
Title: Community Infrastructure Levy
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Briefing note: Explanation of the new Community Infrastructure Levy and its implication on s106 obligations.

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1. Introduction

The Community Infrastructure Levy (CIL) is a new government initiative to aid infrastructure investment in England and Wales. The previous government believed that the current system of planning obligations is inadequate and there is a need for developers to contribute further to the provision of infrastructure critical to the delivery of sustainable development. CIL therefore aims to be used as a more transparent, efficient and flexible tool that local authorities are empowered, but not required, to utilise in unlocking additional funding from new developments.

Currently, only 6% of all planning permissions contribute towards funding infrastructure in the local area. The government forecasted that by implementing CIL an additional £700m per year will be raised by 2016.

2. Context

The government's Housing Green Paper, Homes for the Future: More Affordable, More Sustainable, first introduced the idea of developing CIL in July 2007. The Paper set out a number of possible options on how to reform the existing system of planning obligations to better deliver investment in local infrastructure, with the aim of facilitating discussions with the development industry and local government. Following subsequent engagement, the government announced its commitment within the October 2007 Pre-Budget Report to support the development of a new planning charge.

The enabling legislation for CIL in England and Wales was achieved through the Planning Act 2008 (Part 11: Community Infrastructure Levy), which received Royal Assent in November 2008. Whilst the

Planning Act 2008 provides the broad framework for CIL, implementation details are contained within the Regulations, thus allowing for a more flexible and evolving legislative arrangement.

In July 2009, full details of CIL were published for consultation within the draft Regulations. Consultation ended on 23 October 2009 and a total of 392 responses were received, ranging from the development sector, various tiers of government, and from voluntary and community bodies. Following consideration of the consultation responses, the final Community Infrastructure Levy Regulations 2010 were laid before the House of Commons on 10 February 2010 and came into force on 6 April 2010.

3. Charging Schedule

Those local authorities that choose to implement CIL will set their own 'charging schedule', which is to be evidence-based, appropriate to the area, consulted on, and scrutinised and approved through independent examination, which effectively gives the charging schedule a status equivalent to Development Plan Documents. In London, the Mayor is identified as an appropriate body to approve borough charging schedules (Regulation 11).

The charging schedule will set out the rates in which CIL is to be priced within the authority's area, based on pounds per square metre of net additional floor space (Regulation 40). Local authorities are able to set differential rates according to the intended land use and geographic zones, which are to be accompanied by a map identifying boundaries and locations of such areas.

In setting CIL rates within the charging schedules, charging authorities should consider the following (Regulation 14):

- Actual and expected costs of infrastructure to support development of its area;
- Potential effect of CIL on the economic viability of development across its area;
- Actual or expected administrative expenses in connection with CIL and how CIL can fund these (see Implementation, below);
- Potential effect of CIL on development viability;
- London boroughs should also take into account rates set by the Mayor.

4. Implementation

A charging authority must apply CIL to fund infrastructure that supports the development of its area. A 'charging authority' is defined as the collecting authority for CIL charged within its geographical area. In

relation to CIL charged by the Mayor of London, the borough council in which the applied development is situated within will be the collecting authority for that CIL (Regulation 10). However, Regulation 10 states that a charging authority may come to an agreement with a relevant consenting authority to collecting CIL on their behalf. Such relevant consenting authorities are identified as the Homes and Communities Agency, an Urban Development Corporation, and an Enterprise Zone Authority.

CIL may also be applied to funding infrastructure outside its area where to do so would support the development of its area (Regulation 59). CIL will be chargeable to most types of developments, however Part 6 of the CIL Regulations sets out a number of exemptions, including:

- New development with a gross internal area of less than 100 square metres. However, such development that comprises more than one dwelling is liable for CIL (Regulation 42);
- Development by charities for charitable purposes (Regulation 43); and
- Chargeable development that comprises of social housing, either in whole or in part (Regulation 49).

Charging authorities are able to apply CIL in order to reimburse costs already incurred through funding infrastructure (Regulation 60). This enables authorities to unlock infrastructure earlier in development, thus stimulating the development market. However, the charging authority must have government approval and been collecting CIL for a full financial year before borrowing against future CIL receipts may occur.

The Regulations also recognise that local authorities will incur costs in setting up and administering CIL. As such, local authorities are able to reclaim any such expenses of up to 5% of CIL receipts (Regulation 61). These recovered costs also include any expenses incurred prior to a charging schedule being adopted. This provision may act as an important incentive for local authorities to adopt the discretionary CIL.

All charging authorities will be required to monitor receipts and expenditure on CIL for each financial year of collection. This report must be published on the charging authority's website for the local community to access by 31st December following the end of the reporting year (Regulation 62). The deadline for publishing Annual Monitoring Reports coincides with the CIL reporting deadline, thus enabling authorities to utilise this existing reporting mechanism for CIL.

5. Payments

The Regulations outline a series of payment periods, which correspond with the threshold of the CIL being charged (Regulation 70). Any CIL of

less than £10,000 is required to be paid from the date of development commencing to up to 60 days later. This was extended from 28 days proposed in the consultation draft to ease cash flow for developers. Once CIL liabilities exceed £10,000, payments can be made in instalments with longer payment periods of up to 240 days for the largest amounts. A surcharge and late payment interest can be applied to CIL where such payment periods have been missed (Regulations 80-88). If a CIL payment is still outstanding, a charging authority can issue a Stop Notice, which would require the development to stop until full payment has been received (Regulation 90).

Anyone can assume liability for CIL for a given development. Once a person has assumed liability they will be legally responsible for CIL on commencement of the chargeable development. Liability however can be transferred or withdrawn however this must occur before the chargeable development begins. If no-one assumes liability before the commencement of a development, or if the party that has assumed liability defaults, the owners of the land will be accountable (Regulations 31-39).

The Regulations also set flexible arrangements in accepting payments. For CIL liabilities of over £50,000, a charging authority is able to receive one or more payments in-kind in the form of land (Regulation 73), which the authority must ensure is used for a relevant infrastructure purpose.

In exceptional circumstances, the regulations enable local authorities to grant up to 100% CIL relief (Regulation 55). These circumstances must be justified through an independent assessment of the development's economic viability. Exemption of CIL is also applicable where the cost of complying with a necessary section 106 obligation is greater than the sum due under CIL. In London, any claims for relief are referable to the Mayor (Regulation 58).

6. Definitions

The Planning Act is clear that CIL may only be spent on infrastructure. Infrastructure is defined under Section 216(2) of the Planning Act 2008, following removal of affordable housing set out in Regulation 63, as:

- roads and other transport facilities;
- flood defences;
- schools and other educational facilities;
- medical facilities;
- (sporting and recreational facilities; and
- open spaces.

Although not all forms of conventionally understood infrastructure are included in this definition (such as utilities), CLG has made it clear that the definition is intended to be inclusive and that decentralised energy systems are able to be funded by CIL receipts. This is set out in the CIL companion document which accompanied the Regulations and has been confirmed in a personal communication from CLG to the DEMaP team.

7. Using the CIL Fund to support infrastructure

The CIL Regulations and supporting guidance provide limited information on the arrangements for charging authorities to spend the monies collected through CIL. Current practice with existing tariff-based charging schemes (such as that in place within the London Thames Gateway Development Corporation area) indicate that the charging authority will have considerable flexibility on the location and nature of the works which will be supported. Unlike explicit contributions identified in s.106 agreements there will be no specific obligation upon charging authority to spend the money providing infrastructure which directly benefits the developments which make the contributions, nor will there be a right of repayment to the developer if the money is not spent in full.

A decision-making structure will be needed to authorise the expenditure decisions with governance arrangements for proposals for expenditure to be submitted, scrutinised and authorised, and for monitoring the projects which have been supported.

8. Benefits to Local Authorities

Implementing CIL is expected to have a number of benefits, which are outlined below:

- **Simplicity** – CIL will take the form of fixed standard charges, based on a simple formula outlined within the authority's charging schedule;
- **Transparency** – Draft charging schedule will be subject to consultation and independent examination before adoption, ensuring measures are transparent and supported. However, there are concerns that the requirement for independent examination will result in a more resource intensive CIL process and reduce the ability to frequently review the schedule – a valuable concept when land and property prices are in constant flux;
- **Predictability** – Every charging schedule will be available online allowing developers to effectively predict the size of their potential liability in advance of development. Whilst also providing greater certainty for the development industry, which in turn has the potential to unlock additional development, a CIL

charging schedule will also speed up the planning system by removing the burden of negotiating contributions;

- Fairness – CIL will be levied on most types of new development in a local authority area, thus broadening the range of developments being asked to contribute towards infrastructure;
- Equality – the cumulative impact of small developments, currently not captured within planning obligations, will be addressed thus ensuring all developments make a fair contribution towards funding important infrastructure;
- Efficiency – Local authorities will be able to better forecast the amount of funding expected from developer contributions than achievable through *ad hoc* planning obligations, resulting in more effective planning for infrastructure within their authority area;
- Accountability – Local authorities will be required to monitor their receipts and expenditure on CIL for each financial year. Communities will therefore be aware of how funds are being distributed.

9. Limitations on Planning Obligation Use

The Regulations provide a reform to the current system of planning obligations to enable both Section 106 contributions and the new CIL to operate effectively alongside each other. From 6th April 2010, the appropriate usage of planning obligations when granting planning permissions will be restricted to obligations that are:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development (Regulation 122).

It is noted that the above restrictions serve to codify in statute the principles under which the s.106 regime has operated for many years, with the principles having been established through case law and the publication of CLG circular 05/2005.

Through the introduction of Regulation 122, all other usage of obligations will now be considered unlawful, thus creating a stronger basis for ensuring appropriate use and subsequently incentivising the uptake of CIL.

Once a charging schedule is in place, planning obligations that seek to fund or provide infrastructure cannot be considered in determining

planning applications where this infrastructure is accounted for by the CIL (Regulation 123 (2)). This will ensure that developers will not have to contribute twice to infrastructure through the two different regimes.

However, as of 6th April 2014, regardless of whether a charging schedule is adopted, authorities will not be able to pool contributions for infrastructure through s106 agreements that can be funded by CIL. The use of pooled contributions will be restricted to up to 5 planning obligations (Regulation 123 (3b)), beyond which the local authority is expected to implement such an arrangement through CIL. Regulation 123 reflects the government's commitment to the belief that CIL will be a better vehicle to address cumulative impacts of development. If a charging authority implements CIL before 6th April 2014, transition to these arrangements will be effective from the day of such implementation.

10. Coalition Government Proposals Regarding CIL

It is noted that the new Coalition Government has made clear its intent to replace CIL with a different infrastructure funding regime. No details are yet available of this new regime, nor of the timing of its introduction. Therefore at the present time the CIL Regulations remain in force and local planning authorities are able to proceed with plans to develop and adopt charging schedules.

In the event that CIL is repealed or amended, it appears plausible that any work progressed prior to that event towards the adoption of a tariff would not be abortive. A tariff-based approach to planning contributions is already established practice under the s.106 regime and a tariff supported by a robust evidence base could revert to the s.106 route as the mechanism for the tariff to be applied.