PLANNING BRIEFING NOTE

April 2015

COMMUNITY INFRASTRUCTURE LEVY: APRIL 2015 DEADLINE

OVERVIEW

The Community Infrastructure Levy (CIL), a non-negotiable charge on development, was introduced in April 2010. It was designed to largely replace financial contributions secured through section 106 planning obligations.

A transitional period, during which local planning authorities were invited to begin introducing CIL, comes to an end on 6 April 2015. After that date, those local planning authorities which have not implemented CIL will find that their ability to seek contributions from developers to pay for new infrastructure is much reduced.

THE BACKGROUND

CIL was brought onto the statute book by the last Labour government and, to the surprise of some, the coalition government decided to retain it, describing it 'as fairer, faster and more certain and transparent than the system of planning obligations'.

HOW DOES CIL WORK?

CIL works on the basis that the majority of new development will be required to make a financial contribution towards items included on a local authority's 'Regulation 123 list'. That list identifies the infrastructure which the local authority intends to fund wholly or partly through CIL.

The contribution is non-negotiable and is calculated on the basis of a charging schedule drawn up by the local authority. The schedule typically requires higher payments from those types of development, and in those areas, which have been identified as capable of achieving higher values.

Once a CIL charging schedule is in place, local planning authorities are no longer permitted to seek planning obligations to pay for – in whole or part – any of the infrastructure it has identified on its published list.

WHAT ABOUT INFRASTRUCTURE THAT'S NOT IDENTIFIED ON THE PUBLISHED LIST?

Local planning authorities with a CIL charging schedule in place can continue to seek planning obligations for infrastructure which is not on their published lists, but they may only 'pool' contributions from a maximum of five separate planning obligations for a particular infrastructure project or type of infrastructure.

SO WHAT IS 'INFRASTRUCTURE'?

For the purpose of CIL, 'infrastructure' is defined as (a) roads and other transport facilities, (b) flood defences, (c) schools and other educational facilities, (d) medical facilities, (e) sporting and recreational facilities and (f) open spaces.

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WHAT ABOUT AFFORDABLE HOUSING?

Affordable housing is not defined as 'infrastructure' and, therefore, cannot be secured through CIL. The ability to seek affordable housing through section 106 planning obligations remains.

WHAT ARE THE IMPLICATIONS...

...for development in areas where CIL is in place?

Development in areas where a CIL charging schedule has been adopted will, as now, be subject to CIL. Any planning obligations will be largely limited to affordable housing and contributions towards infrastructure which is not identified by the local planning authority on its published list. Any 'pooling' will be limited to a maximum of five separate planning obligations.

In addition, the Government's Planning Practice Guidance (paragraph 097) makes clear that 'section 106 requirements should be scaled back to those matters that are directly related to a specific site'. Astute developers and investors will look to take advantage of this, in order to minimise planning obligations.

There is also potential for affordable housing to be squeezed, as affordable housing will often be the largest contribution capable of being reduced. Viability advice will be critical for those developers and investors looking to make the case that affordable housing contributions should be reduced. Without it, they may find that they are saddled with a planning obligation requiring large numbers of affordable units, as well as a significant CIL liability.

...for development in areas where CIL is not in place

In areas where CIL has not been adopted, local authorities' ability to secure developer contributions to infrastructure will be limited largely to items which do not require the pooling of funds or those which require only limited pooling – from a maximum of five separate planning obligations.

That will often benefit developers and investors, as they will find that local authorities' ability to seek section 106 contributions towards infrastructure will be restricted. On the other hand, these local authorities may they are better placed to seek affordable housing contributions, as developers and investors will be able to divert funds from infrastructure to affordable housing.

In short, not having CIL in place could mean less infrastructure but more affordable housing. This, it seems, would be an unexpected side-effect of CIL.

CONCLUSIONS

The first five years of CIL have left us with a patchwork quilt of planning obligations and CIL charges. Each local authority area, each site and each type of development is different. For that reason, it's critical that developers and investors are properly informed about the CIL liability and planning obligations to which development schemes will be liable, not just when schemes are being prepared but even at the point when sites are purchased.

For further information on CIL and planning obligations, please contact:

Stuart Robinson
Executive Director
t: 020 7182 2700
e: stuart.robinson@cbre.com

Ian Anderson
Senior Director
t: 020 7182 2328
e: ian.anderson@cbre.com

Gary Cardin
Senior Director
t: 0121 627 5233
e: gary.cardin@cbre.com

Keith Hearn
Senior Director
t: 020 7182 2701
e: keith.hearn@cbre.com

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