

London Councils' response to the CLG proposals and draft regulations for the introduction of the Community Infrastructure Levy (October 2009)

Introduction

London Councils represents the 32 London boroughs, the City of London, the Metropolitan Police Authority and the London Fire and Emergency Planning Authority. We are committed to fighting for resources for London and getting the best possible deal for London's 33 councils. We lobby on our members' behalf, develop policy and do all that we can to help boroughs improve the services they offer. We also run a range of services ourselves designed to make life better for Londoners.

London Councils has chosen not to respond in detail to all the questions posed in CLG's consultation document. Instead we have focused our response on those issues of greatest significance to the London boroughs. London Councils has long been a supporter of Crossrail recognising that it is a key piece of strategic infrastructure. We wish to see it fully funded and built for the benefit of London. However, it is essential that the Mayor's ability to charge CIL in order to raise funds for Crossrail does not have a detrimental impact on boroughs' ability to fund local improvements or the provision of onsite measures necessary to allow development to go ahead through developer contributions. Boroughs are particularly concerned that it will be local infrastructure improvements and affordable housing which will lose out if the Mayor's CIL is set too high and is imposed on schemes without proper regard to financial viability and other infrastructure needs. In the absence of adequate developer contributions for local improvements or any additional funding from Central Government, there is a danger of development occurring across London without satisfactory infrastructure in place to support it and mitigate its impact on local communities. This could have extremely negative impacts in the medium and longer-term and would be detrimental to achieving the sustainable communities that the Mayor, boroughs and Central Government all want to see in London.

Response to specific proposals

Definition of 'infrastructure'

London Councils welcomes the fact that the Government favours a wide definition of infrastructure as different parts of London have different infrastructure requirements and adopting a flexible approach will enable boroughs to deal with differing needs and priorities. However, we believe the regulations should specify that the only infrastructure project to which the Mayor can apply CIL would be Crossrail in the early years of CIL (until such time as the £300million required was obtained). This would ensure that the Crossrail contribution required from CIL could be raised but would prevent the Mayor from setting a higher CIL than was needed for Crossrail.

It is important to remember that S106 is currently used to fund maintenance and operational costs as well as set up costs and it is essential that such costs can also be covered by CIL or that the ability to use S106 for these elements is retained. It will also be important to ensure that the revenue costs of demand management measures can still be funded, for example, paying car club membership fees for new residents.

We welcome the statement in para 2.16 that CIL does not necessarily have to be spent on new infrastructure. Improvements to existing provision through refurbishment or measures to increase capacity play a key role in providing for the growth in population and employment in many parts of London and it is important that CIL can also contribute towards the costs of such improvements.

Deciding the rate of CIL

Although we recognise the need for the Mayor to raise CIL to contribute towards the funding of Crossrail, the need for boroughs to take account of the Mayoral CIL without any need for the Mayor to take account of the borough CIL or S106 arrangements means that the Mayoral CIL will effectively take precedent and reduce the boroughs' ability to raise developer contributions. London Councils, therefore, strongly opposes this proposal and asks that the regulations be amended to require the Mayor to consider all the other costs associated with development and the existence of any local CIL rate set by the boroughs when assessing the potential effect on the

economic viability of development in order to set a Mayoral CIL. This would include the costs associated with other Development Plan considerations such as sustainability and design requirements and affordable housing as well as other S106 requirements. It would be possible to calculate estimates for these other costs based on a sample of recent developments in an area.

It is important to note that in some parts of London, including some areas most in need of regeneration, development values do not support the level of CIL that is needed to meet all infrastructure requirements, even after taking account of alternative funding sources. In these circumstances, both Mayoral CIL and boroughs' CIL/S106 requirements will need to be set at an appropriate level to ensure that important developments are able to proceed.

There is a need to consider further how CIL setting will operate in London. The current proposals will not 'ensure the right balance between the funding of strategic and local infrastructure' that CLG desires. We would therefore like to propose that the rate of CIL set by the Mayor should only apply for each borough until that borough brings forward their own charging schedule, at which point the rate for the Mayor's CIL would be debated and agreed alongside the borough CIL through the examination process and the Mayor's CIL would subsequently be varied accordingly. This would ensure that the overall CIL level set was viable in each borough, took account of both local and strategic needs, and did not have a disproportionate impact in regeneration areas.

Differential rates for CIL

We support the principle of the Mayor and boroughs being able to charge differential rates of CIL for different geographical zones or sub-zones and for different types of development. Many boroughs consider it essential that the viability test is applied by the Mayor to boroughs individually, and that the Mayoral CIL rate takes proper account of development values, other borough infrastructure requirements, and the quantum of developments able to contribute to funding them, which will inevitably vary between boroughs. A one-size-fits-all-boroughs rate of Mayoral CIL would be contrary to the spirit and the letter of the CIL legislation.

Charging metrics

London Councils supports the per square metre approach on commercial and retail schemes but not on residential development for which we favour a charge per dwelling because the alternatives can have a distorting effect on the commercial attractiveness of building different types of housing, rather than building the type of housing (both private and affordable) which best meets the needs of the locality. If the charge per square metre metric proposed is adopted, good internal space standards will be required to avoid the unintended consequence of producing small sized dwellings and we would welcome recognition of the need for this from government.

Indexation

We support CLG's proposal to base indexation on a national index, but the regulations should provide scope for regional variations where these can be justified empirically. For example, construction costs in London can be very different from those elsewhere.

Charging schedule procedures

It is right that the same options for charging procedures should apply to both the Mayor and the boroughs.

We do not agree with the provision for any person who makes a representation to be heard in person at the examination as this could result in lengthy (and expensive) examinations for charging authorities. In addition, this is anomalous when compared to the Core Strategy EIP where the examiner chooses to invite those who are considered to have a useful and important contribution to make.

There needs to be a streamlined process for reviewing the charging schedule to take account of changes in development values within an area. This would ensure that local authorities were more easily able to vary their charge to take account of local circumstances or changes in the economy. Under the current proposals this would be difficult due to the lengthy procedures required. The

regulations should be amended to specify that it would not be necessary to review infrastructure costs as part of any revision of charging schedules within a specified period (i.e. infrastructure costs once agreed would remain valid for a certain period of time).

Exceptional circumstances

Any procedure for dealing with exceptional circumstances will need to take account of the specific circumstances in London and set out how any reduction in CIL liability is to be apportioned between the Mayor and the borough. We believe that the size of any reduction in CIL revenues should be split according to the ratio of the Mayor's CIL to the borough's CIL, as this is the fairest system taking account of both strategic and local needs. In deciding whether there is a case for any reduction in CIL, consideration will need to be given to the full range of costs associated with a development and the need to take account of any on-site facilities required to enable the development to come forward.

Collection and enforcement arrangements

London Councils is concerned that the consultation does not say anything about how the Government proposes to reimburse Boroughs for the costs involved in collecting CIL on behalf of the Mayor. It is essential that boroughs do not lose out financially as a result of the introduction of CIL. We would like to remind CLG again about the provisions under the 'New Burdens Doctrine' which it published and which states that: "A new burden is defined as any new policy or initiative which increases the cost of providing local authority services. The new burden need not necessarily arise as a result of a proposed statutory duty. For example, guidance to act can result in additional costs falling on local authorities, putting pressure on council tax. Government as a whole are committed to ensuring new burdens falling on local authorities are fully funded. This commitment is called the New Burdens Doctrine."

London Councils has obtained a commitment from Ministers in the debates relating to the Business Rate Supplement (BRS) Bill (now an Act) that the additional costs related to collection of the BRS will be refunded to local authorities as they fall under this doctrine. We firmly believe that the same should apply for CIL. The costs involved represent a small proportion of the overall CIL account, but would provide vital resources to fund the provision of a quality service.

In addition, provision should be made to allow CIL payments to be used to cover the cost of administering CIL, in a similar way that most local authorities currently charge a fee as part of a S106 agreement to cover the cost of setting up, running and monitoring compliance with their planning obligation frameworks.

The consultation document discusses the charges and surcharges that collection authorities can make for issues such as identifying liable parties, late payment and failure to submit a commencement notice. However, it is not clear that boroughs will be able to use the income from this to cover their own costs as it states that additional revenue received through surcharges or penalties will be treated as CIL by the charging authority and must therefore be spent on the provision of infrastructure.

We consider the proposal for payment in instalments to be overly burdensome on collection authorities, particularly where boroughs are being required to collect CIL on behalf of the Mayor. It also goes against the 'keep it simple' approach in the regulations.

In addition, we do not support the proposal to require boroughs to transfer CIL revenue to be Mayor on a monthly basis and believe this should happen quarterly as is proposed for other parts of the country. We believe a common approach should be adopted and the larger sums involved in London do not justify a different approach as cash will not be physically transferred.

Planning obligations

Given that there are still a number of uncertainties about how CIL will be implemented and particularly about how it will operate in London, it is essential that boroughs are able to continue using existing approaches for collecting developer contributions until such time as CIL can be seen

to have worked and boroughs are able to make an informed choice as to whether they wish to adopt it. This is particularly important given that CIL was originally conceived when the market was buoyant and we are now in a very different economic climate. We, therefore, believe that there should be no restrictions on S106 for at least 5 years.

Local authorities that do not currently have an infrastructure or S106 policy in place may be keen to introduce CIL quickly. However, for those local authorities (including many of the London boroughs) with well-established S106 policies, the introduction of CIL (particularly if done too quickly) may damage existing best practice. It should be noted that most London boroughs now have an adopted Supplementary Planning Document (SPD) on S106, many of which are very highly regarded. For example, Southwark's S106 SPD was shortlisted for a London Planning Award recently. Local authorities also need sufficient time to undertake the various processes required in preparation for introducing CIL, such as the development of an infrastructure plan.

Changes to S106 also have implications for the delivery of affordable housing in London. For example, the City of London currently seeks developer contributions through their tariff approach for affordable housing to be delivered off-site (and often outside their boundaries). Restrictions on S106 as proposed would prevent them from doing this. We are collecting other examples of the kinds of initiatives that will no longer be funded if restrictions are placed on S106 and will provide a separate note on this for CLG officials.

The retention of S106 is also essential to ensure that improvements that are currently secured as benefits in kind can still be obtained.

The Government's proposals for scaling back the use of planning obligations are unclear. The policy test in circular 5/05 means that planning obligations can be used to ensure that a development is acceptable in planning terms. Currently this is interpreted to mean that if, for example, a local authority has a policy which requires developers to facilitate employment and training measures for local residents on the basis that economic development is a key objective in creating sustainable communities, then it is acceptable to require a planning obligation for employment and training initiatives. There is a lack of clarity in the proposals for making the Circular 5/05 tests statutory as to whether such things will still be able to be funded through planning obligations. Although paragraph 5.52 suggests that the Government wants to encourage local authorities to make greater use of planning obligations to promote skills and training, there is a danger that the scaling back of S106 could make this harder, particularly if planning obligations are restricted to impacts 'solely' caused by a development.

London Councils would be happy to discuss any of the issues raised in this paper further with CLG. Please contact Ruth Bradshaw (ruth.bradshaw@londoncouncils.gov.uk) for further information or clarification on any of the issues raised.