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6 October 2009

Dear Mr Martin

Community Infrastructure Levy (CIL) – Draft Regulations Consultation

Thank you for providing London Thames Gateway Development Corporation (LTGDC) with the opportunity to comment on the Community Infrastructure Levy Draft Regulations. A report was presented to the LTGDC Board on 5th October 2009 where the following response was agreed.

In summary, whilst there is a general recognition that the principles on which CIL is based are sound, the Corporation has a number of significant concerns arising from the proposed regulations. The Corporation proposes that:

- UDCs should be identified as CIL charging authorities.
- If they are not identified as CIL charging authorities, UDCs should have an exemption from CIL and any associated restrictions on the use of S106 contributions and tariffs, unless/until the UDC Boroughs adopt CIL at levels at least comparable with the funding levels likely to be achieved otherwise by the UDC concerned through their S106 tariff arrangements.
- If UDCs adopt CIL the receipts should be kept by the UDC, to fund essential infrastructure in their growth and regeneration areas
- UDCs current S106/tariff arrangements should not be restricted until the Secretary of State is satisfied that the charging authorities in UDC areas have adopted CIL charging schemes which are likely to generate the necessary funding to enable Government regeneration objectives to be achieved or for four years from the publication of the final regulations, whichever is the earlier. This should provide a sufficient transition period and would cover the lifespan of the UDCs (to 2014).
- To make CIL workable it should:
 - be broadly related to impact more than value
 - have an exceptions policy – there is a need to be able to take exceptional circumstances into account, or risk limiting development
 - allow for works in kind – there are efficiencies where developers can provide infrastructure directly and this should not be prevented

Please find attached below responses to the questions set out in the questionnaire at chapter six of the consultation document. Please note these comments have also been submitted via the online consultation portal (reference name: Hannah Berriman).

Thank you for providing the opportunity to comment on these important proposals and please do not hesitate to contact us if you have any queries in relation to any of the responses outlined below.

Yours sincerely

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John Allen
Director of Planning, LTGDC

LTGDC responses to CIL consultation questions

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Position: Director of Planning, LTGDC

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ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?

Organisational response

iii) Please tick the box which best describes you or your organisation:

Non-Departmental Public Body (NDPB)

iv) What is your main area of expertise or interest in this work (please tick one box)?

Planner

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Would you be happy for us to contact you again in relation to this questionnaire?

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Chapter 2. Spending CIL

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

Yes - Given the individual characteristics and needs of each authority it is a sensible approach although care is needed to make sure that different inputs into CIL do not create the impression that items omitted will be recovered in some other way. For example, if police costs are left out that should not be seen as an opportunity for the police to ask for contributions in relation to a later application.

2. Is any further reporting required for CIL?

No

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

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

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4. Do you have any comments on any other matters raised in chapter 2 which are not covered by the questions above?
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Chapter 3. Setting the CIL Charge

5. Are there any circumstances where a CIL charging authority would not be able to fulfil its charging authority functions effectively?
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See above

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Affordable housing generates as much, if not more, need for infrastructure as other forms of housing. Therefore unless there is certainty as to other funding streams for new housing related infrastructure this could result in inadequate facilities required to deliver properly sustainable communities. The proposals are also open to abuse and misinterpretation given the rapidly changing types/definitions of affordable housing.

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27. (a) Should LCHO properties where receipts from staircasing are recycled for additional affordable housing, not be subject to any clawback?

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(c) How should such a clawback operate?

Lesser period than suggested 7 years, potentially 5 years.

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Yes - This is not contradictory to 27 (c) as relates to properties originally liable for relief.

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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? This question raises one of the key criticisms of CIL. CIL is supposed to be set at a viable level against which there is no appeal and for which there is to be a 'regular' review. Although this should mean that most development is viable there is no opportunity to consider the particular circumstances relating to individual applications. In an area like the UDC area there is a greater need than elsewhere to be more responsive to the differing circumstances of development. CIL prevents a negotiated compromise and risks limiting development coming forward.

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Yes - Need to minimise loopholes for developers.

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

No to bespoke regime and Yes to Ombudsman route.

42. Do you have any comments on any other matters raised in chapter 4 which are not covered by the questions above?

No

Chapter 5. 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?

The proposal is to move the requirement that planning obligations meet the Circular 05/05 test from policy into law

The Circular 5/05 tests

A planning obligation must be:

(i) relevant to planning;

(ii) necessary to make the proposed development acceptable in planning terms;

- (iii) directly related to the proposed development;
- (iv) fairly and reasonably related in scale and kind to the proposed development;
- (v) reasonable in all other respects

There is no clarity as to when this scaling back (if that is what it genuinely is) would occur and views are sought – see Q45 below. Given local authorities are at different stages in having approved up to date development and infrastructure plans you could have a situation where use of S106s is scaled back yet they are not in a position to be able to implement CIL. This would severely constrain negotiating benefits from developments and cannot be acceptable in a regeneration or growth area such as London Thames Gateway. It is suggested that the current operation of S106 policy and tariff arrangements are not restricted until CIL is adopted by relevant authorities.

There is a need to make sure that there is no double charging of developers, paying once through CIL and again through section 106 agreements. Regulation 94 does not restrict the future scope of section 106. It simply prevents the obligations being taken into account as a reason for the approval of development. It will remain possible for there to be duplication and that will cause uncertainty particularly if, as in UDCs, there is split responsibility for CIL and section 106 agreements.

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, keep current tests - Could change/delete some of the tests but everyone is used to the tests and what benefits would arise? If CIL is going to last long term then it should it would be better to develop a clearer split between CIL infrastructure and what can be accommodated in section 106 agreements. A bar on obligations relating to CIL infrastructure in section 106 agreements would be simplest and most effective.

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

And if so what should it be and why is such a period required?

See comment under Q43 above. Suggest four years or introduction of CIL whichever is the earlier or alternatively UDC areas could be exempted from CIL unless the UDC adopts any CIL proposed by an underlying local planning authority?

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?

Yes - Subject to suggestion in Q45.

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? In principle yes, with safeguards for areas like UDCs where the continuing use of section 106 may be necessary.

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? As noted above there is a need to avoid an overlap between CIL and section 106 obligations. One approach would simply be to say that section 106 agreements cannot cover items that could have been CIL funded. There would then be a clear split between off site items (covered by CIL) and on site items (covered by conditions). This would make the process of settling agreements very much simpler and easier to operate. It would reduce the costs and delay associated with agreements to the benefit of all parties.

UDCs would need to have the ability to enforce conditions to make this workable should they adopt the CIL developed by charging authorities.

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? Four years and until adoption in UDC areas.

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? Yes, subject to length of transition period.

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? Four years.

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? No comment

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? Section 106 agreements should be primarily (if not wholly) related to affordable housing. There should be very clear national clauses on issues such as cascades to minimise the time wasted in negotiating provisions afresh in agreements.

54. Do you have comments on any other matters raised in chapter 5 which are not covered by the questions above.
No comment

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Position: Director of Planning, LTGDC

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There is a need to make sure that there is no double charging of developers, paying once through CIL and again through section 106 agreements. Regulation 94 does not restrict the future scope of section 106. It simply prevents the obligations being taken into account as a reason for the approval of development. It will remain possible for there to be duplication and that will cause uncertainty particularly if, as in UDCs, there is split responsibility for CIL and section 106 agreements.

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, keep current tests - Could change/delete some of the tests but everyone is used to the tests and what benefits would arise? If CIL is going to last long term then it should it would be better to develop a clearer split between CIL infrastructure and what can be accommodated in section 106 agreements. A bar on obligations relating to CIL infrastructure in section 106 agreements would be simplest and most effective.

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

And if so what should it be and why is such a period required?

See comment under Q43 above. Suggest four years or introduction of CIL whichever is the earlier or alternatively UDC areas could be exempted from CIL unless the UDC adopts any CIL proposed by an underlying local planning authority?

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?

Yes - Subject to suggestion in Q45.

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? In principle yes, with safeguards for areas like UDCs where the continuing use of section 106 may be necessary.

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? As noted above there is a need to avoid an overlap between CIL and section 106 obligations. One approach would simply be to say that section 106 agreements cannot cover items that could have been CIL funded. There would then be a clear split between off site items (covered by CIL) and on site items (covered by conditions). This would make the process of settling agreements very much simpler and easier to operate. It would reduce the costs and delay associated with agreements to the benefit of all parties.

UDCs would need to have the ability to enforce conditions to make this workable should they adopt the CIL developed by charging authorities.

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? Four years and until adoption in UDC areas.

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? Yes, subject to length of transition period.

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? Four years.

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? No comment

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? Section 106 agreements should be primarily (if not wholly) related to affordable housing. There should be very clear national clauses on issues such as cascades to minimise the time wasted in negotiating provisions afresh in agreements.

54. Do you have comments on any other matters raised in chapter 5 which are not covered by the questions above.
No comment