THE HOME BUILDERS FEDERATION

CIL Team
Department of Communities and Local Government
Zone 1/H6
Eland House
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Dear Sirs

CONSULTATION ON COMMUNITY INFRASTRUCTURE LEVY FURTHER REFORMS A RESPONSE BY THE HOME BUILDERS FEDERATION (HBF)

Thank you for consulting the Home Builders Federation on the above proposals. 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. This response is based on discussions with our members around the country.

In general terms we welcome most of the proposed regulation reforms and have been working closely with government and other interested parties to ensure that CIL can be implemented efficiently and effectively and so not be a barrier to development viability and thus much needed economic and household growth aspirations.

While these proposed reforms go some way to meeting our concerns over CIL we do, however, remain concerned that the original principles of CIL being a fairer, faster and more transparent method of ensuring that all development contributes towards the cumulative impact of development on infrastructure is no longer the driving force behind the CIL proposals. The process risks becoming as cumbersome and unworkable as the developer contributions through Section 106 agreements the majority of which CIL was originally designed to replace.

The fact that there is still little or no link between the payment of CIL and the spending of the receipts in a timely manner on infrastructure needed to support development is of critical concern (in effect linking Regulation 59 and the Regulation 123 list of infrastructure). This is, perhaps, most evident with the government's recent changes to the CIL regulations requiring the local allocation of CIL receipts to Parish and Town Councils and neighbourhood planning groups, thereby reducing the contribution of CIL to providing wider, strategic infrastructure.

There is still a risk, therefore, that CIL will become the single biggest impediment to the increased house building programme that the government hopes to stimulate due, primarily, to the cumulative complexity and regulatory burden of the CIL process.

We would, therefore, welcome the chance to continue our constructive dialogue with the government over the future of CIL to ensure that future problems associated with its ongoing setting and application can be quickly and effectively dealt with through any necessary additional legislative or regulatory changes or through the abandonment of CIL in its entirety.

We address the specific proposals and questions set by the consultation below.

Question 1 - We are proposing to require a charging authority to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy on the economic viability of development across the area. Do you agree with this proposed change?

Yes. This balance is critical to ensuring that the cumulative impact of policy costs and CIL does not make development unviable. The current Regulation 14 places this balance in the hands of the CA with little or no scrutiny of the evidence behind the decision. This proposed change places a new responsibility on the CA to provide evidence of their assessment and allows the examiner to reach a view as to whether that balance is correct and will contribute to the delivery of the relevant plan.

Question 2 - We are proposing to allow charging authorities to set differential rates by reference to *both* the intended use and the scale of development. Do you agree with the proposed change?

Yes. However, it is critical that CIL charges should be related to viability of particular types of development and that this provision is not used as a policy tool to encourage or discourage particular types or scale of development,

Any proposals to differentiate CIL charges by scale of development must be simple and clear and we remain concerned of the potential problems of the use of arbitrary thresholds at which different CIL rates may be set.

Question 3 - Should the period of consultation on the draft charging schedule be extended from *"at least 4 weeks"* to *"at least 6 weeks"*?

Yes. While HBF is, in general, in favour of short consultation periods, the amount of information needing to be assimilated with regard to a CIL charging schedule requires a period of longer than 4 weeks. The proposal to require "at least 6 weeks" is a reasonable compromise and is consistent with many other planning documents.

Question 4 - Should the regulation 123 list form part of the relevant evidence under section 211(7A) and (7B) so that it is available during the rate setting process, including at the examination?

Yes. The charging authority implementation plans on the infrastructure on which CIL is to be spent is critical to the assessment of the balance between the cumulative costs of

development plan policy requirements and the CIL charge. Changes to the Regulation 123 list may have a significant impact on this balance and it is, therefore, vital that the Regulation 123 list becomes part of the evidence tested as part of the examination of the CIL charging schedule.

Similarly it is critical that charging authorities show the extent to which developer contributions under Section 106 agreements will be scaled back from existing levels. It should be very clear from both the evidence base and the charging schedule itself how this critical balance between CIL and Section 106 contributions has been assessed and addressed.

Question 5 - We propose to amend the regulations so that a new infrastructure list can only be brought forward after proportionate consultation with interested parties. Do you agree that this approach provides an appropriate balance between transparency and flexibility?

Yes. We accept that charging authorities may need to respond to changing circumstances. However, the balance between CIL and planning obligations is critical to developers' investment decisions and a high level of certainty is required when assessing the impact of CIL on the viability of the development proposed. Thus it is essential that any changes to the Regulation 123 list are appropriately advertised and consulted upon.

However, we believe it would be appropriate for the government to prescribe a minimum level of consultation (such as a minimum consultation period and the requirement to advertise the proposed changes on the relevant website) rather than allow charging authorities to make their own decisions over the appropriate level of consultation.

Question 6 - We are proposing to move the date from when further limitations on the use of pooled planning obligations will apply (to areas that have not adopted the levy) from April 2014 to April 2015. Do you agree?

Yes. The proposed changes will require many charging authorities to readdress their emerging charging schedules and this may take them beyond the April 2014 date currently set by Regulation 123. The extension of this date to April 2015 is considered to be a pragmatic approach towards allowing authorities to assimilate these changes within their emerging schedules.

Question 7 - Do you agree that regulation 123 (excluding regulation 123(3)) should be extended to include section 278 agreements so that they cannot be used to fund infrastructure for which the levy is earmarked?

Yes. We believe that it is a fundamental principle of the relationship between CIL and other developer contributions that there is no "double counting" of developer contributions towards infrastructure provision. Thus any calculation of the effect of all charges against development affecting the viability of that development must be considered when setting a CIL rate.

The concept of CIL is built on the fact that developers' contributions towards infrastructure should be clear and transparent and based on the premise of an infrastructure plan required to support the level of development within a plan. Thus, allowing for the

continued use of Section 278 agreements outside the process of CIL or planning obligations is anathema to this concept. A CIL rate that does not take account of potential costs of Section 278 agreements cannot, therefore, be found sound. This should be made very clear in both statutory guidance and the Regulations.

Notwithstanding the fundamental issue of why Section 278 obligations must be included with CIL, this proposal would have the added benefit of bringing agencies such as highway authorities and the Highways Agency into a closer discussion with charging authorities and developers about the total contributions towards infrastructure and its effect on the viability of development and delivery of the plan's objectives.

Question 8 - Do you agree that, where appropriate and acceptable to the charging authority, the levy liability should be able to be paid (in whole or in part) through the provision of both land *and/or* on-site or off-site infrastructure?

Yes. The current provisions for payments in kind are too restricted. This proposal would also allow the timing of infrastructure provision to be more closely linked with the proposed development – an issue of considerable concern to the development industry.

Question 9 - Do you agree that actual construction costs and fees related to the design of the infrastructure should be used to calculate the sum by which the amount of levy payable will be reduced, when the levy is paid by providing infrastructure in kind?

Yes. The charging authority will have given an indication of the cost of the item(s) within their infrastructure plan that are to be provided "in kind" and it is this value that should be assumed, in the first instance, for calculating the reduced CIL liability. However, it should be the actual costs of the provision of the infrastructure that should be used to reconcile the CIL payment once a project is complete.

Question 10 - Should the payment in kind provisions be limited to the capital value ceilings as set out in the EU procurement rules – currently thresholds of £173,934 for goods and services and £4,348,350 for works?

No. There is no reason for the EU procurement rules to be repeated within the CIL regulations. It is the responsibility of individual charging authorities to ensure that they stick within the existing rules and seek competitive tendering where necessary.

Question 11 - Should all planning permissions (outline and full) be capable of being treated as phased development with each phase a new chargeable development?

Yes. Cash flow is a critical part of the viability of development proposals. Charging authorities should be as flexible as possible in making agreements over payment schedules for CIL.

Question 12 - Do you agree that the phasing of levy payments will make adequate provision in relation to site preparation?

No. Site preparation works should be specifically excluded from triggering CIL liability.

We also remain concerned that it is the responsibility of each charging authority to include phasing of payments within each charging schedule. We believe that, where this is not done there should be a default phasing of payments set out in Regulations (as was the case in the 2010 Regulations, removed by the 2011 revisions).

The trigger for CIL liability should, as a minimum, relate to the commencement of the actual building for which CIL is payable. However, there are many other parts of the development process on which it may be appropriate to trigger various phases of CIL payment. Many planning conditions relating to the provision of on-site infrastructure are related to completion or occupation of dwellings. We suggest that the government looks more widely at the potential for phasing CIL payments in line with these wider triggers rather than merely focussing on the definition of "commencement" and would be happy to work with government and others to develop more flexible arrangements and definitions.

Question 13 - Do you agree that the regulations should make it possible for a charging authority to re-calculate the levy liability of a development when the provision of affordable housing is varied?

Yes. Ultimately the levy should be payable at the rate appropriate on the completion of the development. This should allow for both under and over payment of CIL. This would also apply to the number of self build plots that are ultimately provided on a site if the government persists with its proposals under Question 21 (to which we object – see below).

Question 14 - Should we amend the regulations so that the date at which planning permission first permits development is the date of the final approval of the last reserved matter associated with the permission or phase?

This question appears at odds with the issue discussed in the pre-amble associated with it in the consultation document. However, we conclude that the answer to the question posed is "No".

We would, therefore, re-iterate and endorse the principle that the rate of CIL liability should be established and set at the date of the earliest consent.

Question 15 - Should we change the regulations to remove the vacancy test, meaning the levy would generally only be payable on any increases in floor space in refurbishment and redevelopment schemes, provided that the use of the buildings on site had not been abandoned?

Yes. The current Regulation 40 test of vacancy is both unfair and difficult to calculate. CIL should only be payable on additional floor space created by the development. It is a simple matter for "lawful use" to be established and agreed through existing planning processes and thus this provision should not cause any confusion.

While some may object to this proposal on the basis that they fear the level of CIL receipts will be reduced it should be remembered that CIL attempts to address the issue of cumulative impact of development within an area on the infrastructure of that area. Reusing a building for its lawful use will have little or no additional impact on infrastructure and thus it should not be liable for CIL charges.

Question 16 - We are proposing to amend the regulations so that new applications bringing forward design changes, but not increasing floor space (other than Section 73 applications) would trigger an additional liability to pay the levy but the amount payable would be reduced by the levy already paid under the earlier permission.

Yes. The anomaly in the original regulations relating to Section 73 applications has been adequately addressed to avoid creating a duplication of liability for CIL. The proposal to ensure that this is also the case in other changes to development proposals is considered both necessary and pragmatic.

Question 17 - Would you support giving charging authorities the discretion to apply social housing relief for discount market sales within their local area, subject to meeting European and national criteria?

Tenure of housing is both wide and flexible. The provision of affordable (or subsidised) housing is also now very wide. Given that the government accepts that there is social benefit derived from affordable housing all types of such subsidised housing should be granted relief from CIL liability.

However, this exemption should not be at the discretion of individual charging authorities but should be enshrined within the Regulations themselves.

Question 18 - If the social housing relief was to be extended, do you agree the key national criteria for defining the types of affordable housing provided through intermediate tenures, to which social housing relief could apply, should be that:

- **The housing is provided at an affordable rent / price (at least 20% below open market levels);**
- **The housing is meeting the needs of those whose needs are not being met by the market, having regard to local income levels and local house prices (either rent or sales prices); and**
- **The housing should either remain at an affordable price for future eligible households or, if not, the subsidy (amount of social housing relief) should be recycled for alternative affordable housing provision?**

The criteria above should not be mutually dependable but mutually exclusive. Meeting any of the criteria should result in exemption from CIL liability. Such an approach would be compatible with the definition of affordable housing within the National Planning Policy Framework (NPPF) and this consistency would assist CIL schedules in being simple and transparent. On the above basis we agree with the proposal.

Question 19 - Do you agree that we should amend regulation 49 so that the areas taken into account when assessing eligibility for social housing relief include the gross internal area of all communal areas (including stairs and corridors) and communal ancillary areas (such as car parking) which are wholly used by - or fairly apportioned to - people occupying social housing?

Yes. We further propose that all communal areas within residential development should be exempt from CIL liability regardless of tenure.

Question 20 - Which of the following options do you prefer (a) remove the requirement for a planning obligation which is greater than the value of the CIL charge to be in place, before discretionary relief in exceptional circumstances can be provided, or (b) change the requirement so that the relevant planning obligation must be greater than a set percentage of the value of the CIL charge (for example, 80%), or (c) keep the existing requirement?

The HBF prefers option (a) and believes that CA should have absolute discretion to grant relief subject to notifiable State aid rules and limitations.

Question 21 - Should we introduce a relief from the payment of the levy for self-build homes for individuals as set out above?

Question 22 - We are proposing to amend the regulations to reflect the above process and the evidence self-builders would need to provide to qualify for relief from the levy, including provisions to avoid misuse by non-self-builders.
Do you agree that this approach provides a suitable framework to provide relief for genuine self-builders?

No. It is clear that the government recognises that self build housing has an impact on infrastructure within an area and thus should contribute towards CIL to mitigate that cumulative impact alongside other development. The cost of CIL should, therefore, be included within the project costs of self build just as it is in projects undertaken by commercial developers.

In effect any proposed relief would create a false premium in land value for self build meaning that there would be no difference to the overall costs of proposals – self builders would merely have to pay more for plots since there would be no CIL liability to come out of the plot land value.

The relief would be extremely difficult to manage and monitor, particularly the apparently arbitrary period in which the self builder would have to live in the property to continue to benefit from the relief. In effect this provision would trap people in their own home if, for example, their circumstances changed and they could not afford to liquidise their asset due to the CIL liability payable for doing so.

This would cause a similar problem for mortgaging of the self build property since mortgage companies would be extremely concerned with a CIL charge held against the property for any length of time.

There are many other practical problems associated with this proposed relief that the consultation does not address such as the difficulty of conveyance and the definition of "occupancy" over which to measure the 7 year period.

We are also concerned as to how a charging authority is able to assess how many plots within its overall housing supply will be built under this relief provision and thus by how much their projected CIL income (against which they may wish to borrow to front fund infrastructure) might be reduced.

Thus the proposal introduces greater uncertainty and inequity – both of which the

concept of CIL is aimed at reducing.

Question 23 - Should we change regulation 120 so that any comments must be *received* within 14 days and allow discretion for the appointed person to extend the representations period in any particular case?

Yes. Such an approach is consistent with other parts of the planning application process.

Question 24 - Should we amend the regulations to allow for the review or appeal of the chargeable amount in relation to planning permissions granted after development has commenced?

Yes. It should be a fundamental principle that the CIL payable should be that required by the amount and type of development actually built. Thus review and/or appeal should be allowed at any stage of the development process.

Question 25 - Do you agree that changes related to the charge setting process and examination should not apply to authorities who have already published a draft charging schedule?

No. While we accept that new regulations should not be retrospective or cause unfairness it is essential that charging authorities approach CIL in the correct and proper manner following the most up to date regulations. To not do so would create two tiers of charging authorities resulting in considerable unfairness for the development industry. Thus it should only be those authorities that have a CIL charging schedule in force (not merely adopted) to whom transitional arrangements should be applied. There should be a set period within which those charging authority should bring their schedules in line with the new regulations. Such a period should be no more than 6 months.

Once again I would thank you for consulting on these proposals, with which, as you will note from the above response, we broadly agree. We look forward to seeing the proposed Regulations in due course.

Yours faithfully

Andrew Whitaker
HBF Planning Director