

Housing White Paper – Community Infrastructure Levy and other Planning Reforms

The Government has finally published the delayed White Paper on housing which seeks to rectify the UK's housing shortage. It contains various planning reforms aimed at speeding up the house-building process. It is also accompanied by publication of the Government-commissioned independent report on the Community Infrastructure Levy (CIL). This report contains proposals for major reform of CIL and a move back to Section 106 Agreements for large development schemes. This briefing focuses on the CIL recommendations and also considers the other major planning reforms mentioned in the White Paper and accompanying documents which apply to England only.

The Housing White Paper¹ seeks to address the Government's ambitious aim to 'fix the broken housing market' which is demonstrated by low rates of house-building, homes built in the wrong places, and unaffordable house prices. The proposed reforms aim to reverse these trends by forcing local planning authorities to focus on where housing is needed, building homes more quickly, and supporting new types of home building model including the Private Rented Sector.

Community Infrastructure Levy Review

An independent group with members from across the development industry and local government was appointed in 2015 to assess whether the CIL regime was effective in providing infrastructure funding to support development. A report on its findings, issued to the Government in November 2016, has now been published². The report contains a number of conclusions critical of how CIL has operated to date including:

- Where CIL has been adopted, it has raised only a fraction of the receipts anticipated at inception of the regime.
- Many authorities have not implemented CIL, leaving increased reliance on Section 106 Agreements.
- CIL has not resulted in infrastructure being provided when needed to support development, and is particularly unsuited to larger developments.

Key issues

- Independent review recommends major reform of Community Infrastructure Levy: new Local Infrastructure Tariff for all developments, and Section 106 Agreement for larger developments
- Significant number of other proposed planning reforms:
 - Development control
 - "Build to Rent" and "Affordable Private Rent"
 - Local development planning

¹ The White Paper and accompanying documents can be found at: <https://www.gov.uk/government/collections/housing-white-paper>
² [A new approach to Development Contributions – A Report by the CIL Review Team](#)

- CIL is overly complex and bureaucratic.

The Report stops short of recommending abolition of CIL. However, it recommends extensive reform to effectively replace CIL with a simpler low-level Local Infrastructure Tariff (LIT) covering all developments, and Section 106 obligations for larger (or strategic) developments. Although the review focuses on residential development, the report suggests that it applies equally to commercial development. In brief terms the new LIT regime would work on a mandatory basis as set out below for all local authorities, except where levels of LIT would be too low to make it worthwhile collecting it³.

Rate setting

LIT would be imposed by the Local Planning Authority (LPA) on developers on a simplistic nationally-based formula set at a rate of £ / sq m of development. The idea is that this level would be low enough not to affect development viability such that exemptions and reliefs should not be necessary. The level floated is between 1.75 -2.5% of the sale price for a standard 100 sqm 3-bed family home in the relevant area⁴. LPAs could charge lower rates for different categories of commercial development (but not higher) where they had supporting evidence that a lower rate was necessary.

Application of LIT

LIT would apply to residential development as well as commercial development. The current "existing floorspace credit" would be largely dismantled for the purposes of simplicity: LIT would therefore be applicable to replacement buildings and changes of use, and charged on gross floorspace. Extensions would be charged on net additional floorspace (as per the current CIL regime). Only refurbishments would escape from LIT.

Exemptions

In principle, all developments would pay LIT, but the report notes that the Government might want to exempt a few categories of development such as affordable housing and starter homes. In any event, the process for such exemptions should be simplified.

Monitoring

The report recommends abolishing the LPAs "Regulation 123 infrastructure list"⁵ as it largely gave authorities a way to continue imposing Section 106 planning obligation contributions on developers. This would be replaced by an obligation on LPAs to publish information about how funds are spent on infrastructure through their existing Authorities' Monitoring Report.

Larger Developments – Section 106 Agreements

Larger developments would be subject to Section 106 Agreements in addition to LIT. The recommended threshold for a "larger development" has been set at a fairly low level of 10 units for residential. Assuming a similar level of threshold was set for commercial development, this would mean that most major commercial developments would be subject to Section 106 obligations as well as LIT. The restriction preventing pooling of funds for more than 5 developments would be removed (as abolition of the Regulation 123 list would make it unnecessary).

Currently, site specific issues and affordable housing continue tend to be dealt with through Section 106 Agreements even where CIL is payable. As a result, it would appear that the main change from these proposals would be the re-introduction into Section 106 Agreements of monetary contributions for wider public amenity and infrastructure needs. There would seem to be a very real risk of double counting if contributions to infrastructure, which ought to be covered by LIT, can now also be contained in a Section 106 Agreement. Developers will be encouraged to learn that the report also suggests LPAs should have flexibility to both:

- Offset LIT payments against Section 106 contributions; and

³ This would be a move away from the current optional basis of CIL.

⁴ The Report suggests this could lead to LIT rates of £50-£440 per sq m in London Boroughs.

⁵ A list established by the LPA determining what infrastructure projects or types of infrastructure could be funded by CIL.

- Allow LIT payments to be made in kind (presumably through a Section 106 agreement - an approach which is largely prohibited for CIL under current Regulations).

In response to the possibility that developers may see an inevitable increase in Section 106 obligations under these proposals, the report recommends strengthening the current Regulation 122 test⁶ to ensure that only necessary and appropriate obligations are imposed. A call to further standardise Section 106 drafting and make it more transparent is suggested in an effort to speed up the process more generally. Given the numerous previous attempts at standardisation, it is not clear that much will be achieved on this score given that drafting is often the result of particular needs of individual LPAs and the complexities of the specific development.

Strategic Infrastructure Tariff (SIT)

New-style Combined Authorities (e.g. Greater Manchester) would be permitted to seek an additional SIT (similarly to the current London Mayor's CIL) for a small number of identified infrastructure projects.

Next steps

The report suggests moving to this new system by 2020. The White Paper notes that the Government is considering the report's recommendations and will make an announcement at the Autumn budget 2017.

Putting Section 106 Agreements back centre stage is welcome particularly for large developments where complex Agreements have continued to be needed even once CIL is fully in place. In particular, the flexibility for offsets and payments in kind would be desirable enabling developers to estimate their overall liability more easily in advance. Much will depend on the detail of LIT as to whether it can be made much simpler and straightforward than CIL. Significantly, the review group leaves much of this detail to the Government to work up. As always, simplicity is easier at the generic level.

Other planning reforms

The White Paper and accompanying documents announce a significant number of new reforms to the planning system. Principal changes include the following:

Development control reforms aimed at speeding up grant of planning permission

- **Reducing the time period for commencement of development:** Introducing a new policy encouraging LPAs to reduce the standard period for commencement of development from three years to two years for housing development, except where this might cause viability or deliverability issues (for outline planning permissions, presumably this means submission of reserved matters must be made within two years, rather than the current three).
- **Planning Appeal fees:** Introducing a new fee for making a planning appeal, of up to £2000 for full planning inquiries.
- **Planning fees:** Allowing LPAs to increase planning fees by 20% provided they re-invest the additional receipts in their departments.
- **Material considerations:** considering whether the applicant's development track record, and the likelihood that a site will in fact be developed, should constitute material considerations in determining a planning application.
- **CPO for stalled sites:** A consultation to be launched on new guidance encouraging use of CPO powers for stalled sites. Consideration will also be given of other techniques for assembling land seen elsewhere (e.g. 'pooling' in Germany).
- **New phased Housing Delivery Test:** A new policy making the National Planning Policy Framework (NPPF) presumption in favour of sustainable development (i.e. granting permission) take effect if delivery of housing falls below specified percentages of the LPA's assessed housing requirements (25% by 2018, 45% by 2019 and 65% by 2020).
- **Provision of information by developers:** New requirements for developers to notify an estimated start date for development on the planning application form for all proposals including housing; and a duty to update the LPA on progress of build out of homes.

⁶ Regulation 122 of the CIL Regulations provides that planning obligations need to be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

- **Simplifying the Completion Notice procedure:** Removing the requirement for the Secretary of State to approve a completion notice⁷; and allowing LPAs to serve a notice before the commencement deadline has passed, where works have already started.

New Emphasis on Build to Rent and Affordable Private Rent⁸

- **New policy supporting Build to Rent:** Introduction of a new planning policy in the NPPF encouraging development of "Build to Rent" properties.
- **New definition of Affordable Private Rent (APR):** A new definition of APR which will count towards developers' affordable housing requirements. The features of APR Rent would be:
 - Rent must be at least 20% below local market rents, with the discount to apply indefinitely. A commuted sum clawback would apply in the event of loss of APR homes (e.g. through sale).
 - 20% of homes within a Build to Rent scheme would need to be APR.
 - APR would need to be "family friendly rental": i.e. offered for a term of at least 3 years where the tenant so desires, with an option to terminate at 1 month's notice after an initial 6 month period.
 - Eligibility determined by local incomes and house prices.
- **London:** The Government acknowledges that London may have different needs and seeks views on whether London should be treated differently.
- **Starter homes:** Removing the requirement for larger housing developments to include 20% starter homes. Replacing this with a new NPPF policy setting an expectation for all housing sites to deliver at least 10% affordable housing.

Local development planning

- **Local Plans:** New powers to force LPAs to prepare local plans and keep them up-to-date, with a review at least every 5 years.
- **Allocation of Strategic sites:** New powers for combined authorities or elected mayors to allocate strategic sites for development.
- **Housing Assessments:** Consideration of options for introducing a new standardised approach to assessing housing requirements as the basis for calculating five year housing land supply, and strengthening the NPPF requirements to allocate sufficient land in local plans to satisfy the identified need.
- **Selling off land:** A new consultation will be undertaken to consider possibilities to extend powers of authorities to sell off land for development at less than 'best consideration' using powers under the Growth and Infrastructure Act 2013.
- **Green Belt:** Maintaining green belt protections and making it clear that green belt boundaries should only be considered for amendment where other reasonable options have been fully examined.
- **Housing density:** Further strengthening of NPPF policy to encourage higher densities of development to meet housing requirements.

Responses to the consultation on proposals in the White Paper must be provided by 2 May 2017; responses to the Build to Rent proposals must be provided by 1 May 2017.

⁷ Service of a completion notice removes rights to carry out remaining works under a planning permission if the development is not completed by the relevant date.

⁸ These proposals are contained in a separate consultation document: [Planning and affordable housing for Build to Rent - DCLG](#)

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