

GUIDELINES IN RELATION TO THE DISTRIBUTION OF THE COMMUNITY INFRASTRUCTURE LEVY (CIL) FUNDS TO PARISH AND TOWN COUNCILS

**Hertsmere Borough Council
August 2015**



1. Summary

Regulations 59A and B of the Community Infrastructure Levy Regulations 2011 (the CIL Regulations) requires Hertsmere Borough Council (HBC) as the Charging Authority to pass a proportion of CIL receipts collected from developments in its area directly to the Town and Parish Councils established in the Borough to be spent on infrastructure or anything else that is concerned with addressing the demands that development places on their area. HBC will transfer accumulated funds to the Parish and Town Councils every 6 months who will be required to report publicly on the income they have received and how this has been spent each year.

In accordance with Paragraph 78 of National Planning Practice Guidance (NPPG), HBC will expect the Town and Parish Council's in the Borough to work closely with HBC and their neighbouring Councils to agree on infrastructure spending priorities. This co-operation on spending priorities and plans will be important to avoid any prospect of a Town or Parish Council having to pay CIL receipts back to HBC or having HBC make deductions from future CIL entitlements to compensate for impermissible or inappropriate expenditure.

2. Introduction

Regulation 59A of the CIL Regulations, which came into effect in April 2013 provides that HBC as the Charging Authority must pass a proportion of CIL receipts to Town and Parish Councils from developments that take place in their areas. The proportion of CIL receipts that are required to be passed to relevant Parish and Town Councils arising from developments in their areas has been set nationally at 15% but capped at £100 per council tax dwelling per year. For example, a Parish Council with 400 dwellings in its area can never receive more that £40,000 per year in CIL receipts. However, should any of the Town or Parish Council in the Borough adopt a Neighbourhood Plan, HBC will hand over 25% of the CIL receipts arising from chargeable developments in the Neighbourhood Plan area and this will not be subject to any cap. However, these receipts must be spent only in Neighbourhood Plan area if such area is not contiguous with the whole of the Town or Parish area.

3. How the funds must be spent

Regulation 59C of the CIL Regulations provides that CIL receipts received by Town and Parish Councils must be used to support the development of their 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.

Regulation 59C is framed in wider terms than the expenditure powers given to HBC (which are limited to funding the provision of infrastructure only) in order to give local councils more flexibility in deciding what needs to be done in their area to mitigate the impacts of development on the area. However, there are expenditure restrictions,

especially for Town or Parish Councils who do not have a General Power of Competence (GPC) and these are set out in more detail in Paragraphs 4, 5 and 6 below.

The CIL Regulations provide that where a Town or Parish Council has failed to spend CIL funds passed to it within **five years** of receipt, or has applied the funds otherwise than in accordance with the CIL Regulations, HBC can serve a notice on the relevant Council requiring it to repay unspent CIL receipts. However, misspent CIL receipts will be recovered by deduction from future CIL receipts and not from current precept balances. In such cases HBC will be required to spend recovered funds in the area of the Town or Parish Council in question on anything the Town or Parish Council could have spent it on.

Should a Town or Parish Council decide that it does not want to receive CIL receipts funding, it must notify HBC in advance stating that the funding is to be retained by HBC who will then use it for the benefit of that Council's area. This may be appropriate in cases where the Town or Parish Council lacks the statutory powers to fund particular infrastructure, but HBC does not.

4. Restrictions on Neighbourhood Spending

Although Regulation 59C of the CIL Regulations authorises Town and Parish Councils to spend CIL receipts on the provision, maintenance or improvement of infrastructure in their area or on anything else that is concerned with addressing the demands that development places on the area, it is considered that this does not authorise a Town or parish Council to spend CIL receipts on infrastructure or other matters that they could not incur expenditure on under their existing statutory powers. Consequently, Town or Parish Councils that have the benefit of the General Power of Competence in Part 1 of the Localism Act 2011 (GPC) will have significantly wider expenditure powers under Regulation 59C than local councils that do not have a GPC. In this regard, in order to have a GPC, at least two thirds of councillors must be elected and the Council must employ a qualified Clerk who has completed the requisite training on the exercise of the GPC.

In addition, although the HBC Monitoring Officer can give an informal opinion on whether proposed expenditure by a Town or Parish Council is compliant with the CIL Regulations and its statutory powers, it is important to stress that such informal opinion will not be binding on HBC nor will it prejudice the powers of HBC as the Charging Authority to recover misspent CIL receipts in appropriate circumstances. Consequently, Town and Parish Council's should always consider seeking independent legal advice on the matters that can lawfully be funded out of CIL receipts, particularly if such matters have previously been funded out of the Town/Parish precept.

It should also be emphasised that if Town or Parish Councils choose to spend CIL receipts on more tangential items or items which already are well provided for in the locality, some developers may challenge subsequent requests from the Local Planning Authority for site-specific s106 contributions. This is because it could be argued that CIL monies previously received should have been allocated towards

those site-specific items of infrastructure now being requested through a s106 agreement.

5. Town and Parish Councils without the General Power of Competence

Where a Town or Parish Council does not have a GPC, this will restrict the use of CIL funds to infrastructure or other matters which it has a statutory power to provide, maintain or improve. A list of the infrastructure items that a Town or Parish Council can provide under statutory powers is set out at Appendix 1 and although fairly extensive, the only way that CIL receipts in Town or Parish Council area without a GPC can be used to fund strategic infrastructure, is for the Town or Parish Council to work closely with HBC (as the NPPF requires) to agree infrastructure priorities (i.e. as set out in a Local Investment Plan and Programme). HBC could then “retain” CIL receipts to spend on specific agreed infrastructure item/s. This could include infrastructure outside the Town or Parish Council’s statutory remit and/or outside the Council’s geographic boundary, for example the provision of a new road.

6. Town and Parish Councils with the General Power of Competence

Town or Parish Councils that have a GPC will be able to spend CIL receipts on all the infrastructure items that non GPC local councils can spend CIL receipts on (see Appendix 1) but will also be able to rely on the exercise of the GPC to fund wider strategic infrastructure, for example providing new roads or new or extended school, libraries or doctors surgeries or providing affordable housing or village shops, gyms or cafés or funding or part funding a PCSO or a Community Warden etc. - so long as such expenditure can properly be said to relate to the provision, improvement, replacement, operation or maintenance of infrastructure or assists in addressing the demands that development places on the area.

7. Expenditure of CIL Receipts on Matters Currently Funded by the Precept

So long as Town or Parish Councils spend CIL receipts in accordance with Regulation 59C and within their statutory powers, such expenditure will be lawful, even if it is being used to funding local infrastructure that has previously been funded out of the Town/Parish precept. Whilst ultimately, it will be for a Town or Parish Councils itself to be satisfied that all CIL expenditure either supports the development of its area or addresses the demands that development places on the area, HBC is of the opinion that the following kinds of expenditure may not be funded by CIL receipts and that any such expenditure would be likely to result in a reclaim:-

- Provision of Fireworks Displays
- Provision of Carnivals
- Provision of Christmas Lighting
- Improvements to Council Offices or other operational buildings
- Provision of improvements to existing allotments sites e.g. locker rooms or toilets
- Ground maintenance, verge mowing or hedge cutting.
- Improvements to parks and other open spaces that do not address the demands imposed on the area by development

This is not an exhaustive list and Town and Parish Councils are strongly advised to agree CIL-related spending priorities with HBC.

8. Payment periods

HBC will make payment in respect of any CIL monies it receives from 1st April to 30th September in any financial year to the Town or Parish Council by 28th October of that financial year and pay the CIL received from 1st October to 31st March in any financial year by the 28th April of the following financial year.

9. Interest

Where amounts are paid over to the Town or Parish Councils six monthly, no interest will be accrued. However should a Parish or Town Council decline the funding and ask HBC to take responsibility for it then it will be held in a separate holding account and administered by HBC. The account will be credited with any funds due to it from the six monthly lump sum payments of CIL funding and debited with any expenditure. Interest will be applied daily, based on the seven day libor rate.

10. Reporting

To ensure transparency Town and Parish Councils must publish each year:-

- their total CIL receipts
- their total expenditure
- a summary of what the CIL was spent on; and
- the total amount of receipts retained at the end of the reported year from that year and previous years

Reports can be combined with reports already produced by parish council and must be placed on their websites (or on the HBC's website where the Town or Parish Council does not have a website) and a copy of the report must be sent HBC.

Mark Silverman
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Appendix 1

Infrastructure which can be Provided or Maintained by Town and Parish Councils

(The list below is not exhaustive)

Infrastructure Type	Duty or Power	Statutory Provision
Allotments	Duty to provide and manage allotments	Small Holding and Allotments Act 1908 s.23 Allotments Acts 1922 and 1950
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	Power to provide litter bins	Litter Act 1983 ss. 5,6
Bus Shelters	Power to provide Bus Shelters	Local Government (Miscellaneous Provision) Act 1953 s.4
Clocks	Power to provide Public Clocks	Parish Councils Act 1957, s.2
Closed Church Yards	Duty to maintain such	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 - now managed under Section 19 of the Local Government (Miscellaneous Provisions) Act 1976
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	Power to provide entertainments or pay other to do so including the power to provide theatres, concert halls, dance halls and arts and crafts centres together with the power to maintain a band or orchestra	LGA 1972 s.145
Highways Powers	Power to repair and maintain public footpaths and bridleways	Highways Act 1980 ss.43 & 50

Ditto	Power to light roads and public places	Parish Councils Act 1957 s.3; Highways Act 1980, s.301
Ditto	Power to provide parking places for vehicles, bikes, and motorbikes	Road Traffic Regulations Act 1984 ss.57,63
Ditto	Power to enter into agreement as to dedication and widening	Highways Act 1980 ss.30 ,
Ditto	Power to provide roadside seats and shelters and bus shelters	Parish Councils Act 1957 s.1
Ditto	Power to provide certain traffic signs and other notices	Road Traffic Regulations Act 1984 s.72
Ditto	Power to plant trees and maintain roadside verges	Highways Act 1980 s.96
Ditto	Powers to contribute financially to Traffic Calming Schemes	Local Government and Rating Act 1997 s.30
Ditto	Power to spend money on Community Transport Schemes	Local Government and Rating Act 1997 ss.26-29
Land and Buildings	Power to acquire and dispose of land	LGA 1972 ss.124; 126; 127
Mortuaries and Post Mortem Rooms	Power to provide such	Public Health Act 1936 s.198
Village Halls and Community Buildings	Power to acquire and provide buildings for public meetings and assemblies	LGA 1972 s.133
Leisure Centres and Facilities	Power to provide or pay others to provide a wide range of Leisure facilities including Leisure Centres and Swimming Pools	Local Government (Miscellaneous Provisions) Act 1976 s.19
Public Toilets	Power to provide such	Public Health Act 1936 s.87 as amended by the LGA 1974 Schedule 14 para 9. Public Health Act 1875 s.164; LGA 1972 sch.14 para 27; Public Health Acts Amendments Act 1890 s.44; Public Health Acts Amendment Act 1907 - ss .76 and 77 Open Spaces Act 1906 ss.9, 10 and 14
Parks, Gardens and Open Spaces	Power to acquire land for recreation grounds, public walks, pleasure grounds and open space; and to manage maintain and control them.	Public Health Act 1961 s.54
War Memorials	Power to provide boating pools	War Memorial (Local Authorities' Power) Act 1923, s.1; as extended by Local Government Act 1948
Water Supplies	Power to utilise well or spring and to provide facilities for obtaining water from them	Public Health Act 1936 s.125