

Questionnaire

Delivering infrastructure with CIL

1: Do you agree with the proposal that the draft CIL regulations do not define 'infrastructure' further? Yes

Comments: This gives a local authority the flexibility it needs to draw up its infrastructure plan and charging schedule in response to local conditions. This authority has identified the following categories of infrastructure that require additional capacity as the result of new development in our area, and would wish to ensure that they will fall within the definition of 'infrastructure': public transport and highways projects, education provision, community facilities, library services, public open space, including allotments and biodiversity provision, indoor sports facilities, public art and heritage projects, improvements to our town centres, economic development initiatives, improvements to air quality, extension of the County archiving facilities, and waste disposal and recycling and Parish projects.

2: Is any further reporting required for CIL? No

Comments: An annual report provides sufficient clarity for developers and local communities.

FORMAT OF REPORTS

3: (a) Is the 1 October deadline for reporting on the previous year's activity sufficient for local planning authorities? Yes

(b) Will this timescale enable developers and local communities to understand how CIL revenue has been applied? Yes

GENERAL

4: Do you have any comments on any other matters raised in "Delivering Infrastructure with CIL" which are not covered by the questions above? No

Setting the CIL Charge

CHARGING AUTHORITIES

5: Are there any circumstances where a CIL charging authority would not be able to fulfill its charging authority functions effectively? No

Comments: None perceived

6: (a) In deciding whether to use the power at section 207 of the Act, should the Government apply different criteria? No observations

(b) Which functions should a joint committee perform? No observations

DIFFERENTIAL RATES

7: Do you agree that differential rates should be based only upon the economic viability of development? Yes

Comments: Whilst we can accept the general principle, there seems to be an unspoken assumption running through the document (for example at 3.45) that the differentiation of rates by land use will be relatively simple – for example, solely between residential and some undifferentiated class of “commercial” development. Our concern is that the process will become much more complicated than that, with many different land uses coming forward to argue that their viability case differs from every other one. We could also face differing viability arguments in relation to different scales of development (for example, that the economic viability of a development of small shops is very different to that of a large supermarket). If we are correct, this could substantially increase the length and complexity of the process of producing a CIL. If the Government’s expectation is that there should not be a lot of differentiation, it may be helpful for them to make this more explicit and consider ways of limiting special pleading. At present, the guidance in 3.53 would seem to point in the direction of greater, rather than lesser, complexity.

Similarly, we can accept the principle in 3.50 that we do not want the additional complexity of “attribution zones” but, again, there is a concern that special pleading about the differing viability of development in different parts of the local authority area could introduce a very similar form of complexity for another reason. If the intention is to keep it simple, it may be helpful for the final guidance to spell out the expectation that there will not be a multitude of different charging zones within most authorities and possibly also set out criteria by which any such differentials should be justified.

METRICS

8: Do you agree that CIL charges should be based on a metric of pounds per square metre? Yes – commercial /No – residential

Comments: CIL charges based on a metric of pounds per square metre are appropriate for commercial development as this information is readily available on the 1APP planning application form, and supporting data is held on the basis of floorspace figures.

However, for residential developments, the majority of existing data, such as pupil yields, is based at both local and national level on number of bedrooms. Insufficient local and/or national data exists on pupil yields per square metre of residential floorspace exists to enable a robust justification for education contributions to be put forward. Setting the levy based on number of bedrooms is a better method, since existing data on pupil yields is held on this basis. Pupil yields are currently established by commissioning market research firms to survey properties identified by the borough as being built within the last five years. It is straightforward for a resident in one of these properties to indicate how many bedrooms their property has and how many children live there. It seems highly unlikely, however, that a resident will know how large their property is in terms of square meterage. This will make it extremely difficult to get any pupil yield figures in future years that are robust – these figures are, of course, key in determining the likely additional school provision that will be required as a result of new housing.

Furthermore, if CIL charges for residential development are to be based on a metric of pounds per square metre, the 1APP form should be amended to include such information, otherwise charging authorities will have to spend considerable time calculating the floorspace from plans.

9: Would you prefer to have a choice of charging metrics, and if so, can you suggest what and how the system could accommodate this choice without undue complexity and unfair distortions? Yes

Comments: One solution to 8. would be to charge pounds per square metre for all developments except residential, and use number of bedrooms for residential developments.

10: Do you agree with the Government's proposal to apply the charging metric to the gross internal area of development or do you think there are advantages to levying CIL on the gross *external* area? Yes (Gross internal area) No (Gross external area)

Comments: If CIL was to be levied on the gross external area, it would serve to inhibit innovative design in an attempt to minimise CIL liability, since the most efficient designs for CIL purposes would be rectangular boxes with no projecting

elements. Which ever metric is chosen must be the same as the available information on the planning application form.

11: Do you agree that CIL should be levied on the gross development, rather than the net additional increase in development? Yes

Comments: Whilst we can accept the arguments in 3.61 – 3.65 in favour of gross, rather than net, floorspace, we are concerned that the counter arguments rehearsed in 3.66 could also be significant. We would ask for this aspect of the regulations to be kept under particularly close scrutiny for perverse effects.

INDEXATION

12: Should authorities be required to index CIL charges? Yes

Comments: Indexation is necessary to pass on any increase or decrease in inflationary pressure to the developer, and ensure sufficient funds are available to local authorities to complete the required infrastructure projects.

13: (a) Should indexation be based on a national index to provide simplicity, consistency and a readily understood index. No

Whilst a national index would aid certainty for developers, it is inevitable that regional differences will exist in construction costs. This will generally work against authorities in expensive areas such as this one. In our experience, unless a local indexation is applied, CIL may not provide enough income to cover the construction costs of e.g. new schools. Examples of local indexation that we envisage we would use would be average build costs per square metre for different types of buildings (schools/ libraries/ community centres); average construction costs per square metre for highways; and average costs for purchasing and laying out a hectare of public open space etc..

(b) Alternatively, should charging authorities be allowed to choose different indices in different places? Yes

Comments: See 13a) Only local indices would enable regional differences in construction costs to be taken into account.

14: Do you agree with the Government's proposed choice of an index of construction costs? No

Comments: Only local indices would enable regional differences in construction costs to be taken into account.

15: Are you content with indexation taking place to the point of the grant of planning permission or would you prefer charges to be indexed to the point when development commences? No (grant of planning permission) Yes (Point when development commences)

Comments: In a normal (i.e. inflationary) situation, indexation to the date of granting planning consent, rather than that of commencement, would result in some loss of income to the charging authority. We do not consider that the additional calculation that would be required at the point of commencement to be a particularly onerous requirement for the charging authority. In terms of certainty for the developer, it should also be a relatively easy task for them to calculate their liability from the charging authority's latest published indexation.

16: Do you think it is right to apply the index on an annual basis or do you see advantages in applying it monthly? No (annual basis) Yes (monthly)

Comments:

The costs of providing infrastructure will continuously evolve and will change more often than annually. Hence CIL should be indexed frequently (on a monthly basis) otherwise Local Authorities risk having insufficient income from CIL to fund the necessary infrastructure and services needed as a result of new developments in their area.

We would use the national Retail Price Index figures which are published monthly.

17: Do you agree that charging authorities should be able to index their charges from 1 January each year (taking the November index)? No

Comments: CIL should be indexed on a monthly basis (see 16)

CHARGING SCHEDULE PROCEDURES

18: Do you agree with the Government's proposal to allow joint charging schedule/development plan examinations? Yes

Comments: Joint charging schedule/development plan examinations would provide greater clarity, understanding and reduced costs for interested parties. We are still concerned over the cost to the Authority for this process.

19: Do regulations or guidance need to cover any additional matters relating to joint examinations? Yes No

Comments: No comments

20: Should the CIL examiner be able to modify a draft charging schedule to increase the proposed CIL rate? Yes

Comments: It would be perverse to allow the CIL examiner to only be able to modify a draft charging schedule downwards. The point that an examiner is there to test the Local Authority's proposal rather than maximise income is true; however this does not preclude the examiner correcting a perceived error in the proposal either upwards or downwards.

GENERAL

21: Do you have comments on any other matters raised in "Setting the CIL Charge" which are not covered by the questions above? Yes

This Authority considers the current S106 process, supported by Local Plan polices and a Supplementary Planning Document (SPD) has been very effective in providing funds for the required infrastructure within the Borough, and sees no reason why it cannot continue to do so. We therefore object in principle to the governments plans to curtail the effectiveness of the current S106 system, in what appears to be an attempt to obligate us to adopt the newly proposed CIL process.

The processes involved in setting a CIL charge will be unfamiliar to the charging authorities. A good deal of thought will need to be given to how the evidence base is presented, including the level of detail required.. This process could be greatly assisted by the provision of a worked examples giving some idea of what a CIL charging schedule and its accompanying evidence base is expected to look like. We are particularly concerned over the cost to this authority of the CIL charge setting process.

Paying CIL

22: (a) Do you agree with the chosen definitions of building, planning permission and 'first permits'? No comments

(b) If not, what changes would you wish to see that strike the right balance between simplicity, fairness and minimising distortions?

Comments: No comments

23: (a) Do you agree with our approach to when CIL is chargeable on outline and reserved planning permissions. Yes

(b) If not, what changes would you wish to see that deal fairly with these types of permissions? No changes required

EXEMPTIONS AND DISCOUNTS

24: (a) What are your views on the principle of providing a reduced rate of CIL for affordable housing development? No

We do not support the principle of a reduced rate of CIL for affordable housing, on the basis that occupiers of affordable housing schemes place the same burdens on the Boroughs' infrastructure and services as occupiers from open market schemes. . The only exceptions should be the requirement to make payments towards affordable housing schemes (which would be perverse to impose).

(b) What do you think the likely consequences of providing such a discount might be?

Could result in insufficient income to the Borough to provide the required infrastructure and services made necessary by the new affordable housing development.

25: If the Government were to provide a reduced rate of CIL for affordable housing development, do you think that the proposed definition of affordable housing is workable in practice? No

Comments: The proposed definition of affordable housing for this purpose as being required to be in receipt/eligible for public funding is fundamentally flawed. Not all affordable housing is publicly funded (especially but not necessarily exclusively Low Cost Home Ownership). In addition Registered Social Landlords will often start on a development, cash-flowing it themselves with the hope of possibly receiving a future grant allocation. They would be very likely to be deterred from doing this which will result in a reduction and/or delay in the provision of affordable housing. This goes for Section 106 and non-Section 106 affordable housing development.

Some Councils have a high proportion of affordable housing. Applying a lower rate of CIL to affordable housing development in these areas would limit the ability of these authorities to provide the necessary infrastructure to support the new development.

26: If the proposed definition provides a workable basis for any reduced rate of CIL for affordable housing, should CIL relief for charities building affordable housing be applied according to this definition or according to whether it fulfils the charity's charitable purposes? No

Comments: Notwithstanding our answer at 24 a) Only if a condition is attached to that the premises that it only be used as affordable housing.

27: Should Low Cost Home Ownership properties where receipts from staircasing are recycled for additional affordable housing, not be subject to any clawback? No

Comment: In principle, we believe that the full CIL charge should be applied to all residential properties regardless of whether they are open market or affordable housing schemes. This is because occupiers of affordable housing schemes place the same burdens on the Boroughs' infrastructure and services as occupiers from open market schemes.

That said, should the Government decide to go down the reduced payment route for affordable housing, we would support the principle of clawing back any CIL relief from dwellings that are staircased to full ownership, though we would welcome guidance as to the practicality and mechanics of doing so. We suggest that clawback on Low Cost Home Ownerships be over a period of 10 years in line with existing Right To Buy (RTB) arrangements with Housing Associations. We are concerned that clawing back CIL directly from the homeowner would create an additional administrative burden to the authority, and a higher risk of bad debts. It would therefore be preferable to collect the clawback from Housing Associations, with an administration charge similar to current Right To Buy arrangements.

Note that grant funded schemes would be exempt, but not all Low Cost Home Ownership is grant funded and seems unfair to penalise some buyers over others. Will also impose a tax on the most marginal buyers maybe making it less attractive/affordable for people to staircase to 100% and if people are deterred from ultimately doing this they may be deterred from staircasing at all.

(b) if Low Cost Home Ownership properties where receipts are not recycled are subject to clawback of the CIL discount, should there be a time limit up till when staircasing to full ownership would invoke clawback? No. We see no reason why there should.

(c) How should such a clawback operate? See 27.

28: Is 7 years an acceptable time period for clawback to operate over? No
Comments: Should be 10 years in line with current RTB arrangements

29: Is it reasonable to ask a claimant to submit an apportionment of liability in this way? Yes No

Comments: No comments

30: Do you agree that it is best not to have a special procedure for developments that have difficulty in paying the advertised rate of CIL? If not, how could it be done in a way that is fair, non-distortionary and not open to abuse?

Comments: Any such scheme runs the risk of becoming hugely costly and time-consuming for the charging authority to operate, if it is anything but very exceptional. But not to have one runs the risk of losing developments which otherwise offer overriding benefits to the community. Would it be possible for the regulations to introduce a process along the lines of that suggested, but on a trial basis and subject to review of its operation in practice?

THE LIABLE PARTY

31: Do you agree with the Government's proposals for liable parties and assumption of liability? Yes No

Comments: No comment

COLLECTING CIL

32: Are these timescales for the transfer of CIL revenue from the collecting authority to the charging authority the right ones? Yes No

Comments: No comment (not applicable)

PAYMENT OF CIL IN KIND

33: Do you think that the final regulations should provide for the payment of CIL in-kind?No

Comments: Whilst we would regret the loss of flexibility (and potentially of added value) that would result from the wholesale rejection of the option of payment in kind, the arguments against payment in kind are very well rehearsed and its rejection would aid certainty and reduce confusion.

34: If you think they should, can you suggest how CIL could be paid in-kind without incurring the difficulties outlined above?

Comments: We are not in a position to suggest ways around the legal and other obstacles raised by the consultation paper. If others can see solutions, we would hope this option could be reinstated into the regulations. See also our comments about payment in kind in relation to Q52.

PAYMENT BY INSTALMENTS

35: (a) Should payment by instalments be provided for in the final CIL regulations in addition to the ability to pay CIL by phases of development?

Yes

Comments: We too recognise the cash-flow problems that a large development can encounter, between the obligation to pay CIL (or a planning obligation) and the development generating income. However, any deferral of those payments may also prejudice an authority's ability to bring forward essential infrastructure in a timely manner. Any deferral should therefore only be in exceptional circumstances, should be at the option of the charging authority and should not prejudice the timely delivery of infrastructure that will serve the development concerned.

(b) How should the instalments be structured?

Comments: Not withstanding our answer at 35a) - At agreed timescales for completion of individual phases in accordance with Building Control records. NOT dependant on occupation, which is difficult to establish.

36: Do you agree that payment on account should not be provided for in the final CIL regulations? Yes

Comments: See 35a)

DUTY ON THE AUTHORITY TO REMOVE THE LOCAL LAND CHARGE UPON REQUEST

37: Should the collecting authority be under a duty to remove the charge automatically on payment of the full CIL liability? Yes

Comments:

The small administrative burden involved would be less than that of dealing with the multiplicity of individual enquiries in the event automatic removal was not the standard practice.

ENFORCEMENT OF CIL LIABILITIES

38: Should the draft regulations be amended to require collecting authorities to have to issue a warning to liable parties (in writing and possibly by posting a warning on the site in question) before being able to impose a late payment surcharge? No

Comments: This would add another administrative burden on the authority and an unnecessary process, particularly if the possibility of it happening is flagged up at the start of the process.

39: Are the means of recovering CIL debts sufficient or would further methods, such as the ability to impose attachment of earnings orders, be helpful? Yes

Comments: No comments

40: Should the Government provide for specific enforcement measures in regulations to allow collecting authorities to penalise and deter breaches of the conditions for relief?

Yes No

Comments: No comments

COMPENSATION

41: Is a bespoke compensation regime required for CIL where enforcement action is inappropriately taken or would the Ombudsman route suffice? Yes

Comments: Building on the current system would be more cost effective.

GENERAL

42: Do you have any comments on any other matters raised in "Paying CIL" which are not covered by the questions above? No

Planning obligations and other powers

43: What do you think about the Government's proposal as set out in draft regulation 94 to scale back the use of planning obligations?

Comments: Perhaps the most worrying aspect of the new regulations is their relationship to Section 106 planning obligations

We accept the need to tighten the focus of S106 and move back towards their original purpose, as set out in the tests in Circular 5/05. However, the process and timetable for this is critical to this local authorities' ability to deliver essential infrastructure, and the proposals as currently drafted seem to us problematic in a number of respects, as discussed below.

44: Do you think the wording of the five tests as set out in draft regulation 94 is appropriate? Is each of the five tests meaningful and workable in practice, or could any be expressed in a better way? Yes

Comments: We agree that the first and last of the five tests are probably redundant, and that the remaining three are a clear and adequate test for the use of planning obligations. (This is notwithstanding our comments on the use of planning obligations to secure affordable housing, which is addressed separately below). It may also be helpful to clarify the practical differences that would result for the local authority from the 5/05 tests being changed from Government guidance into a legal requirement. Would it be simply that it would strengthen the developer's hand in appealing against any obligation they considered unreasonable, or do any new obligations fall on the local authority as a result?

45: Do you think that a transitional period, beyond the commencement of CIL regulations in April 2010, would be required to restrict use of planning obligations to the Circular 5/05 tests. Yes

Comments: As we understand it, what is currently being proposed is that, from April 2010, the use of S106 will be restricted to anything that falls within the strict definition of Circular 5/05, plus affordable housing and (for a two year transitional period only) any item covered by a tariff (see our comments on the latter later).

And if so what should it be and why is such a period required? 5 years is required to ensure that an authority has time to implement CIL effectively.

46: Do you agree that a scale back of planning obligations as set out in draft regulation 94 should apply universally across England and Wales regardless of whether a local authority has a CIL or not? No

Comments: . It was always envisaged that the introduction of CIL would be optional, leaving authorities the choice of continuing to use the existing S106 process. The current S106 process, backed up with an SPD, has been successfully utilised by the Borough to provide the necessary infrastructure arising from new development in the area. By scaling back planning obligations, the Borough would be prevented from continuing to provide the necessary infrastructure in their area without embarking on the CIL route. The Regulations as written effectively make CIL compulsory, whether or not it is right for a particular area.

47: Should a scale back of the use of planning obligations go further and prevent the future use of planning obligations for pooled contributions and tariffs? No See answer 46

Comments: We are concerned the transitional arrangements are not clear. For example, if a Local Authority is accumulating S106 money (previously interpreted as "pooling") for future projects and there is not sufficient money in the pot at the

end of the 2 year transitional period to enable the piece of infrastructure to be provided, is the Local Authority still allowed to use the money collected and is it able to supplement the pot with CIL money?

48: Do you think the Government's proposal to provide an additional legal criterion to restrict the use of planning obligations to address planning impacts 'solely' caused by a CIL chargeable development is workable in practice? No

Comments: We need to make sure that such a limit does not rule out cases where the use of planning obligations might be appropriate. For example, a new area of residential development might have infrastructure needs that were specific to it and that would normally be covered by a planning obligation. But what if that development were being carried out by a consortium of developers or, say, for reasons of fragmented land ownership, came forward as a series of applications rather than a single one. Would the planning authority be debarred from dealing with its infrastructure needs through planning obligations? It may well be that the intention is to be pragmatic and allow a development conceived of as a whole to be treated as such, despite it being the subject of multiple applications. However, this is not clear from the guidance as currently drafted.

If not, please state why not. Can you think of an alternative which would have the same or similar effect? See answer above.

49: What transitional period, beyond the commencement of CIL regulations in April 2010, would be required to restrict use of planning obligations to mitigate impacts 'solely' caused by CIL chargeable developments?

Comments: Two years is wholly inadequate, and we should learn from the over-ambitious timetables associated with other Government initiatives, notably the introduction of Local Development Frameworks. The introduction of CIL is a major undertaking for a local authority, comparable in scale to the preparation of a core strategy. It involves untried processes and requires a considerable amount of learning new skills on the part of the local authority, as well as other participants. It will also make considerable demands on the resources of other agencies, such as the Planning Inspectorate, which may delay the process. It was always envisaged that the introduction of CIL would be a gradual process, with some authorities being ready to begin implementation from day 1, whilst others would need to learn from the experience of others and bring it forward more gradually. Not least, there are considerable resource implications associated with developing a CIL, which would need to be met at a time when many local authorities will face an unprecedented degree of budgetary constraint. For all these reasons, a blanket two-year transitional period from the commencement date is totally inadequate. We suggest instead a gradual phasing out of tariffs. As authorities get an adopted CIL in place, they would lose the ability to operate a tariff through S106 and there would be a general fall-back

date of, say, five years from commencement, after which the restriction on the use of tariffs would apply nationwide.

50: Do you agree that a restriction of planning obligations to prevent their use for pooled contributions or tariffs should apply universally across England and Wales regardless of whether a local authority has a CIL or not? No

Comments: See our answers to Q46 to 49

51: What transitional period in London do you think would be required before a scale back of the use of planning obligations which prevented the use of pooled contributions and tariffs could take effect, to ensure a smooth transition from the existing to the new planning obligations regime, taking account for the need to use planning obligations for Crossrail purposes?

Comments: The Royal Borough of Windsor and Maidenhead would like to emphasise the fact that whilst there is much needed infrastructure associated with the Crossrail project within the Borough, such infrastructure should not be funded from the CIL or S106 funds collected by this authority and alternative funding arrangements must be obtained to ensure the local needs are protected.

52: In revising Circular 5/05 in light of the introduction of CIL what further policy or areas of clarification do you think might be required with regards to the use of planning obligations?

Comments: The main need would seem to be in relation to the use of S106 for securing affordable housing, where there appear to be many ambiguities. For example, what happens in cases where an authority cannot achieve part or all of its affordable housing requirement on site? Is it acceptable to seek a cash contribution through S106 towards its provision off-site, or, say, a contribution of housing land elsewhere in lieu of on-site provision? If not, it would remove an important part of the flexibility currently available to local authorities in delivering affordable housing. If, on the other hand, it is acceptable, how does that square with the concerns about provision in kind raised elsewhere in the consultation document? There is also a question about even-handedness. Section 106 agreements are the product of negotiation between planning authority and developer, which necessarily means there is scope for variation between one development and another. All our efforts to be even-handed in the application of CIL could be undone if the additional burden of S106 payments for affordable housing differs significantly between developers.

One of the objectives of CIL was to spread the burden of paying for essential infrastructure more widely across different types and scales of development, but the provision of developer funding for affordable housing still appears to rest solely with housing developers. Given that they will now face the additional and

compulsory burden of CIL payments, the likelihood is that it will become more difficult to negotiate the same level of “voluntary” S106 payments towards affordable housing. Given also that an objective of CIL is that it should not reduce funding for affordable housing, has any thought been given to extending the obligation to help fund affordable housing to a wider cross-section of development?

It is unclear how extending funding obligation across different types of development would work in practice especially to secure housing on site/mixed communities.

53: Do you think any additional further guidance (additional to a revised Circular 5/05) is required to support the use of planning obligations or CIL, and if so who would be best to provide it? Yes No

Comments: No comment

GENERAL

54: Do you have comments on any other matters raised in “Planning Obligations and other powers” which are not covered by the questions above? Yes

This Authority considers the current S106 process, supported by Local Plan polices and a Supplementary Planning Document (SPD) has been very effective in providing funds for the required infrastructure within the Borough, and sees no reason why it cannot continue to do so. We therefore object in principle to the governments plans to curtail the effectiveness of the current S106 system, in what appears to be an attempt to obligate us to adopt the newly proposed CIL process.

Should CIL be introduced, we would like to make the following additional comments:

The Borough is concerned that the minimum threshold of 100 m² is set too high, and that this may lead to a reduction in the total CIL collected compared to the amount of developers’ contributions collected under the current S106 regime.. Whilst additional income under the CIL would arise from permitted developments over 100 m², no realistic estimate can be made of the number of developments that would qualify, since developers have not had a duty in the past to notify the Borough of such types of development. This could lead to a failure to adequately fund the additional infrastructure and services made necessary as a result of new development in our area. The Borough therefore suggests the minimum threshold for commercial development be set at 20 m² (this is just above 19 m² which is our minimum space standard for one additional employee in an office development) and one additional unit of residential development.

The introduction of CIL should not rely on the existence of an adopted Core Strategy. It should be possible to develop and adopt the Infrastructure Plan and CIL Charging Schedule as Development Plan Documents independent of the timetable for the adoption of a Core Strategy.