

## **COMMUNITY INFRASTRUCTURE LEVY**

**John Rennilson**

### ***Introduction***

1. The Town & Country Planning Act 1990 covering England and Wales provides in Section 106 for agreements to be entered into, generally just prior to the grant of planning permission, restricting or regulating development or the use of land. This often has been used to secure payments for off-site infrastructure which cannot otherwise be covered by a planning condition.
2. Increasingly, the Government has been concerned that local authorities and the courts have used the Section in a way that significantly has extended the scope beyond its original purpose which was for development-specific impact mitigation. In particular large developers have been asked for what might be considered disproportionate amounts and have agreed to pay so as to secure early issue of a planning permission. Transparency, certainty and accountability have been lost.
3. The Planning Act 2008 contains enabling clauses providing the legislative basis for a Community Infrastructure Levy (CIL). The DCLG issued on 30 July detailed proposals and draft regulations in a Consultation Paper seeking comments by 23 October 2009. It is intended that the Regulations will be effective from 6 April 2010.
4. It is claimed in the Ministerial Foreword that CIL will be a fairer, clearer, more legitimate and more predictable way of seeking contributions from developers towards the costs of local infrastructure compared with the existing system.

### ***Consultation Paper***

5. Local Planning Authorities will be empowered but not required to implement CIL which is designed to help fund needed infrastructure identified in their plans. Indeed, Section 216(1) places a statutory ring fence for infrastructure funding around CIL receipts. Likewise the Act provides a wide definition of infrastructure and lists examples such as transport, flood defences, schools, recreational facilities and open spaces.
6. The Levy will be a mandatory charge rather than a negotiable Section 106 agreement. It will apply to buildings rather than development more generally. De minimus provisions will exclude buildings below 100 square meters. CIL charges will be based on a simple formulae which relates the size of the charge to the size and character of the development at £ per square metre of gross internal floor space with no liability in respect of the use of open land nor sub-surface development.
7. The Government is committed to the principle that monies coming in from CIL will be additional to existing funding streams and thus new resources for local government. CIL is not to be used for general local authority expenditure. How much nationally will depend on the number of local authorities that elect to charge and the rates that they charge. How much locally will depend not only on the infrastructure needs identified but also the economic circumstances of the area.
8. CIL may only be spent on infrastructure and only on projects identified in an up-to-date Development Strategy for the area which will have been the subject of public consultation with objections finally being resolved through the public inquiry process.
9. A particular target for CIL is sub-regional infrastructure covering more than one local authority area. Regional Development Agencies will be able to forward fund infrastructure

and subsequently be reimbursed by authorities as CIL is paid by developers. Other potential beneficiaries of CIL collected by a local authority are listed as the Highways Agency and the Environment Agency.

10. The charging authority for CIL in England will be District and Unitary Authorities and National Parks. County Councils in two tier local government areas will not be charging authorities and will require to identify their infrastructure requirements – transport, education and waste management - and bid them into the appropriate plans of the District or National Park Authorities. In Wales, it is simpler with all County Councils, County Borough Councils and the National Park Authorities being charging authorities with direct responsibility for CIL.

11. In terms of setting the rate for CIL, charging authorities will have in parallel with their development plans to cost and justify the likely overall cost of infrastructure going forward. Having considered other sources of funding, the gap in funding to be met by CIL will be established. That calculation will result in establishing the necessary rate or rates for each of the main classes of development liable for CIL, subject to an assessment of economic viability of development at the plan level. These calculations eventually lead to a charging schedule.

12. Government has already identified a concern that rates should not be set a level that renders development unviable and that a balance must be struck between national consistency and local flexibility.

13. To these ends, Government is proposing that certain matters be defined at a national level. An exemption is suggested for affordable housing. Inflation indices are to be set nationally. More controversially a mechanism is to be considered whereby a developer can be excused all or part of the CIL if the developer cannot pay.

14. Differential rates can be achieved in one of two ways. Firstly in different geographical zones within the local authority area and secondly by reference to the intended use of development. Different rates are to be justified by an assessment of the economic viability of those classes of development. CIL regulations will not provide for the charges to differentiate to reflect different infrastructure costs between different charging zones.

15. The charging schedule will be subject to public examination, normally but not necessarily at the same time as the development plan and not legally part of it. Final approval of the charging schedule must be by resolution of the full council of the charging authority.

16. Planning permission granted by the Infrastructure Planning Commission for nationally significant development will be liable to pay CIL at the locally determined rate.

17. Payment will be required to be made not at the time of granting planning permission but at the commencement of development. The idea of payment by instalments is, however, floated in the Consultation Paper. The possibility of payment in kind is thought to present some fairness and technical issues.

18. To show clear accountability for CIL monies received, spent and retained at year end, authorities will need to manage their accounts in such a way that CIL monies are clearly distinguishable and certain information will have to be made available to communities on at least an annual basis.

19. The facility to enter into a negotiated Section 106 agreement will remain when CIL is introduced but is to be restricted, whether an authority adopts CIL or not, to its original purpose with the policy tests for its use being made statutory along with the addition that it

mitigates the impact of the development in question. Planning conditions, it is suggested, would be enough for most of these more direct local matters.

20. The Government sees the introduction of CIL as helping communities to engage more with the planning system, including in the use to which developer contributions may be put.

21. Although the Regulations are made by the Secretary of State for Communities and Local Government, they require the formal approval of HM Treasury. Thereafter the Regulations need an affirmative resolution of the House of Commons i.e. a motion passed following a debate.

22. Section 278 of the Highways Act 1980 is not proposed for amendment since the power here to secure developer contributions for highway improvements is more directly targeted to the traffic implications of permitting a development. Its use is thus not to be scaled back.

### ***Possible Issues for Delivery of the MRWS Programme***

23. The reduction in the scope for using Section 106 agreements is likely to mean that most, if not all, local authorities will move promptly to using CIL to part fund local and sub-regional infrastructure projects.

24. The rate(s) of CIL across the authority area, or a tighter geographic area, will depend in part on the economic viability of development in that area. No one is likely to argue that a decision to construct a GDF is linked to its economic viability!

25. There are certain buildings which are to be exempt from CIL because people do not normally go into them e.g. electricity sub-station. It is unlikely that surface buildings for a GDF could be so classified.

26. Only the surface buildings in a GDF would be liable for CIL, so only a small part of the overall development project will contribute by this method to funding local infrastructure. Might it be considered that the totality of a GDF should be eligible to pay CIL but what implications would that have for other uses – quarries and domestic waste disposal sites- which cover significant land areas but have modest sized buildings?

27. The GDF would have to be included in a charging schedule for it to be liable for CIL. The local authority could decide to exclude it. Would other developments in the area consider that such exclusion or the rate(s) set for CIL to pay for infrastructure mean that they are paying for works that the GDF should be paying for as community benefit for the well-being of the area?

28. Might it be considered that by paying CIL, a GDF could finish up not paying as much community benefit as if this were negotiated directly and uniquely as a total package? The uniqueness of affordable housing and the necessity to secure it has led Government to propose its exclusion from CIL. Might this be the better route for a GDF?

29. CoRWM will not wish to respond to the Consultation Paper but will undoubtedly be interested in how the Government finally frame the CIL Regulations.