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**COMMUNITY INFRASTRUCTURE LEVY (CIL):  
A PRACTICAL UPDATE**

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## PLANNING ACT 2008, PART 11

### 208 Liability

(1) Where liability to CIL would arise in respect of proposed development (in accordance with provision made by a charging authority under and by virtue of section 206 and CIL regulations) a person may assume liability to pay the levy.

(2) An assumption of liability—

(a) may be made before development commences, and

(b) must be made in accordance with any provision of CIL regulations about the procedure for assuming liability.

(3) A person who assumes liability for CIL before the commencement of development becomes liable when development is commenced in reliance on planning permission.

(4) CIL regulations must make provision for an owner or developer of land to be liable for CIL where development is commenced in reliance on planning permission if—

(a) nobody has assumed liability in accordance with the regulations, or

(b) other specified circumstances arise (such as the insolvency or withdrawal of a person who has assumed liability).

(5) CIL regulations may make provision about—

(a) joint liability (with or without several liability);

(b) liability of partnerships;

I assumption of partial liability (and subsection (4)(a) applies where liability has not been wholly assumed);

(d) apportionment of liability (which may—

(i) include provision for referral to a specified person or body for determination, and

(ii) include provision for appeals);

(e) withdrawal of assumption of liability;

(f) cancellation of assumption of liability by a charging authority (in which case subsection (4)(a) applies);

(g) transfer of liability (whether before or after development commences and whether or not liability has been assumed).

(6) The amount of any liability for CIL is to be calculated by reference to the time when planning permission first permits the development as a result of which the levy becomes payable.

(7) CIL regulations may make provision for liability for CIL to arise where development which requires planning permission is commenced without it (and subsection (6) is subject to this subsection).

(8) CIL regulations may provide for liability to CIL to arise in respect of a development where—

(a) the development was exempt from CIL, or subject to a reduced rate of CIL charge, and

(b) the description or purpose of the development changes.

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## **2010 No. 948**

# **COMMUNITY INFRASTRUCTURE LEVY, ENGLAND AND WALES**

## **The Community Infrastructure Levy Regulations 2010**

### **6.— Meaning of “development”**

(1) The following works are not to be treated as development for the purposes of section 208 of PA 2008 (liability)—

(a) anything done by way of, or for the purpose of, the creation of a building of a kind mentioned in paragraph (2);

(b) the carrying out of any work to, or in respect of, an existing building if, after the carrying out of that work, it is still a building of a kind mentioned in paragraph (2);

(c) the carrying out of any work to, or in respect of, an existing building for which planning permission is required only because of provision made under section 55(2A) of TCPA 19902 ; and

(d) the change of use of any building previously used as a single dwellinghouse to use as two or more separate dwellinghouses.

(2) The kinds of buildings mentioned in paragraph (1)(a) and (b) are—

(a) a building into which people do not normally go;

(b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

#### Notes

<sup>1</sup> Substituted by Community Infrastructure Levy (Amendment) Regulations 2011/987 reg.4(1) (April 6, 2011)

<sup>2</sup> Section 55(2A) was inserted by section 49 of the Planning and Compulsory Purchase Act 2004.

#### Commencement

Pt 2 reg. 6(1)-(2)(b): April 6, 2010

#### Extent

Pt 2 reg. 6(1)-(2)(b): England, Wales

## PART 5

### CHARGEABLE AMOUNT

#### 40.— Calculation of chargeable amount

(1) The collecting authority must calculate the amount of CIL payable (“chargeable amount”) in respect of a chargeable development in accordance with this regulation.

(2) The chargeable amount is an amount equal to the aggregate of the amounts of CIL chargeable at each of the relevant rates.

(3) But where that amount is less than £50 the chargeable amount is deemed to be zero.

(4) The relevant rates are the rates, taken from the relevant charging schedules, at which CIL is chargeable in respect of the chargeable development.

(5) The amount of CIL chargeable at a given relevant rate © must be calculated by applying the following formula—

where—

A = the deemed net area chargeable at rate R, calculated in accordance with paragraph (7);

Ip = the index figure for the year in which planning permission was granted; and

Ic = the index figure for the year in which the charging schedule containing rate R took effect.

(6) In this regulation the index figure for a given year is—

(a) the figure for 1<sup>st</sup> November for the preceding year in the national All-in Tender Price Index published from time to time by the Building Cost Information Service of the Royal Institution of Chartered Surveyors<sup>2</sup>; or

(b) if the All-in Tender Price Index ceases to be published, the figure for 1<sup>st</sup> November for the preceding year in the retail prices index.

(7) The value of A must be calculated by applying the following formula—

where—

G = the gross internal area of the chargeable development;

GR = the gross internal area of the part of the chargeable development chargeable at rate R;

KR = the aggregate of the gross internal areas of the following—

(i) retained parts of in-use buildings, and

(ii) for other relevant buildings, retained parts where the intended use following completion of the chargeable development is a use that is able to be carried on lawfully and permanently without further planning permission in that part on the day before planning permission first permits the chargeable development;

E = the aggregate of the following—

(i) the gross internal areas of parts of in-use buildings that are to be demolished before completion of the chargeable development, and

(ii) for the second and subsequent phases of a phased planning permission, the value Ex (as determined under paragraph (8)), unless Ex is negative, provided that no part of any building may be taken into account under both of paragraphs (i) and (ii) above.

(8) The value Ex must be calculated by applying the following formula—

where—

EP = the value of E for the previously commenced phase of the planning permission;

GP = the value of G for the previously commenced phase of the planning permission; and

KPR = the total of the values of KR for the previously commenced phase of the planning permission.

(9) Where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish that a relevant building is an in-use building, it may deem it not to be an in-use building.

(10) Where a collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish—

(a) whether part of a building falls within a description in the definitions of KR and E in paragraph (7); or

(b) the gross internal area of any part of a building falling within such a description, it may deem the gross internal area of the part in question to be zero.

(11) In this regulation—

“building” does not include—

1 a building into which people do not normally go,

(ii) a building into which people go only intermittently for the purpose of maintaining or inspecting machinery, or

(iii) a building for which planning permission was granted for a limited period;

“in-use building” means a building which—

1 is a relevant building, and

(ii) contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development;

“new build” means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings;

“relevant building” means a building which is situated on the relevant land on the day planning permission first permits the chargeable development;

“relevant charging schedules” means the charging schedules which are in effect—

- 1 at the time planning permission first permits the chargeable development, and
- (ii) in the area in which the chargeable development will be situated;

“retained part” means part of a building which will be—

- 1 on the relevant land on completion of the chargeable development (excluding new build),
- (ii) part of the chargeable development on completion, and
- (iii) chargeable at rate R.

#### Notes

1 Substituted by Community Infrastructure Levy (Amendment) Regulations 2014/385 reg.6 (February 24, 2014: substitution has effect subject to transitional provision specified in SI 2014/385 reg.14(3))

2 Registered in England and Wales RC00487.

#### Commencement

Pt 5 reg. 40(1)-(11)©: April 6, 2010

### **74B.— Abatement: implementation of a different planning permission**

(1) This regulation applies where—

- (a) a chargeable development has been commenced under a planning permission (A);
- (b) a different planning permission (B) has been granted for development on all or part of the land on which the chargeable development under A is authorized to be carried out; and

© the charging authority receives notice from a person who has assumed liability to pay CIL in relation to B that the chargeable development under A will cease to be carried out and that the chargeable development under B will commence.

(2) Where this regulation applies a person who has assumed liability to pay CIL in relation to B may request that the charging authority credits any CIL paid in relation to A against the amount due in relation to B.

(3) To be valid a request under paragraph (2) must be—

- (a) made before the chargeable development under B is commenced; and
- (b) accompanied by proof of the amount of CIL that has already been paid.

(4) Subject to the following paragraphs of this regulation, the charging authority must grant any valid request made under paragraph (2).

(5) This regulation does not apply where B is a planning permission

granted under section 73 of TCPA 1990.

(6) Any CIL paid in relation to A can only be credited against the CIL due in relation to B to the extent that the CIL paid in relation to A relates to buildings (“relevant buildings”) that—

- (a) have not been completed when the request is made; and
- (b) are not taken into account in reducing the chargeable amount in relation to B through the operation of regulation 40.

(7) Where—

- (a) B is a phased planning permission; and
- (b) the amount to be credited against the CIL due in relation to B is greater than the amount due in relation to the first phase of B commenced after a request under this regulation has been granted, the remainder must be credited against the next phase or phases of B until there is no remainder.

(8) Paragraph (9) applies where—

- (a) a request under paragraph (2), which is a valid request, is made in respect of the amount due in relation to B;
  - (b) a relevant building is completed under A after the valid request is made (whether the completion occurs before or after the chargeable development under B commences); and
- © a reduced amount of CIL is paid in relation to B as a result of the grant of the request under this regulation.

(9) Where this paragraph applies the person who was granted the abatement under this regulation must pay to the collecting authority an amount equal to the amount of CIL paid in relation to that relevant building which was credited against the amount due in relation to B.

(10) For the purposes of this regulation the amount payable under paragraph (9), if paid, is to be treated as CIL paid in relation to B.

(11) Abatement may be granted more than once in relation to a planning permission.

(12) Paragraph (13) applies where a request under paragraph (2) in respect of the amount due in relation to B is made within the period ending three years after the grant of A and that request is granted.

(13) Where this paragraph applies, any parts of buildings which—

- (a) were demolished under A,
  - (b) were taken into account in reducing the chargeable amount in relation to A through the operation of regulation 40,
  - (c) would have been taken into account under regulation 40 in relation to B had they not been demolished, and
  - (d) are not otherwise taken into account under regulation 40,
- are to be taken into account under regulation 40 in relation to B as if they are parts of in-use buildings that are to be demolished before the completion of the chargeable development under B (or, if B is a phased permission, in relation to the first phase of B).

(14) The difference between the amount paid in relation to A and amount due in relation to B after any abatement has been granted

under this regulation is not to be treated as an overpayment for the purposes of regulation 75.

Notes

1 Added by Community Infrastructure Levy (Amendment) Regulations 2014/385 reg.9(9) (February 24, 2014)

Extent

Pt 8 reg. 74B(1)-(14): England, Wales

## **122.— Limitation on use of planning obligations**

(1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.

(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

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

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development.

(3) In this regulation—

“planning obligation” means a planning obligation under section 106 of TCPA 1990 and includes a proposed planning obligation; and

“relevant determination” means a determination made on or after 6<sup>th</sup> April 2010—

(a) under [ section 70, 73, 76A or 77 of TCPA 1990 ] 1 2 of an application for planning permission [...]3 ; or

(b) under section 79 of TCPA 19904 of an appeal [...]5 .

Notes

1 Word inserted by Community Infrastructure Levy (Amendment) Regulations 2011/987 reg.12(1)(a) (April 6, 2011)

2 Section 70 was amended by paragraph 14 of Schedule 7 to the Planning and Compensation Act 1991 (c. 34).

Section 76A was inserted by section 44 of the Planning and Compulsory Purchase Act 2004 (c. 5). Section 77 was amended by section 40(2)(d) of the Planning and Compulsory Purchase Act 2004, paragraph 18 of Schedule 7 to the Planning and Compensation Act 1991 and paragraph 2 of Schedule 10 to the Planning Act 2008 (c. 29).

3 Words revoked by Community Infrastructure Levy (Amendment) Regulations 2011/987 reg.12(1)(b)(i) (April 6, 2011)

4 Section 79 was amended by section 18 of the Planning and Compensation Act 1991 and paragraph 4 of Schedule 10 to the Planning Act 2008.

5 Words revoked by Community Infrastructure Levy (Amendment) Regulations 2011/987 reg.12(1)(b)(ii) (April 6, 2011)

Commencement

Pt 11 reg. 122(1)-(3) definition of “relevant determination” (b): April 6, 2010

Extent

Pt 11 reg. 122(1)-(3) definition of "relevant determination" (b): England, Wales

Law In Force

### **123.— Further limitations on use of planning obligations**

(1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.

(2) A planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure (including, subject to paragraph (2B), through requiring a highway agreement to be entered into).

(2A) Subject to paragraph (2B) a condition falling within either of the following descriptions may not be imposed on the grant of planning permission—

(a) a condition that requires a highway agreement for the funding or provision of relevant infrastructure to be entered into;

(b) a condition that prevents or restricts the carrying out of development until a highway agreement for the funding or provision of relevant infrastructure has been entered into.

(2B) Paragraphs (2) and (2A) do not apply in relation to highway agreements to be entered into with—

(a) the Minister, for the purposes of section 1(1) of the 1980 Act;

(b) Transport for London ; or

(c) a strategic highways company for the time being appointed under Part 1 of the Infrastructure Act 2015.

(3) Other than through requiring a highway agreement to be entered into, a planning obligation ("obligation A") may not constitute a reason for granting planning permission to the extent that—

(a) obligation A provides for the funding or provision of an infrastructure project or provides for the funding or provision of a type of infrastructure; and

(b) five or more separate planning obligations that—

(i) relate to planning permissions granted for development within the area of the charging authority; and

(ii) which provide for the funding or provision of that project or provide for the funding or provision of that type of infrastructure, have been entered into on or after 6<sup>th</sup> April 2010.

(4) In this regulation—

"the 1980 Act" means the Highways Act 1980;

"charging authority" means the charging authority for the area in which the development will be situated;

"condition", in relation to a planning permission, has the same meaning as in section 70(1)(a) of TCPA 1990;

“funding” in relation to the funding of infrastructure, means the provision of that infrastructure by way of funding;

“determination” means a determination—

(a) under section 70, 73, 76A or 77 of TCPA 1990 of an application for planning permission, or

(b) under section 79 of TCPA 1990 of an appeal;

“highway agreement” means an agreement under section 278 of the 1980 Act<sup>16</sup> ;

“planning obligation” means a planning obligation under section 106 of TCPA 1990 and includes a proposed planning obligation but does not include a planning obligation that relates to or is connected with the funding or provision of scheduled works within the meaning of Schedule 1 to the Crossrail Act 2008;

“relevant determination” means—

(a) in relation to paragraph (2), a determination made on or after the date when the charging authority’s first charging schedule takes effect, and

(b) in relation to paragraph (3), a determination made on or after 6<sup>th</sup> April 2015 or the date when the charging authority’s first charging schedule takes effect, whichever is earlier; and

“relevant infrastructure” means—

(a) where a charging authority has published on its website a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL (other than CIL to which regulation 59E or 59F applies), those infrastructure projects or those types of infrastructure;

(b) except where paragraph (c) applies, where no such list has been published, any infrastructure; or

(c) in relation to any planning obligation requiring a highway agreement to be entered into or condition falling within paragraph (2A), where no such list has been published, no infrastructure.

Commencement

Pt 11 reg. 123(1)-(4) definition of “relevant infrastructure” (b): April 6, 2010

Extent

Pt 11 reg. 123(1)-(4) definition of “relevant infrastructure” ©: England, Wales

## **128.— Transitional provision: general**

(1) Subject to paragraph (2), liability to CIL does not arise in respect of development if, on the day planning permission is granted for that development, it is situated in an area in which no charging schedule is in effect.

(2) Where planning permission is granted for development by way of a relevant general consent, liability to CIL does not arise in respect of that development if—

- (a) it is commenced before 6<sup>th</sup> April 2013; or
- (b) on the day on which it is commenced it is situated in an area in which no charging schedule is in effect.
- (3) In paragraph (2) “relevant general consent” means—
  - (a) a development order made under section 59 of TCPA 1990;
  - (b) a local development order adopted under section 61A of TCPA 1990; or
  - (c) an enterprise zone scheme adopted under Schedule 32 to the Local Government, Planning and Land Act 1980.

Commencement

Pt 12 reg. 128(1)-(3)©: April 6, 2010

Extent

Pt 12 reg. 128(1)-(3)©: England, Wales

Law In Force

### **128A.— Transitional provision: section 73 of TCPA 1990 applications**

(1) Where all the criteria set out in paragraph (2) are satisfied by a development, paragraphs (3) to (6) shall apply.

(2) The criteria are—

- (a) on the day planning permission (A) is granted in relation to the development, the development is situated in an area in which a charging authority has no charging schedule in effect;
- (b) a new planning permission (B) is later granted in relation to the development under section 73 of TCPA 1990; and
- (c) on the day B is granted, the development is situated in an area in which that charging authority has a charging schedule in effect.

(3) Liability to CIL shall arise in respect of the development, and the amount of CIL payable (“chargeable amount”) shall be—  
where—

X = the chargeable amount for the development for which B was granted, calculated in accordance with regulation 40; and

Y = the amount, calculated in accordance with regulation 40, that would have been the chargeable amount for the development for which A was granted, if A first permitted development on the same day as B.

(4) For the purpose of calculating Y, for the definition of “relevant charging schedules” in regulation 40(11) substitute—

“relevant charging schedules” means the charging schedules which are in effect—

- (i) at the time B was granted, and
- (ii) in the area in which the development will be situated;

(5) If Y is greater than or equal to X, the chargeable amount is deemed to be zero.

(6) Part 11 of these Regulations (planning obligations) shall not apply in relation to that development.

Notes

1 Added by Community Infrastructure Levy (Amendment) Regulations 2012/2975 reg.9(1) (November 29, 2012:

insertion has effect subject to transitional provisions specified in SI 2012/2975 reg.10(1))

2 Substituted by Community Infrastructure Levy (Amendment) Regulations 2014/385 reg.13 (February 24, 2014)

Extent

Pt 12 reg. 128A(1)-(6): England, Wales

Law In Force

### **128B.— Transitional provision: article 18(1) of DMPO applications**

(1) In this regulation “DMPO” means the Town and Country Planning (Development Management Procedure) (England) Order 2010.

(2) Where all the criteria set out in paragraph (3) are satisfied, paragraph (4) shall apply.

(3) The criteria are—

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(a) on the day planning permission (A) is granted in relation to a development, the development is situated in an area in which a charging authority has no charging schedule in place;

(b) a new planning permission (B) is later granted in relation to the development;

(c) B is granted in accordance with regulation 18(1)(b) or (c) of DMPO (consultations before the grant of planning permission pursuant to section 73 or the grant of a replacement planning permission subject to a new time limit); and

(d) on the day B is granted, the development is situated in an area in which that charging authority has a charging schedule in effect.

(4) Other than this regulation these Regulations shall not apply in relation to that development.

Notes

1 Added by Community Infrastructure Levy (Amendment) Regulations 2012/2975 reg.9(2) (November 29, 2012:

insertion has effect subject to transitional provisions specified in SI 2012/2975 reg.10(6))

Extent

Pt 12 reg. 128B(1)-(4): England, Wales

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## HIGHWAYS ACT 1980

### 38.— Power of highway authorities to adopt by agreement.

(1) Subject to subsection (2) below, where any person is liable under a special enactment or by reason of tenure, enclosure or prescription to maintain a highway, the Minister, or a strategic highways company, whichever is the highway authority in the case of a trunk road, or a local highway authority, in any other case, may agree with that person to undertake the maintenance of that highway; and where an agreement is made under this subsection the highway to which the agreement relates shall, on such date as may be specified in the agreement, become for the purposes of this Act a highway maintainable at the public expense and the liability of that person to maintain the highway shall be extinguished.

(2) A local highway authority shall not have power to make an agreement under subsection (1) above with respect to a highway with respect to which they or any other highway authority have power to make an agreement under Part V or Part XII of this Act.

(3) A local highway authority may agree with any person to undertake the maintenance of a way—

(a) which that person is willing and has the necessary power to dedicate as a highway, or

(b) which is to be constructed by that person, or by a highway authority on his behalf, and which he proposes to dedicate as a highway;

and where an agreement is made under this subsection the way to which the agreement relates shall, on such date as may be specified in the agreement, become for the purposes of this Act a highway maintainable at the public expense.

(3A) The Minister may agree with any person to undertake the maintenance of a road—

(a) which that person is willing and has the necessary power to dedicate as a highway, or

(b) which is to be constructed by that person, or by a highway authority on his behalf, and which he proposes to dedicate as a highway,

and which the Minister proposes should become a trunk road; and where an agreement is made under this subsection the road shall become for the purposes of this Act a highway maintainable at the public expense on the date on which an order comes into force under section 10 directing that the road become a trunk road or, if later, the date on which the road is opened for the purposes of through traffic.

(4) Without prejudice to the provisions of subsection (3) above and subject to the following provisions of this section, a local highway authority may, by agreement with railway, canal or

tramway undertakers, undertake to maintain as part of a highway maintainable at the public expense a bridge or viaduct which carries the railway, canal or tramway of the undertakers over such a highway or which is intended to carry such a railway, canal or tramway over such a highway and is to be constructed by those undertakers or by the highway authority on their behalf.

(6) An agreement under this section may contain such provisions as to the dedication as a highway of any road or way to which the agreement relates, the bearing of the expenses of the construction, maintenance or improvement of any highway, road, bridge or viaduct to which the agreement relates and other relevant matters as the authority making the agreement think fit.

**Notes**

1. Words inserted by Infrastructure Act 2015 c. 7 Sch.1(1) para.19 (February 12, 2015 in so far as it confers power to make regulations; March 5, 2015 otherwise)
2. Substituted by New Roads and Street Works Act 1991 c. 22 Pt I s.22(1) (November 1, 1991: represents law in force as at date shown )
3. Repealed by Local Government Act 1985 (c.51), s. 102, Sch. 17

**278.— Agreements as to execution of works.**

(1) A highway authority may, if they are satisfied it will be of benefit to the public, enter into an agreement with any person—

(a) for the execution by the authority of any works which the authority are or may be authorised to execute, or

(b) for the execution by the authority of such works incorporating particular modifications, additions or features, or at a particular time or in a particular manner,

on terms that that person pays the whole or such part of the cost of the works as may be specified in or determined in accordance with the agreement.

(2) Without prejudice to the generality of the reference in subsection (1) to the cost of the works, that reference shall be taken to include—

(a) the whole of the costs incurred by the highway authority in or in connection with—

(i) the making of the agreement,

(ii) the making or confirmation of any scheme or order required for the purposes of the works,

(iii) the granting of any authorisation, permission or consent required for the purposes of the works, and

(iv) the acquisition by the authority of any land required for the purposes of the works; and

(b) all relevant administrative expenses of the highway authority, including an appropriate sum in respect of general staff costs and overheads.

(3) The agreement may also provide for the making to the highway authority of payments in respect of the maintenance of the works to which the agreement relates and may contain such incidental and consequential provisions as appear to the highway authority to be necessary or expedient for the purposes of the agreement.

(4) The fact that works are to be executed in pursuance of an agreement under this section does not affect the power of the authority to acquire land, by agreement or compulsorily, for the purposes of the works.

(5) If any amount due to a highway authority in pursuance of an agreement under this section is not paid in accordance with the agreement, the authority may—

(a) direct that any means of access or other facility afforded by the works to which the agreement relates shall not be used until that amount has been paid,

(b) recover that amount from any person having an estate or interest in any land for the benefit of which any such means of access or other facility is afforded, and

(c) declare that amount to be a charge on any such land (identifying it) and on all estates and interests therein.

(6) If it appears to the highway authority that a direction under subsection (5)(a) is not being complied with, the authority may execute such works as are necessary to stop up the means of access or deny the facility, as the case may be, and may for that purpose enter any land.

(7) Where a highway authority recovers an amount from a person by virtue of subsection (5)(b), he may in turn recover from any other person having an estate or interest in land for the benefit of which the means of access or other facility was afforded such contribution as may be found by the court to be just and equitable. This does not affect the right of any of those persons to recover from the person liable under the agreement the amount which they are made to pay.

(8) The Local Land Charges Act 1975 applies in relation to a charge under subsection (5)(c) in favour of the Secretary of State as in relation to a charge in favour of a local authority.

#### Notes

1. Substituted by New Roads and Street Works Act 1991 c. 22 Pt I s.23 (November 1, 1991: represents law in force as at date shown )

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**TOWN AND COUNTRY PLANNING ACT 1990**

**55.— Meaning of “development” and “new development”**

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “*development*,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

.....  
(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(a) the carrying out for the maintenance, improvement or other alteration of any building or works which—

(i) affect only the interior of the building, or

(ii) do not materially affect the external appearance of the building, and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;

(b) the carrying out on land within the boundaries of a road by a highway authority of any works required for the maintenance or improvement of the road [ but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment;

(c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;

(d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such;

(e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;

(f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.

(g) the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities generally or to a particular local planning authority.

(2A) The Secretary of State may in a development order specify any circumstances or description of circumstances in which subsection (2) does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the gross floor space

of the building by such amount or percentage amount as is so specified.

(2B) The development order may make different provision for different purposes.

**73.— Determination of applications to develop land without compliance with conditions previously attached**

(1) This section applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.

(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

(4) This section does not apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun.

(5) Planning permission must not be granted under this section for the development of land in England to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which—

(a) a development must be started;

(b) an application for approval of reserved matters (within the meaning of section 92) must be made.

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**TOWN AND COUNTRY PLANNING (DEVELOPMENT  
MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015/595**

**44.— Development to include certain internal operations**

(1) The amount specified under section 55(2A) of the 1990 Act (meaning of "*development*" and "*new development*") 1 is 200 square metres.

(2) The circumstances in which section 55(2) of the 1990 Act does not apply to operations mentioned in paragraph (a) of that subsection which have the effect of increasing the floor space of the building by more than 200 square metres are that the building is used for the retail sale of goods other than hot food.

(3) In paragraph (2), the reference to a building used for the retail sale of goods includes a building used as a retail warehouse club, being a retail club where goods are sold, or displayed for sale, only to members who are members of that club.

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## LEXISNEXIS PLANNING

### Defining Developer Contributions—progress and lessons learned on CIL

18/08/2016

**Planning analysis:** At the Westminster Briefing 'Defining Contributions' on 17 August 2016, developers, local planning authorities (LPAs) and solicitors discussed the progress, success stories and challenges of the community infrastructure levy (CIL) regime so far. Although CIL is proving effective in many areas of the country, some LPAs are reluctant to introduce it, as potential funds are out-weighed by administration costs and resource needs.

#### What is the progress on CIL so far?

Laurence Martindale, head of local infrastructure planning—infrastructure division at the Department of Communities and Local Government (DCLG) summarised the uptake of CIL by LPAs:

- there are currently 127 LPAs charging CIL
- a further 88 LPAs have 'taken steps towards adopting CIL' (although it later transpired that this figure included LPAs who had considered and dismissed the decision to introduce CIL)
- CIL is further advanced in the south and east of the country
- there is almost complete CIL coverage in London

#### How effective has CIL been?

Key points on the effectiveness of CIL included:

- CIL was only ever intended to produce a contribution to infrastructure costs
- CIL is yielding between 5–20% of funding required
- viability testing means that only residential and retail development are attracting a significant CIL charge (other developments generally low or zero rate)
- Mayoral CIL has worked well
- CIL has produced certainty in terms of rates/transparency
- CIL is working best for charging authorities where it has 'bedded down', ie been in place for a few years

## What problems have been identified?

Wokingham Borough Council (WBC) relayed a success story of the operation of CIL in its area, emphasising that 'CIL is working!'. However, WBC, other LPAs and a representative from the CIL review panel identified a number of challenges with the current system, relating to:

- rate-setting—rates vary hugely across the country. LPAs at the conference quoted rates of between £49–£350 per sq m—this means that CIL is much more profitable for some LPAs than others
- administrative burdens—'too many forms!'. The administrative burdens and costs involved in the collection process in particular has prevented some LPAs from adopting CIL—the re-sources in different LPAs are hugely varied and, in some cases, the number of staff in planning teams appears to have affected the decision as to whether to adopt CIL
- complexity of the regulations
- relationship with agreements under section 106 of the Town and Country Planning Act 1990 (TCPA 1990) and the pooling restrictions
- statutory environmental mitigation (eg SANGS)
- exemptions and reliefs—there are too many exemptions and reliefs, which not only causes confusion, but means that some LPAs cannot make enough money to justify the resources required to monitor and collect CIL—in particular, WBC explained that there were a lot of extensions over 100sq m in their area, which are heavy on administration but attract no CIL
- paying CIL alongside affordable housing contributions is making development unviable
- assumption of liability is not a validation requirement
- in CIL appeals, the Valuation Office Agency has made planning decisions, which should have been made by the Planning Inspectorate
- the scope for using payment in kind for infrastructure is 'vanishingly' small. WBC tried to use it in conjunction with willing developers and considered that although it could be a useful tool, the drafting of Regulation 73A of the Community Infrastructure Levy Regulations 2010, SI 2010/948 renders it meaningless (section 73A only allows infrastructure payments where, among other things, the LPA is satisfied that: the person liable to pay CIL has, or is likely to have, sufficient control over the land on which the infrastructure is to be constructed to enable them to provide the infrastructure—the infrastructure to be provided is not necessary to make the development granted permission by the relevant permission acceptable in planning terms)

- LPAs have to make commitments to delivery of strategic enabling projects clear or development will stall
- the requirement to pass on a 'meaningful proportion' of CIL to the local communities that re-ceive development can be problematic because parish councils are often small organisations ill-equipped to deal with large amounts of infrastructure funding due to a lack of staff/knowledge/skills to prioritise/commission/finance—It can be a significant drain on infra-structure packages on sites that affect more than one parish

### **What progress has been made on the review of CIL?**

The government confirmed in November 2015 that an independent group would conduct a review of CIL. The CIL review panel were asked to:

- assess the extent to which CIL provides an effective mechanism for funding infrastructure
  - recommend changes that would improve its operation in support of the government's wider housing and growth objectives, and
  - look at the relationship between CIL and TCPA 1990, s 106
- Progress to date on the review includes:

- November 2015 to January 2016—submissions on the questionnaire
- January to March 2016—face to face sessions with a range of stakeholders
- March 2016 to date—brainstorming and report writing sessions

DCLG confirmed in the session that the outcome of the review was expected 'later this year', but could not give any further details. It is thought that some LPAs may be slowing down their progress in adopting CIL because they are waiting to see what comes out of the report.

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