



Community Infrastructure Levy – Deadline for Charging Authorities

BRIEFING

On 18 November 2010, Decentralisation Minister Greg Clark, announced the Government's plans to retain the Community Infrastructure Levy ("CIL") subject to reforms. CIL was first introduced by the previous Government as a mechanism under the Planning Act 2008, to raise funds for local infrastructure and came into force on 6 April 2010.

Prior to the General Election, the Tories had planned to scrap CIL which resulted in the majority of local authorities holding back from committing resources to the adoption process. However, now that it looks as if CIL is here to stay, the latest polls show that almost 70% of local authorities expect to press ahead with adoption. This figure is likely to rise as the deadline for having more than five pooled S106 contributions approaches in April 2014.

What is CIL?

The overall purpose of CIL is *"to ensure that costs incurred in providing infrastructure to support the development of an area can be funded (wholly or partly) by owners or developers of land"* (Section 205, Planning Act 2008). CIL enables the local planning authority to charge a tariff on most new development. This goes into a locally-held fund it administers and uses to pay for infrastructure (such as roads, schools, hospitals, and green space) which is needed as a result of permitting development in its area.

What can CIL be used for?

Local authorities decide what infrastructure is needed in accordance with their development plan and use CIL to:

- Provide new infrastructure (roads, transport, flood defences, schools, medical facilities, sporting and recreational facilities, and open space);
- Improve existing infrastructure if deficiencies will be made worse by the new development; or
- Increase capacity of or repair/maintain existing infrastructure needed to support the new development.

How is it triggered?

The charge applies to most new buildings or extensions, which have at least 100 squares of gross internal floor space. If the development involves additional dwellings they are caught even if the gross internal floor area is less than 100 square metres, but if any building is demolished as part of the overall development the amount of floor space removed is deducted from the total.



When is it due and who pays for it?

The charge is calculated at the time the planning permission is granted and becomes due when development commences. The owner or developer will be responsible for paying CIL if no-one else has assumed liability for CIL before development has begun.

Are there any exemptions from payment of CIL?

There are some limitations on who pays (eg if development is below the 100 square metres threshold) and there are a number exemptions (eg change of use, charities/social housing relief as well as and relief in exceptional circumstances). The charging authority also has some flexibility on how it is paid - instalments can be accepted or payments in kind.

Does a Local Planning Authority have to adopt CIL?

No, CIL is not mandatory. However, the CIL Regulations 2010 have brought in limitations to the planning obligations regime, which will make it difficult for local planning authorities to rely on pooled contributions from S106 agreements to fund infrastructure in its area.

What are the restrictions on use of s106 agreements?

First, there can be no double charge, so once a charging schedule is in place, anything which is

included in that charging schedule as infrastructure cannot be recovered through a section 106 agreement.

Secondly, for any planning permission granted after 6 April 2014, or from the date the CIL charging schedule is adopted, if earlier, a local planning authority can pool no more than five contributions for an item of infrastructure not being funded from CIL. This covers any category of infrastructure to which CIL could apply (whether a local planning authority is adopting CIL or not).

How are rates set?

CIL rates must be set out in a charging schedule (Section 211 Planning Act 2008) and expressed as pounds per square metre. Before setting rates, charging authorities will need to ensure they have identified their area's infrastructure needs as supported by appropriate evidence. Information on infrastructure needs should be drawn from an up to date Development Plan. It is for the authority to decide if this evidence is sufficiently up to date in order to calculate a CIL infrastructure funding target. If weak then additional bespoke studies should be commissioned.

How important is viability?

CIL regulation 14 requires authorities to set rates, which strike "*an appropriate balance*" between the desirability of funding CIL infrastructure and the potential effects on "*economic viability of development across its area*". Robust evidence will be required at examination to show how



economic viability has been assessed. Rates should not be set so high as to put development at risk.

Variable rates may be set for different zones or categories of intended use, but care should be taken to ensure the viability evidence supports differential rates. Criticism has already been levied at one council by a neighbouring local authority for proposing zero rates for commercial developments on the basis it would not be state aid compliant.

So are s106 agreements dead?

No, there remains a role for planning obligations to deal with specific consequences of a development on a locality. This is because a local planning authority may still need some site specific mitigation or compensation required to make that development acceptable in planning terms. CIL cannot, for example, be used to secure affordable housing, so this will continue to be provided through s106 agreements.

Front Runners Scheme

In December 2010, the DCLG invited charging authorities to apply to be part of a CIL 'Front Runners 1' scheme. Eight front runners were selected to pave the way with the new adoption process. In July this year, the Government chose a further 20 local authorities for the 'Front Runners 2' project. All Front Runners are expected to share experiences and methodologies with other authorities.

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