is ‘yes’ if it encourages new developments by developers.

Issue.

CIL must be spent in accordance with Regulation 59 and the definition of infrastructure in section 216(2) of the Planning Act 2008. At present the definition of infrastructure does not specifically include Broadband Infrastructure making it extremely difficult for the Basingstoke & Deane Borough Council to include broadband infrastructure investment in its Regulation 123 List. As the actual spend would be in breach of the CIL regulations as they stand at present.

It requires a change to the CIL regulations to include Broadband Infrastructure in the allowable list of “roads and other transport facilities, flood defence, schools and other educational facilities, medical facilities, sporting and recreational facilities and open spaces.”

This regulatory change would then allow the Community Infrastructure Levy (CIL) to be the means by which the Charging Authority, e.g. Basingstoke & Deane Borough Council and the local parishes, in our case Hannington Parish, to accumulate funds ‘jointly’ to finance new broadband infrastructure for those communities that do not have superfast broadband.

Solution.
Change the CIL rules. Donald Sherlock and myself have lobbied Kit Malthouse MP to have these changes included in the Housing Bill being laid before parliament later this year.

By including ‘broadband infrastructure’ in the CIL regulations within the Housing Bill it will clarify and lift the present restriction on Borough Councils nationally.

It clearly would encourage parish councils to discuss priorities with their local Borough Council and for them to act in concert to accumulate CIL funds for new broadband infrastructure for those ‘have not’ communities such as ours.

With the agreement of our HP Cllrs., I clearly would encourage and propose that our Hannington Parish Council lobby our neighbouring PC’s and the Hampshire ‘Association of Parish Councils’ to put up a policy statement with regard to the change of CIL regulations via our local MPs.

I have attached my email trail with Alison Young, Senior Planning Officer – Infrastructure, B&DBC. It makes for interesting reading and explains some of the mechanics involved and constraints the team are under. My thanks to her for having the patience to research and explain this stuff to me.

I am happy to discuss any of the Cllrs. thoughts or ideas on this subject...

Best regards... Jan

Janusz ‘Jan’ Hertz | mob 07770 876 391 | janusz@hertz.me.uk

Please consider the environment before printing this e-mail

From: Alison Young [mailto:alison.Young@basingstoke.gov.uk]
Sent: 27 July 2015 15:57
To: Janusz ‘Jan’ Hertz
Subject: RE: CIL : Broadband in Hannington and the wider community in B&DBC

Dear Jan,

The council intends to publish a Revised Draft Charging Schedule and as part of this consultation will publish a draft Regulation 123 list. The draft Regulation 123 list will be worked up internally with input from stakeholders and broadband will be considered for inclusion, although you will understand that at this stage I am unable to be clear about whether it will be included or not. This consultation would represent your formal opportunity to make comments. All parish councils will be consulted at this stage and representations received will be considered by the Examiner. The draft Regulation 123 list will remain in its draft form until the council adopts its CIL Charging Schedule, and as such there is plenty of opportunity to input your thoughts.

With regard to your query about holding discussions to align the parish council’s priorities to the borough council’s priorities, I am not sure that now is the right time. The borough council is focused on the Local...
Plan Examination, with hearings due to take place in October and November this year. While we are undertaking viability work to progress our CIL Charging Schedule; a CIL Examination would not take place before the Local Plan Examination. As such, the borough council has not begun work on identifying its CIL spending priorities yet and this is anticipated to follow on from adoption of the Charging Schedule, so would be in spring 2016 at the earliest. It is also worth remembering that it may take some time for the CIL pot to build up.

I hope that this helps.

Thanks

Alison

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From: Janusz 'Jan' Hertz [mailto:janusz@hertz.me.uk]
Sent: 23 July 2015 15:42
To: Alison Young
Subject: CIL : Broadband in Hannington and the wider community in B&DBC

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Good afternoon Alison,

You are an absolute star!

Thank you for working this through and so thoroughly – I can understand the context now.

The reading list will keep me occupied for a while . . .

I particularly find this element very interesting but it clearly requires our close cooperation with the local Parish Councils and the ‘charging authority’ Basingstoke and Deane to tackle the issue in ‘wider context’, e.g. rural broadband for the *development of the area by addressing the demands that development places on the area*. 
“Parish, Town and Community Councils should discuss their priorities with the charging authority during the process of setting the Levy rate(s).

Once the levy is in place, Parish, Town and Community Councils should work closely with their neighbouring councils and the charging authority to agree on infrastructure spending priorities. If the Parish, Town or Community Council shares the priorities of the charging authority, they may agree that the charging authority should retain the neighbourhood funding to spend on that infrastructure. It may be that this infrastructure (e.g. a school) is not in the Parish, Town or Community Council’s administrative area, but will support the development of the area.”

I guess that my next question follows on from our recent telephone conversation and in the spirit of the above, with regard to getting ‘Broadband’ onto the Basingstoke & Deane Regulation 123 List even though B&DBC have significantly higher priorities to consider (and appreciating it does not mean that B&DBC would spend any monies on the Broadband infrastructure in future). I suspect getting the local parish councils to agree that the ‘charging authority should retain the neighbourhood funding (or part of it) to spend on that infrastructure’ – RURAL BROADBAND in this case, would be like ‘herding cats’. Impossible to get consensus, but nevertheless we should try!

Do you or any of the team at B&DBC have any suggestions or recommendations on how or what established forum exists that I (HPC) could use as a ‘rally point’ to broach the above subject to obtain some consensus that would feed into “... should discuss their priorities with the charging authority...”?

I do appreciate that all of the team at B&DBC are extremely busy and enthusiastic in their roles, however, do you think there is any mileage in getting together a ‘very, very small crash team’ to work out the activities that would be required by me (and others) to input the outcomes ... to meet B&DBC key dates to provide the necessary input to the ‘charging authority’ as suggest by the above i.e. what are the ‘formal’ processes required to achieve the inputs to B&DBC?

As always my thanks once again for your continued support and patience ... Jan

Cllr. Jan Hertz  | mob 07770 876 391 | tel 01635 297 694 | janusz@hertz.me.uk

12 Oakley Road, Hannington, Tadley, Hampshire RG26 5TU

Please consider the environment before printing this e-mail

From: Alison Young [mailto:alison.Young@basingstoke.gov.uk]
Sent: 23 July 2015 10:58
To: Janusz ‘Jan’ Hertz
Subject: RE: Broadband in Hannington

Dear Jan,
I’m afraid that the answer is not straightforward as discussed on the phone earlier this week but I will endeavour to set out the two main avenues to spending CIL as they are governed by different regulations.

Firstly there is the **CIL that charging authority (Basingstoke & Deane Borough Council) spends**. Below are a few key points about this:

1. This amounts to either 75% or 85% of the CIL income received from a development (dependent on whether it is received from an area which has an adopted Neighbourhood Plan)

2. CIL must be spent in accordance with Regulation 59 of the CIL Regulations 2010 as amended by the CIL (Amendment) Regulations 2012 – “A charging authority must apply CIL to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area.”

3. The definition of infrastructure is given in section 216(2) of the Planning Act 2008 and includes “roads and other transport facilities, flood defences, schools and other educational facilities, medical facilities, sporting and recreational facilities and open spaces.”

4. As you can see this definition of infrastructure does not include utilities.

5. The Planning Practice Guidance which is issued by the Government expands on this (see below) and seems to provide more flexibility for local authorities to decide what infrastructure they want to spend the levy on (see my highlighted section).

The levy can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities (for further details, see Section 216(2) of the Planning Act 2008, and Regulation 59, as amended by the 2012 and 2013 Regulations). This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, academies and free schools, district heating schemes and police stations and other community safety facilities. This flexibility gives local areas the opportunity to choose what infrastructure they need to deliver their relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London). Charging authorities may not use the levy to fund affordable housing.

Local authorities must spend the levy on infrastructure needed to support the development of their area, and they will decide what infrastructure is needed. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development.

The levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support development.

6. However, all of the regulations and guidance continue to point out that it must be spent to “support the development of the area” as set out in Regulation 59.

7. Charging Authorities must produce a Regulation 123 list which sets out what they intend to spend their CIL on and as we discussed on the phone a number of local authorities have included off-site broadband provision within their Regulation 123 lists, including Exeter City Council and North Warwickshire Borough Council, however I do not know if they have actually spent any CIL on broadband provision yet, bearing in mind that the first few CIL Charging Schedules were only adopted at the end of 2011/early 2012 and it takes some time for the CIL income to build up to a point where there is enough to spend on an infrastructure project.
Secondly there is the **CIL income that is passed to the local community** to spend:

- Known as the neighbourhood portion or neighbourhood fund
- Amounts to 15% from development in the parish where there is no Neighbourhood Plan
- Amounts to 25% from development in the parish where there is an Adopted Neighbourhood Plan
- Neighbourhood fund must be spent in accordance with regulation 59C of the CIL (Amendment) Regulations 2013 – as set out in my email of 15 July (see below)
- Regulation 59C gives parish councils greater freedom than the charging authority in what CIL can be spent on by application of the sentence “anything else that is concerned with addressing the demands that development places on an area.”
- The Planning Practice Guidance states:

  The neighbourhood portion of the levy can be spent on a wider range of things than the rest of the levy, provided that it meets the requirement to ‘support the development of the area’ (see Regulation 59C for details). The wider definition means that the neighbourhood portion can be spent on things other than infrastructure (as defined in the Community Infrastructure Levy 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.

  Parish, Town and Community Councils should discuss their priorities with the charging authority during the process of setting the Levy rate(s).

  Once the levy is in place, Parish, Town and Community Councils should work closely with their neighbouring councils and the charging authority to agree on infrastructure spending priorities. If the Parish, Town or Community Council shares the priorities of the charging authority, they may agree that the charging authority should retain the neighbourhood funding to spend on that infrastructure. It may be that this infrastructure (e.g. a school) is not in the Parish, Town or Community Council’s administrative area, but will support the development of the area.

  If a Parish, Town or Community Council does not spend its levy share within five 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).

  I would urge you to read this section of the Planning Practice Guidance which is the national guidance issued by the Government - [http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/](http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/spending-the-levy/)

  It would seem that funding the improvements or replacement of broadband infrastructure with the neighbourhood fund would be acceptable, but a necessary condition is that it must support the development of the area/address the demands that development places on an area. It will be up to the parish council to determine its spending priorities and to demonstrate that it has spent its CIL receipts in accordance with the regulations.

  Apologies that I cannot give you a definitive answer at this stage but if I find out any more information on this matter, I will of course let you know.
Good morning Alison,

Firstly, given your very busy schedule may I thank you for your time in looking into my query.

Reading your interpretation I see and clearly understand your caution.

Creating an example real-life model scenario would help my understanding in particular such that I can explain it to others.
At present we have two locations in the parish each connected to a different BT Exchange. At this time both locations have absolutely abysmal broadband services. The Hampshire Broadband Programme will not include these locations in its ‘superfast’ broadband programme.

**Let us say that in location 1**, a new development takes place and is completed – CIL funds are now available to the parish. The broadband service in the new development is still abysmal. The parish decides to improve the broadband infrastructure re 59C part a) of your email below, by using the available CIL funds to install a fibre enabled broadband street cabinet in location 1. This ‘new’ improved broadband infrastructure now directly benefits the ‘new development’ but coincidently and by the very nature of the broadband infrastructure also benefits the immediate surrounding community with increased broadband speeds.

Does the above scenario comply with the two points in your email i.e. “concerned with addressing the demands that development places on [the] area” and “support the development of the local council’s area”?

If it is not the case, could you please explain why that is?

My thought here is – if we understand the ‘objection’ perhaps we can investigate another basis upon which we could or would comply with the rules to use the CIL funding to benefit our rural communities that are not included in the Hampshire Broadband Programme. This may be just a simple form of words that describe the ‘demands that the development places on [the] area’ that complies with the requisite criteria for use of the funds. But broadband is as yet not seen to be a ‘conventional’ utility so I know life is not as simple as that!

My thanks for your continued support and patience . . . Jan

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12 Oakley Road, Hannington, Tadley, Hampshire RG26 5TU

Please consider the environment before printing this e-mail
Dear Jan,

Thank you for your patience. The query was trickier than I expected and I had to seek advice from colleagues.

Let me start by setting out what the CIL Regulations say the neighbourhood proportion of CIL must be spent on:

**Application of CIL by local councils**

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.

My interpretation is that spending on broadband provision would be acceptable whether that be new infrastructure or improvements to existing networks, however it must be linked to new development as this is the government’s intention with CIL. The funds do not have to be used solely to provide infrastructure to the new homes. Improving broadband provision in Hannington which would benefit existing properties too would be acceptable, as long as it is “concerned with addressing the demands that development places on [the] area.”

I would be concerned if the Parish Council intended to collect the funds purely to link up certain existing properties to the network, but if there is a wider community benefit, including the new properties, then I feel that this would be addressing the demands that development places on the area.
The reason that I am being so cautious in providing this advice is that the CIL Regulations (Reg59E) also make provision for the Borough Council to recover CIL that is paid to parish councils if it is not spent in accordance with regulation 59C, or if it is not spent within 5 years. In short, any spending must “support the development of the local council’s area.”

If a Neighbourhood Plan (NP) is implemented, the parish council will receive 25% of the total CIL receipts from development that is granted permission in the NP area after the NP is adopted. Otherwise, the parish council will receive 15% of the CIL receipts. The rates that are currently proposed in Hannington are £150 per square metre for new homes, but we are undertaking further viability work so the rates may change. The Borough Council is looking to implement CIL as soon as possible after the Local Plan Examination, which is likely to be in 2016.

I hope that this helps, but please do not hesitate to contact me if you have any further queries.

Kind regards

Alison

Alison Young

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Good afternoon Alison,

Thank you for updating me . . . I will look forward to the outcome of your enquiries.

Kind regards . . . Jan Hertz

Janusz ‘Jan’ Hertz | mob 07770 876 391 | janusz@hertz.me.uk

—from Alison Young [mailto:alison.Young@basingstoke.gov.uk]
Sent: 10 July 2015 16:22
To: janusz@hertz.me.uk
Subject: Broadband in Hannington

Dear Janusz,

Apologies for the delay in replying to your query about the possibility of funding broadband through Community Infrastructure Levy. I have been looking into it and have asked some colleagues for advice, so I hope to be able to get back to you next week.

Kind regards

Alison
Alison Young

Senior Planning Officer - Infrastructure

Planning Policy and Implementation Team

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