The Planning Inspectorate

PINS NOTE 1142r8

To: All Inspectors

Date of Issue: February 2010

Last updated: 23 June 2014 – Paragraph 5 updated to note that Community Infrastructure Levy Guidance has been published on the Planning Practice Guidance website as a replacement for the standalone guidance (February 2014). Paragraph 4 reflects the extension to the transitional period in accordance with the CIL Amendment Regulations 2014.

Currency: review 6 months after issue

Community Infrastructure Levy

Background

1. On 10 February 2010 the Community Infrastructure Levy Regulations 2010, SI 2010 No. 948 were laid in the House of Commons, starting the process of bringing into effect the CIL arrangements set out at Part 11 of the Planning Act 2008. They came into force on 6 April 2010.

2. The Community Infrastructure Levy (CIL) is a new charge in the form of a local levy, which local authorities in England and Wales can choose to introduce in order to fund infrastructure in their areas. CIL is intended to provide additional funding for facilities such as roads, public transport, open space or health centres,[1] although it will not replace mainstream public funding. Although not originally intended, current Government proposals are that CIL will also be able to be used to fund affordable housing, although this has yet to be confirmed. The Regulations currently rule out the application of the levy for the provision of affordable housing[2].

3. Section 208 of the Planning Act 2008 defines development to which CIL will apply as:-

(a) anything done by way of or for the purpose of the creation of a new building, or

(b) anything done to or in respect of an existing building.

[1] See s216 of the Planning Act 2008.

[2] Regulation 63(4) removed affordable housing from the list of infrastructure capable of funding by CIL, as specified in s216(2) of the Act.

However Regulation 6 of the CIL Regulations excludes from this definition (i) any building into which people do not normally go and (ii) any building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery, as well as (iii) the change of use of any building previously used as a single dwellinghouse to use as two or more separate dwellinghouses and (iv) the carrying out of any work to, or in respect of, an existing building for which planning permission is required only because of provision made under section 55(2A) of TCPA 1990. This is subject to the building continuing to meet this definition once any work to it has been carried out. Local authorities can choose the CIL rate that they wish to set, but must set this out in a charging schedule which is independently examined. For developments that are not capable of being charged CIL, the policy tests set out in paragraph 204 of the National Planning Policy Framework will apply.

4. In respect of planning obligations, the Regulations:

• **place into law for the first time the Government's policy on the use of planning obligations**. The Regulations confirm that from 6 April 2010 it is unlawful for a planning obligation to be taken into account in a planning decision on a development which is capable of being charged CIL if the obligation does not meet all of the following tests (regulation 122):

(a) necessary to make the development acceptable in planning terms;
(b) directly related to the development; and,
(c) fairly and reasonably related in scale and kind to the development.

• **provide a transitional period after which planning obligations designed to collect pooled contributions ('tariffs') may not be used to fund infrastructure which could be funded from CIL**. The transitional period will end nationally on 6 April 2015 (and locally on the day that a local authority begins to charge CIL if earlier)(regulation 123(4) as amended). Until the national or local transitional period ends a local authority may continue to seek contributions secured through a s106 obligation for development which is capable of being charged CIL.

• **allow only very limited pooled contributions (up to five developments) will be permitted towards infrastructure which could be funded from CIL**. The Government will allow contributions to be sought from up to five developments; beyond five developments such arrangements will be considered to amount to a tariff and should be implemented through CIL (regulation 123(3) as amended which applies from 6 April 2015 or the coming into effect of the LPA's CIL schedule).

• **introduce locally on the day that a local authority begins to charge CIL, a further scale back of planning obligations designed to prevent charging for the same infrastructure through both CIL and planning obligations**. The Regulations state that a local authority may not take a planning obligation into account in a planning decision if that obligation seeks to fund infrastructure which the authority has said it will fund through CIL – with the intention of ensuring that developers are protected from 'double charging' (regulation 123(2)). The Regulations contain special transitional arrangements to reflect existing commitments by the Government and the Mayor of London to use planning obligations to raise revenue for Crossrail (regulation 123(4)).

5. On 12th June 2014, DCLG added CIL guidance to the Planning Practice Guidance website, as a replacement for the standalone guidance published in February 2014. The guidance sets out the main procedures local authorities need to follow when introducing and operating CIL and also explains the changes made by the CIL Amendment Regulations 2012, 2013 and 2014[3]. However there are minor changes since the February 2014 version:

   - Clarification around the operation of reg 128A in respect of transitional arrangements for section 73 applications
   - Reference to local authorities giving consideration to setting differential rates in respect of alternative models of social housing provision
   - Reference to how instalment policies can assist viability and delivery of development within the buy to let sector
   - Clarification around how the restriction on the pooling of planning obligations relates to staged section 106 payments.

Inspectors working in Wales should also be aware of the guidance issued by the Welsh Government on preparation of CIL charging schedules – Community Infrastructure Levy: Preparation of a Charging Schedule.

Action

6. Inspectors involved in DPD examinations and potentially involved in charging schedule examinations will need to be aware of the provisions of the Regulations.

[3] (i) The Community Infrastructure Levy (Amendment) Regulations 2012 - SI 2012 2975; and
(ii) The Community Infrastructure Levy (Amendment) Regulations 2013 – SI 2013 982; and
(iii) The Community Infrastructure Levy (Amendment) Regulations 2014 – SI 2014 385

7. Inspectors will also need to be aware of these in the course of appeals casework. PG 7 Obligations has been updated to reflect the application of CIL in relation to chargeable and non-chargeable development and planning obligations. Further advice will be issued as appropriate.

8. PINS Note 1119, which covered a CLG consultation document setting out the Government's detailed proposals and draft regulations for CIL, is cancelled.

9. Please contact XXXX if you have any queries on this Note.

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Acting Chief Planning Inspector