



Community Infrastructure Levy: Consultation

BRIEFING

On 30 July 2009 the Department for Communities and Local Government published for consultation detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy (CIL). The consultation finished on 23 October 2009.

The proposals and draft regulations set out how CIL will operate in practice. This briefing note summarises the key provisions and looks at how CIL will affect developers.

CIL

CIL will be a new charge that “charging authorities” in England and Wales will be empowered (but not required) to charge on new development in their area. CIL aims to ensure that owners and developers of land will fund infrastructure costs (in whole or in part) to support the development of an area in accordance with the development plan. Those authorities who prepare development plans are generally considered to be charging authorities. In London, the Mayor of London will also be a charging authority.

An up-to-date development plan must be in place before CIL can be charged for a particular area. Charging authorities can elect whether or not to charge CIL. Saved Unitary Development Plan or District Plan policies are not considered to be a satisfactory basis for implementing CIL and

authorities with saved policies should complete their core strategy or local development plans.

Setting CIL

A charging authority must prepare a charging schedule which should allocate the proposed amount to be raised from CIL to each main class of development as set out in the development plan. Charging authorities will be able to set differential rates based on either the zone in which the development is situated or the intended use of development. When setting CIL, a charging authority must consider that part of the actual and expected estimated total cost of infrastructure required to support the development of the areas which it wishes to fund from CIL, taking into account other actual and expected sources of funding, and the potential effects of CIL on the economic viability of development in the area. Charging authorities will be required to consult on their charging schedules which will be examined by a CIL examiner in a hearing. A charging authority is not required to adopt the charging schedule but can submit new proposals for examination.

Application of CIL

CIL will be applied to fund infrastructure as defined in Section 216(2) of the Planning Act 2008. Infrastructure includes roads and transport, schools, medical facilities, sporting and



recreational facilities, open spaces and affordable housing although the Government have made it clear that there is no intention to permit CIL to be used for affordable housing. In relation to London, transport infrastructure includes Crossrail. A charging authority may use CIL to reimburse expenditure already incurred on infrastructure.

How Liability will Crystallise

Liability to pay CIL arises when planning permission “first permits” the development. In the case of full planning permission, this is the date when permission is granted (or if subject to conditions requiring further approval the development is first permitted on the day of final approval of the conditions) and for outline permission, it is the date of final approval of the last reserved matters (or if the development is permitted in phases upon final approval of each reserved matters phase). Planning permissions granted under sections 70, 73, 73A, 77, 78 and 177 or a modification of planning permissions made under section 97, 100, 102 or 104 of the Town and Country Planning Act 1990 and a number of other regimes which grant permission for development will be liable for CIL. These include Local Development Orders, Enterprise Zones and Simplified Planning Zones and deemed permission secured through section 90 of the Town and Country Planning Act 1990 for Transport and Works Act development. Development consents under the Infrastructure Planning Commission process are also included.

Calculation and Payment of CIL

The amount of the CIL charge will be calculated upon grant of permission and at that point developers will be advised of the CIL liability. Charges will be calculated as pounds per square metre of gross internal floorspace. The Government chose this metric because it offers uniformity across all classes of development. Buildings and extensions will be exempt from CIL up to 100 square metres of gross internal floor space although the threshold will not apply in relation to one or more new dwellings. After 100 square metres, the whole development will be liable for CIL. CIL will also be charged on changes of use which require planning permission and some permitted development may incur CIL liability. The regulations set out a formula for calculating CIL as set out below:

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|---------------------------------------|---------------------------------------------------------------------------------------------|------------------------------------------------------|
| CIL rate in charging schedule X | [construction costs] index for the calendar year in which permission is granted | X the gross internal area per square metres |
|---------------------------------------|---------------------------------------------------------------------------------------------|------------------------------------------------------|

Payment of CIL will be required within a fixed time of commencement and the Government is considering a 28 day payment window and the possibility of payment by instalments. For phased developments, each phase would pay CIL separately. In respect of liability, in the first instance it will be left for the person who wishes to assume liability to pay CIL to notify the charging authority (or any other appointed collecting authority) of their assumption prior to commencement. If no-one comes forward to



assume liability it will default to the owners of the land.

Implementation of CIL

CIL is expected to come into force on 6 April 2010 but each charging authority will be able to decide for itself when and if it will introduce it.

Enforcement of CIL

The Government proposes to register CIL liability as a Local Land Charge to ensure that future purchasers of the developed site are aware of outstanding liability. Charging authorities will also have powers to add interest and surcharges to CIL for late payment. CIL Stop Notices are also proposed as a means of enforcement.

Planning Obligations

The Government proposes to restrict the use of planning obligations to their original intention of mitigating the direct impact of development and, in particular, to secure delivery of affordable housing.

Winckworth Sherwood's View: Advice for Developers

- When acquiring sites for development, consider whether the site falls within an area

where CIL is operative and whether there are any outstanding CIL charges.

- How will CIL affect the economic viability of the development?
- If a CIL charging schedule has not been adopted yet, investigate whether the Local Planning Authority intend to adopt one (and its intended timeframe) and seek legal advice on whether to secure planning permission before adoption
- Developers may need to think twice before implementing schemes to keep planning permissions alive just before expiry as this could trigger CIL liability

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