SUBMISSION

Community Infrastructure Levy Detailed Proposals and Draft Regulations for Reform Consultation

16 December 2011

Thank you for consulting the Home Builders Federation (HBF) on the above proposed changes to Community Infrastructure Levy (CIL). Submission

The HBF is the principal representative body of the housebuilding industry in England and Wales and our representations reflect the views of our membership of national and multinational plc's, through regional developers to small, local builders. Our members account for over 80% of all new housing built in England and Wales in any one year.

Our members are, of course, payers of CIL and site specific planning obligations. We have encountered many of the problems associated with the current system of CIL charging schedules and payment and are, therefore, particularly interested in the possibility of changes as proposed.

As an overall comment on the proposals we are concerned that the changes made to CIL by the Localism Act have the potential to divert funds away from strategic infrastructure and appear to seek to re-establish (to some extent) a link between the actual development site and the CIL. We are, therefore, concerned that in some cases this may threaten the delivery of strategic infrastructure upon which development plans rely.

We suggest below that the CIL charging authority, therefore, maintains a much closer control over how levy receipts are spent locally in order that infrastructure is provided at the right time and in the right places to allow development to go ahead. To do otherwise would affect the delivery of much needed development and growth this country so desperately needs.

We also make comments on the discussion over whether or not to include affordable housing contributions within CIL or to allow charging authorities the ability to spend CIL receipts on affordable housing provision. We do not believe that a robust case has currently been made to go forward with this proposal at the present time. However we would wish to continue our discussions with government and others over the practicalities of allowing this to happen in future once we have seen more clearly how CIL will work in practice and how the necessary "cushions" to cope with market fluctuations operate successfully.

Our response addresses each of the questions posed in the consultation document.

Question 1:

Should the duty to pass on a meaningful proportion of levy receipts only apply where there is a parish or community council for the area where those receipts were raised?

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We are concerned that the spending of levy receipts locally has the potential to threaten the delivery of wider infrastructure needs for which CIL was originally designed by diverting funds to local rather than more strategic projects.

We also have some concerns over the potential double counting (or double spending) of CIL receipts and site specific impact mitigation through S106 agreements delivered locally.

We are, therefore unconvinced that the money should be paid to parish and town councils for direct spending but that such Councils should request the charging authority to deliver specific infrastructure projects within an agreed timetable. This would, we believe, be the best way of avoiding potential double spending or the allocation of funds to a strategic project that was being delivered locally.

The charging authority should be under an obligation to take account of the requests of the town or parish council and to agree a delivery timetable for the local infrastructure.

Question 2:

Do you agree that, for areas not covered by a parish or community council, statutory guidance should set out that charging authorities should engage with their residents and businesses in determining how to spend a meaningful proportion of the funds?

We agree with the proposal for charging authorities to engage with local residents over how levy receipts will be spent locally. We suggest that our proposed approach in response to Question 1 accords with this principle and ensures that there is no difference between how levy receipts are spent locally in areas where there are, or are not parish or town councils.

A consistent approach would be more transparent and understandable to local communities than a different process for those areas with lower tier councils.

Question 3:

What proportion of receipts should be passed to parish or community councils?

We believe that fixing a proportion of receipts to lower tier councils is not the correct approach. Certainly a nationally set proportion would be wholly inappropriate in a process which seeks to provide local infrastructure and wider, strategic infrastructure.

In some areas the provision of strategic infrastructure and site specific planning contributions will mean that no additional levy receipts will need to be spent in the local area. In other areas the levy will be directed towards a larger project elsewhere in the charging authority area and thus a local contribution might need to be higher.

We therefore believe that it should be up to charging authorities to consider and set the proportion of receipts to be spent locally, taking into account the spatial distribution of infrastructure set out in their plans. This decision should form part of the charging schedule and be justified within the evidence base.

Question 4:

At what level should the cap be set, per council tax dwelling?

This issue is only a problem due to the rigid approach suggested in the consultation paper. In practice areas that take large, strategic development are most likely to also receive the benefit of a great deal of the strategic infrastructure towards which CIL receipts have contributed. Therefore it may be inappropriate for the local community to receive further "local" funding as proposed.

Under our proposed approach set out above, this discussion could be held between the charging authority and the lower tier council or group to ensure that an appropriate balance was struck, thereby removing the need to cap local payments.

Question 5:

Do you agree that the proposed reporting requirements on parish or community councils strike the right balance between transparency and administrative burden?

No. It should be the responsibility of the charging authority to account for how every penny of levy collected is spent. Thus it should also be up to the charging authority to report on how the monies have been spent locally as well as strategically over the wider area.

It should, therefore, be a requirement of giving any money to a local council or group to require them to report to the charging authority how they have spent that money. Of course, our suggestion above would alleviate any such problems since it would be the charging authority itself that delivered the local infrastructure in accordance with the local council's request.

Question 6:

Draft regulation 19 (new regulation 62A(3)(a)) requires that the report is to be published on the councils website, however we recognise that not all parish or community councils will have a website and we would welcome views on appropriate alternatives.

As above, it should be the responsibility of the charging schedule to publish details of how levy receipts have been spent. To allow any amount of CIL to be spent in an unspecified or unreported way is unacceptable.

Question 7:

Do you agree with our proposals to exclude parish or community councils' expenditure from limiting the matters that may be funded through planning obligations?

We fundamentally disagree.

There is a real threat that parish or community councils will seek to spend their proportion of CIL receipts on items that are neither infrastructure nor necessary to enable the development to go ahead. Allowing such expenditure will turn CIL into a value capture tool rather than an infrastructure based levy.

Parish and community councils should be under the same requirements as charging authorities to produce local infrastructure plans in association with development plans in order that the devolved receipts are spent on necessary infrastructure.

Question 8:

Do you agree with our proposals to remove the cap on the amount of levy funding that charging authorities may apply to administrative expenses?

No. The purpose of CIL is to raise money to be spent on infrastructure. The current cap on administrative charges is already great enough. Charging authorities should put in place efficient systems to ensure that they can administrate their system within the existing caps.

Question 9:

Do you consider that local authorities should be given the choice to be able if they wish to use levy receipts for affordable housing?

We do not believe that charging authorities should be given a choice as to whether or not affordable housing is included in CIL. This should be a national decision if and when it is thought correct to do so.

However working practice on CIL is still in its infancy and we are starting from a position of market instability and uncertainty. We have yet to see how CIL will operate in practice on a day to day basis and how practical examples will cope with the unviability of individual sites unable to afford the rate of CIL set by a charging authority. If affordable housing is considered to be classed as infrastructure (on which CIL can be spent) then it should be universally regarded as such and should move from a policy basis to a charging basis.

However, at the present time the provision of affordable housing is a negotiable benefit and this negotiation can flex to allow sites to come forward where their development is considered important enough to reduce or waive affordable housing provision. Without this flexibility we are worried that currently emerging CIL charging schedules do not have enough of a cushion against changing markets in the current economic climate. Thus we would prefer to revisit this proposal in a few years time when everyone will have the benefit of setting, charging and paying CIL while being able to adjust for market conditions through other, flexible planning obligations such as affordable housing provision.

Question 10:

Do you consider that local authorities should be given the choice to be able if they wish to use both the levy and planning obligations to deliver local affordable housing priorities?

No. We consider that affordable housing provision should either be considered as infrastructure and be included within CIL or a policy objective of providing a mix and balance of tenures within an area or a development.

However, we are happy to discuss this proposal in greater detail and look forward to holding such conversations with the government and other interested parties.

Question 11:

If local authorities are to be permitted to use both instruments, what should they be required to do to ensure that the choices being made are transparent and fair?

The consultation document appears confused over the provision of affordable housing on site and commuted payments for offsite provision. The idea of including affordable housing within CIL will effectively move affordable housing into the list of infrastructure towards which CIL is a contributor. This choice is fundamental and should be discussed in greater detail before the decision is made as to whether or not to include affordable housing within CIL or not.

While not wishing to pre-judge such a discussion, it is highly unlikely that it will conclude that affordable housing can be either in CIL or negotiated through site specific planning permissions. This is a wholly different discussion as to whether or not affordable housing is provided on the proposed development site through provision in kind or off site through the payment of a commuted sum. Just because the latter is a financial contribution does not mean that the principle behind it is the same as the financial contribution of CIL payments.

Question 12:

If the levy can be used for affordable housing, should affordable housing be excluded from the regulation that limits pooling of planning obligations, or should the same limits apply?

WE refer to our views set out above. Since we do not currently consider it appropriate to allow provision of affordable housing through CIL or S106 as a choice for the local authority the issue over pooling of contributions is not an issue.

However, it is worth noting that this restriction is one of the issues that will need to be examined in greater depth should it be decided to pursue the provision of affordable housing through CIL.

Question 13:

Do the proposed changes represent fair operation of the levy in Mayoral Development Corporation areas?

We see these proposals as merely tidying up anomalies of the existing regulations with regard to practical ways forward for Mayoral Development Corporations. We therefore have no objections.

Please do not hesitate to contact me should you require any further clarification on the points made above. We will, of course, be happy to continue to work with the government and other parties to take forward the proposed changes and continue the discussion over the practicalities of the new process of CIL charging and spending.

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