

Government response on latest reforms of Community Infrastructure Levy

The final shape of further reforms of the Community Infrastructure Levy (CIL) has emerged in a response to the Government's April consultation¹. We give a rundown below on the changes to be made to the regime. For further analysis of the Government's proposals, see our April briefing².

Payment-in-Kind – Allowing Infrastructure Cost Credit Against CIL

Authorities will be able to allow the costs of on- or off-site infrastructure provided by the developer to be credited against CIL liability (rather than simply land, as currently). The credit against CIL will relate to the cost of the infrastructure provided and this will need to be independently assessed or based on set benchmarks.

The Department for Communities and Local Government (DCLG) has dropped its proposal to restrict payment-in-kind to costs below the EU procurement thresholds. In circumstances where procurement rules apply, the developer and the Council will simply have to decide whether it is appropriate or worth pursuing a payment-in-kind given the delay and cost involved.

It remains to be seen whether the regulations will specify how the payment-in-kind is to be documented, and whether relevant provisions (albeit not planning obligations) could be located in an agreement under Section 106 Planning Act 1990. Alternatively they might be contained in agreements made, for example, under Section 2 of the Local Government Act 2000 and / or Section 1 of the Localism Act 2011.

Existing floorspace offset - Removing the Vacancy Test Requirement

DCLG has changed its position from the original proposal and now proposes to allow an offset for existing floorspace against CIL only where either:

- The building has been in use for a continuous 6 month period in the last 3 years (i.e. extending this from the current 12 month period); or
- the use of the building is not changing and there is no planned increase in floorspace.

For the "no change in use" option, we will still need to see the regulations to determine exactly how much flexibility this provides. For example, how will this apply to mixed use buildings?

Key issues

- Reforms adopted largely as proposed in Consultation but with some significant revisions.
- Changes expected to be brought into force by end of January 2014.

¹ [Community Infrastructure Levy: Consultation on further Regulatory Reforms - Government Response – October 2013 - DCLG](#)

² [Consultation on Further Reforms to the Community Infrastructure Levy – April 2013](#)

Extending Phased Payments

As proposed, phasing of CIL payments will be allowed for phased schemes governed by *full planning permissions* (as already permitted for phased *outline permissions*).

Also, demolition or site preparation works will be able to constitute a separate phase of works to allow payment of CIL to be delayed until commencement of construction of the first substantive phase of a development.

Excluding CIL Infrastructure from Section 278 Agreements

As a general rule, DCLG will restrict any infrastructure in the Charging Authority's CIL Infrastructure list from being included in a Section 278 Agreement. However, this restriction will not apply to agreements relating to trunk roads (involving Transport for London, the Highways Agency or Welsh Ministers). This is intended so as not to prevent more significant cross-boundary highway infrastructure from being provided. The risk remains, therefore, of so-called "double-dipping" for the costs of trunk road works which might be provided for under both CIL and in a Section 278 Agreement.

Deadline for Abolition of "Pooled Contributions"

As anticipated, DCLG has pushed back from 6 April 2014 to April 2015, the deadline after which charging authorities will not be able to pool Section 106 contributions from more than 5 planning obligations to pay for any infrastructure.

Other significant changes include:

- Allowing differential CIL rates for different scales of development (and not only for different uses, as currently).
- Changing the date when the amount of CIL is fixed for full permissions, to the date of the permission (rather than satisfaction of the last pre-commencement condition). For outline permissions, this will remain the date the last reserved matter is approved.
- Removing the requirement for a planning obligation to be of greater value than the relevant CIL charge in order for "exceptional circumstances relief" to apply to the CIL charge. There will still need to be a planning obligation in place but, unlike DCLG's original proposal, no threshold will apply at all.
- Allowing Affordable Rent properties to benefit from mandatory social housing relief from CIL. Discounted market sales which satisfy defined national and European criteria would be subject to discretionary relief; communal areas in affordable housing will also be eligible for pro rata CIL relief.
- Allowing CIL to be recalculated where the expected affordable housing mix changes during the carrying out of the development.
- Allowing CIL payments to be credited against CIL liability for an amended permission where a full planning application seeks that amendment (such a credit already exists where a Section 73 application seeks the amendment). This has also been extended to allow any levy paid towards an incomplete building to be credited against site-wide liability where there are changes to a larger scheme during development.
- Requiring the charging authority when setting the CIL rate to justify the balance between funding infrastructure from the levy and the impact on general economic viability of development.
- Making the charging authority's CIL Infrastructure list more transparent by requiring it to be made public earlier. Contrary to the original proposal, DCLG will leave the extent and duration of consultation to the authority's discretion.
- Allowing appeals against determination of CIL amounts to be made after commencement of development in certain circumstances, e.g. where a planning application is made to amend a scheme after work has started.

Final Comments

The changes are expected to come into force by the end of January 2014. We still await publication of amending regulations. The detail of the regulations will need to be scrutinised to identify how some of these changes (e.g. in particular the revised vacancy test) will operate and to ensure that no additional problems have crept in.

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