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COMMUNITY INFRASTRUCTURE LEVY (CIL) REGULATIONS NOW IN FORCE

What is CIL?

The Community Infrastructure Levy (CIL) is a new charge which local authorities in England and Wales will be empowered, but not required, to levy on most types of new development in their areas. The proceeds of the levy will provide new local and sub-regional infrastructure to support the development of an area in line with local authorities' development plans. This identified local and sub regional infrastructure sought could include new schools, hospitals, roads and transport schemes, as well as libraries parks and leisure centres.

CIL will be levied in pounds per square metre of the net additional increase in floorspace of any given development. This will ensure that charging CIL does not discourage the redevelopment of sites. Any new build - that is a new building or an extension - is only liable for CIL if it has 100 square metres, or more, of gross internal floor space.

Who can set the CIL?

CIL is to be set by the "charging authorities." In England this will be district and metropolitan district councils, London borough councils, unitary authorities, national park authorities, The Broads Authority and the Mayor of London. In Wales, the county and county borough councils and the national park authorities will have the power to charge CIL. These bodies all prepare development plans for their areas, which are informed by assessments of the infrastructure needs for which CIL may be collected.

Given that the Regulations have come into force, Communities and Local Government (CLG) have issued guidance to Local Planning Authorities entitled "The Community Infrastructure Levy: An overview' This is a short explanation of Community Infrastructure Levy (CIL) regulations and explains what CIL will be used for and how it will work.

The Guide can be found at the following link:

[www.communities.gov.uk/publications/
planningandbuilding/communityinfrastructurelevy](http://www.communities.gov.uk/publications/planningandbuilding/communityinfrastructurelevy)

CLG has also issued 'Community Infrastructure Levy Guidance: Charge Setting and Charging Schedule Procedures' and also gives guidance for councils on how set up a CIL in their area, and can be found at the following link:

[www.communities.gov.uk/publications/
planningandbuilding/cilguidance](http://www.communities.gov.uk/publications/planningandbuilding/cilguidance)

Scaling Back of Section 106 Planning Obligations

In order to ensure that planning obligations and CIL can operate in a complementary way and clarify the purposes of the two instruments the CIL regulations scale back the way planning obligations operate. Limitations are placed on the use of planning obligations in three respects:

1. Putting the Government's policy tests on the use of planning obligations set out in Circular 5/05 on a statutory basis for developments which are capable of being charged CIL
2. Ensuring the local use of CIL and planning obligations does not overlap; and
3. Limiting pooled contributions from planning obligations towards infrastructure which may be funded by CIL.

Therefore from 6 April 2010 it will be unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, that is capable of being charged CIL, whether there is a local CIL in operation or not, if the obligation does not meet all of the following tests:

- (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.

For all other developments (i.e. those not capable of being charged CIL), the policy in Circular 5/05 will continue to apply.

The statutory tests are intended to clarify the purpose of planning obligations in the light of CIL, improve the effectiveness of their use and negotiation and provide a stronger basis to dispute planning obligations policies, or practice, that breach these criteria. This seeks to reinforce the purpose of planning obligations in seeking only essential local contributions towards the granting of planning permission, rather than more general contributions which are better suited to the use of CIL.

Consultation Paper on Planning Obligations

As a consequence of these changes introduced by the CIL regulations, CLG have also produced a new consultation on for public comment until 17 June 2010. In its final form, this policy document is intended to replace the Government's current policy contained in Circular 5/05: Planning Obligations, and form an annex to the new Development Management Planning Policy Statement on which the Government launched a consultation in December 2009. In the meantime, the policy in Circular 5/05 continues to apply. The consultation paper can be found at:

[www.communities.gov.uk/publications/
planningandbuilding/planningobligationsconsultation](http://www.communities.gov.uk/publications/planningandbuilding/planningobligationsconsultation)

Commentary

The introduction of CIL represents the culmination of much time and effort taken by Government in grappling on how it can, on the one hand, extract value from developers on the grant of planning permission and, on the other, ensure that in taking its slice the public body does not make the development unviable whilst at the same time is lawful and seen to be fair.

This balancing act is has proved to be a very contentious and its routes can go back to development land tax to more recently the planning gain supplement and introduction of tariffs and now CIL.

Will CIL work?

This remains to be seen as no Local Authority - or charging authority - has yet produced a "charging schedule" and the charging schedule will have to be tested in a public examination and be required in support of the Local/Regional Authority's assessment of the adopted development plan's assessment of its future infrastructure needs so that the plan can be implemented.

There is also the issue that CIL was conceived in an era when land and capital values were rising for a long period of time; with the recession this has long past and many extant and future schemes are simply not viable with the plethora of section 106 requirements now coming through emerging development plans or supplementary planning documents. CIL can only compound this problem.

However, given that many Local Authorities are well behind on preparing their "Core strategies" and other development plan documents and given their scare resources - especially in light of the need to cut back on public expenditure - it is highly likely that many "charging authorities" will just not take up the opportunity of having CIL in place - unless there are special circumstances - for example, in key regeneration or growth areas.

There is also the issue of whether this will be lawful in the future as the bets are on that if a Conservative Government is elected CIL will be abolished. Therefore, despite the fanfare and announcements by CLG of the benefits of CIL, in reality it is highly likely that it will be "business as usual" - i.e. section 106 negotiations continue as they did before based upon site specific negotiations within the context of set contribution rates given in supplementary planning documents.

However, what is clear is that the three Circular 5/05 tests are now law and so it will be harder for Local Planning Authorities and developers to justify /offer obligations that are now clearly unrelated to the development's off site impacts. No doubt the future cases of judicial review on these points can be anticipated.

For further information please contact your usual CgMs contact or:

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