

BRIEFING



The Community Infrastructure Levy (CIL)

7 August 2008

The Community Infrastructure Levy

1. On 5 August Communities and Local Government (CLG) published their second policy document on their proposals for a Community Infrastructure Levy (CIL) to be introduced in England and Wales through the Planning Bill, currently awaiting its Committee discussion in the House of Lords in October.
2. The statement sets out details of how CIL might work in practice. It represents the results of CLG dialogue with both local authorities, developers and interested parties including the HBF. In that respect it is an important document. However, there is still a great deal of detail still to be developed and HBF will continue to work with CLG and other stakeholders to develop a process that is both workable and practicable for the house building industry.
3. The full document can be viewed at:
<http://www.communities.gov.uk/publications/planningandbuilding/communityinfrastructurelevy>

All paragraph references in this briefing note are to the full document above.

Objectives of CIL

4. CIL is being pursued in order to improve predictability and certainty for developers as to the amount that they will be asked to contribute to community infrastructure. The system of CIL will not replace the current process of planning obligations under S106 in their entirety due to the need to continue to provide for on-site infrastructure including the negotiation of an element of affordable housing on site. Affordable housing is not currently envisaged as being included within CIL although the Planning Bill would allow this to happen in the future.
5. CLG are well aware of the need to avoid double payment for infrastructure through CIL and S106 contributions. They have not, however, decided on how best to restrict the use of planning obligations in the future. This is one of the critical issues for ongoing discussion with all stakeholders.

6. CIL loosens the relationship between the development itself and the infrastructure funded from the levy (para 1.36). Not only does this allow CIL contributions to be made towards sub regional infrastructure but it also allows contributions from less major developments, thereby spreading the financial burden (para 1.38).
7. It should be remembered that CIL will be just one funding stream for the provision of infrastructure. Central government funding will continue to be the main contributor to community infrastructure (paras 2.8 and 3.21).

Setting CIL

8. Setting of CIL will be inextricably linked to the development strategy for an area. Planning Policy Statement 12: Local Spatial Planning (PPS12) already requires Local Planning Authorities to undertake robust infrastructure planning needed to support development plans for an area (para 3.15).
9. Infrastructure plans will be tested as part of the development plan process since they will form the evidence base of the assessment for soundness of the core strategy to which they relate. Thus, over elaborate “wish list” type proposals will be able to be challenged via the development plan inquiry process (para 3.27).
10. However, the charging schedule (the amount that each type of development will pay in each area) is currently not proposed to be part of the formal development plan although it will form part of the overall local development framework (para 3.38). The schedule will, however, still be open to independent examination alongside the development plan (para 3.42). Although not clearly explained in the CIL policy document this is known to be because of government fears over state aid problems around setting different charges in different areas. In effect, the policy document proposes a parallel testing process for the charging schedule identical to that followed for a development plan document. Indeed, the document even suggests that the examination of the charging schedule might be undertaken at the same time and by the same inspector as the development plan that it supports (para 3.42).
11. HBF continues to discuss this rather convoluted proposal with CLG since it is (as recognised in the document at para 3.36) essential that there must be a direct relationship between the process for establishing the charging schedule, the infrastructure planning process and thus with the development plan strategy.
12. It is recognised that the level of CIL should not be set at unaffordable levels rendering development unviable (para 3.50). The setting of CIL should also take account of the wider range of development costs such as affordable housing contributions and other regulatory burdens (para 3.55).

13. Units (or metrics) of the CIL charge are discussed (paras 3.64 – 3.98) but although it is proposed that commercial and industrial development could easily be charged at a rate per square metre of floorspace of development (para 3.65) it is recognised that this would not be quite as simple for residential development. The problems and inequities of other measures such as per dwelling or habitable rooms are discussed in some detail (paras 3.66 – 3.68) with no conclusion yet proposed.

Paying CIL

14. It is proposed that CIL should be levied on most types of development above a yet to be defined threshold (para 4.3).
15. The amount of CIL payable is proposed to be set at the level in force at the time a planning application is validated (para 4.14). The amount of CIL payable will be the rate in the charging schedule multiplied by the units of development for which permission is granted (para 4.16).
16. It is recognised (in para 4.18) that there will be some (rare) cases when payment of CIL would make desirable development unviable. It is, however, reiterated that the act of setting the CIL level should make robust assessments of the burden of CIL to ensure that it does not render the vast majority of development in an area unviable (para 4.18).. The government continues to discuss whether to allow rare exceptions to be made to allow development to go ahead or whether to accept that unviable development will not proceed (para 4.18).
17. Liability to pay CIL will only be triggered on commencement of development (para 4.20). While the definition of commencement is proposed to remain as defined in the Town and Country Planning Act 1990, the government also proposes that developers be required to notify the charging authority of their intention to commence via a commencement notice (para 4.24). The commencement notice will also establish the identity of the liable party for the CIL payment, albeit that the regulations will set out how and in what circumstances liability will attach to the landowner, the developer or another third party (para 4.28).
18. Payment of CIL is proposed to be within 28 days of service of the commencement notice (para 4.33). The government is discussing ways of allowing payment by instalments, possibly linked to defined stages of development progress (para 4.34). However it is not envisaged that developers would be able to negotiate bespoke payment schedules (para 4.35).
19. The government recognises the potential benefits of in-kind payment of CIL (para 4.45) but identifies a number of practical problems that are still to be resolved such as how to value the in-kind provision of infrastructure (paras 4.41 – 4.44).

20. The policy document gives considerable space to enforcement of CIL payment including the proposal to create CIL Stop Notices in serious cases of non-compliance to the extent of proposing new powers such as giving charging authorities the power to seize assets of the liable party to recover monies due (para 4.61).

The Use of Planning Obligations

21. The government currently see affordable housing contributions continuing to be required through planning obligations (para 5.22). However, rather worryingly, although the document recognises the concerns raised by others that CIL may threaten to reduce affordable housing contributions the inclusion of affordable housing within CIL is suggested as a possibility for the future in order to “top up” developer contributions towards affordable housing (para 5.24). This suggests that local authorities may seek affordable housing contributions through both S106 negotiations and through CIL. Such double payment towards infrastructure will continue to be resisted by HBF in ongoing discussions with government.

Implementation

22. Regulations underpinning CIL are not expected to come into force until after Spring 2009 (para 6.2). However, the document is clear that without an up to date development plan and charging schedule CIL will not be chargeable (para 4.16). Nor will CIL apply to planning permissions which have been granted before the day on which the charging schedule comes into force in an area (para 4.16).

Wales

23. CIL regulations will apply to Wales as well as England (Section 7).

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