



The Community Infrastructure Levy is coming... very soon.

Drivers Jonas recently undertook an update to their 2008/9 Community Infrastructure Levy (CIL) survey of local authorities in England and Wales.

The findings show that whilst 20% of authorities are intending to implement CIL, 63% of authorities were unsure and a further 17% stated they were unlikely to implement the Regulations. The main reasons related to the lack of detail and uncertainty on what is required and how it will operate.

The timely publication of the CIL Regulations on Wednesday 10 February 2010 responds to a number of concerns highlighted in our survey and those raised by developers, local authorities and professional groups in the latest consultation round. In particular, the CIL Regulations provided detail on the process of getting CIL set up and the charging schedule in place. This responds to the 63% of local authorities who raised concerns in the DJ survey about the uncertainty on the detail of CIL and how it would work.

So what are the other changes and how do they respond to the concerns raised?

- Changes have been made to the calculation of the CIL payment due – CIL will be calculated on the net additional floorspace as opposed to the gross new floorspace. This responds to the previous concern that redevelopment or refurbishment of existing buildings would be discouraged if a developer was required to pay CIL on the re-provision of existing floorspace as well as any extended area.
- Payments in kind for the provision of infrastructure are now accepted subject to certain criteria - i.e. transfer of land and where the CIL contribution would be over £50,000.
- Phased payments have been introduced depending on the level of CIL to be paid with guidance provided on the timeframe for standard payments (extended to 60 days) and instalments increased to 240 days.
- Guidance is given on projects that will be delivered in phases of development i.e. outline applications with reserved matters being delivered in phases.
- A series of exemptions have been introduced including:

- A minimum 100 sqm threshold for CIL payments.
- Widened charity exemptions and relief for most types of affordable housing.
- A further exemption for 'exceptional circumstances', subject to restrictions including:
 - The authorities decision to accept these exemptions in their area at the outset;
 - That the S106 cost is greater than the cost of complying with CIL;
 - An independent assessment of any unacceptable impact on viability is provided;
 - Not to trigger State Aid rules and;
 - The exception will only be valid for 12 months and if the development is not implemented during this time it will fall away.

This exemption responds to the concerns flagged up in the DJ survey of local authorities, as to how CIL can respond to difficult economic circumstances or to allow some flexibility where there are other factors to consider.

- The Regulations include limitations to S106 agreements:
 - Firstly, the advice in Circular 05/05 will be enshrined in the CIL Regulations, with effect from 6 April 2010, ensuring that S106 agreements are necessary, directly related and fair and reasonable in scale and kind to the development.
 - The second change is the restriction on S106 agreements to avoid double counting. From April 2014, a S106 agreement cannot seek contributions for funding or the provision of relevant infrastructure. This transitional period has been extended to four years (April 2014) rather than two years in the previous CIL consultation draft. However, the restrictions will be introduced earlier to authorities that bring into effect a charging schedule. This responds to developers concern about the potential for double charging under both CIL and S106.

In light of concerns raised by local authorities in our survey, our view is that the extension to the limitations on S106 for four years rather than two years will be welcomed. However, these Regulations do mean that if local authorities want funding for infrastructure they will have to adopt CIL. They will no longer have a choice to continue with an alternative tariff system for infrastructure under S106. This is likely to significantly affect on the 80% of authorities that were undecided or not going to adopt CIL. In our view a significant

proportion undecided authorities may consider that they have no choice but to adopt CIL if they want to obtain funding for infrastructure in the longer term.

- The CIL Regulations now allow authorities to recover some administration costs in selling up and monitoring CIL. This recognises the fact that CIL will result in significant pressure on local authorities. However, many authorities have yet to adopt their LDF core strategy. Therefore, the next four years will be a very resource intensive period to local authorities.
- The Regulations allow local authorities to borrow against future CIL income, subject to Secretary of State approval, in order to provide short term bridging finance. This is a change since the draft Regulations but was raised in the Pre Budget Report. However, the ability to forward fund does not necessarily guarantee timely delivery of infrastructure to meet the needs of development.

DJ Thoughts:

The changes from the consultation document are welcome. They indicate that the Government is listening to the concerns raised.

However, there will still be significant pressure on local authorities given the work involved in implementing CIL and the process to get an effective charging schedule as well as the ongoing resource and financial cost with collecting and monitoring CIL payments.

The Drivers Jonas Survey identified significant concern from authorities as to the level of resource input required, especially at the current time where many are under resourced and focusing on getting their Core Strategy adopted. For developers, this could add more complexity and time delays to planning applications whilst the local authorities implement CIL.

While we welcome the potential to allow for 'exceptional circumstances', local authorities have to decide whether they opt to allow an 'exceptional circumstances' policy from the outset. If a particular local authority decides not to have a policy for exceptional circumstances, developers may decide not to undertake marginal schemes in these areas and this could make some authority areas more attractive than others.

The change to only charge CIL on net additional floorspace is, in our view, a positive change. This will not discourage the redevelopment of existing buildings which could have been the effect of the previous position of charging CIL on total gross floorspace.

The changes to S106 obligations will have a significant impact on local authorities and their decision on whether or not to implement CIL. From 6 April 2010, these regulations will require

S106 obligations to be i) necessary to make the development acceptable in planning terms, ii) directly related to the development and iii) fairly and reasonably related in scale and kind to the development.

The change to S106 obligations seek to remove their ability to provide for funding or the provision of infrastructure projects or types of infrastructure. If local authorities want to obtain funding for infrastructure they will have to produce a charging schedule and adopt CIL prior to April 2014, effectively making CIL mandatory. This was a concern raised by a significant number of authorities in our recent DJ survey. As a result we anticipate that a significant number of the 63% of authorities that were undecided as to whether they will adopt CIL will now be forced to introduce CIL or acknowledge that their ability to fund infrastructure if its absence will be severely limited.