

## **Reforming developer contributions – proposed Government measures**

It is widely recognised that the current system of developer contributions (section 106 obligations and Community Infrastructure Levy) is too complex and uncertain. In May 2018, HUDU responded on behalf of London NHS Clinical Commissioning Groups to the Government’s public consultation on reforms to developer contributions. The Government has responded to the consultation and proposed measures which reflect some, but not all, of the recommendations of an earlier independent [CIL Review \(A New Approach to Developer Contributions\)](#) which was published in February 2017.

A number of measures will require new guidance and further amendments to the Community Infrastructure Levy Regulations 2010, and the Government will consult on draft amended regulations in ‘due course’.

This note summarises the measures and comments on the Government’s response to the public consultation and the need for further reforms as advocated by the CIL Review.

### **Overall Comment**

***The CIL Review was commissioned in November 2015 and its report was submitted to Government in October 2016. We are now three years on from the start of the review.***

***There is no timetable for the preparation of new guidance or amendments to the regulations. Changes to the operation of developer contributions are urgently needed as the current system is not delivering sufficient contributions to help fund infrastructure to support housing growth in London.***

***A key recommendation of the CIL Review was to replace CIL with a hybrid system of a low level Local Infrastructure Tariff (LIT) and section 106 agreements for larger developments. The March 2018 public consultation document stated that in the longer term, the Government would explore the option of a national, non-negotiable developer contribution tariff for affordable housing and infrastructure. However, there is no reference to this in the Government response to the consultation, other than to acknowledge that some respondents suggested alternative systems that could replace CIL. The Government should explore the LIT option further as it is widely recognised, as reported in the [Housing, Communities and Local Government Committee report on Land Value Capture \(Sept 2018\)](#) that the system needs major reform rather than further amendments to existing regulations.***

## Aligning the evidence for Community Infrastructure Levy charging schedules and plan making

The Government recently published the revised National Planning Policy Framework and planning guidance on viability. This includes policy and guidance on undertaking viability assessments and on the evidence of infrastructure need that is required for plan-making. The Government agrees with the need for improved guidance, particularly to help provide local planning authorities with certainty around the level of detail needed in establishing an evidence base.

In relation to the question ‘What evidence might be needed to plan for health and well-being?’, the revised planning practice guidance ([Plan-making, Paragraph: 039 Revision date: 13 09 2018](#)) states:

“Strategic policy-making authorities may work with public health leads and health organisations to understand and take account of the current and projected health status and needs of the local population, including the quality and quantity of, and accessibility to, healthcare and the effect any planned growth may have on this. Authorities should also assess quality and quantity of, and accessibility to, green infrastructure, sports, recreation and places of worship including expected future changes, and any information about relevant barriers to improving health and well-being outcomes. Strategic policy-making authorities may consult any relevant Health Impact Assessments and consider their use as a tool for assessing the impact and risks of development proposals.”

### Comment

***We welcome the revised guidance, in particular the need to assess current healthcare capacity and the reference to Health Impact Assessments. However, further guidance and a standardised approach to assess health infrastructure requirements is needed to help local authorities establish an evidence for plan making and CIL and to determine major planning applications, including proposals subject to an Environmental Impact Assessment.***

***The planning practice guidance on [Health and Wellbeing](#) has not yet been updated and needs revisions to bring it in line with other updated guidance.***

### Removing unnecessary barriers: the pooling restriction

At present, a local planning authority is unable to pool more than five section 106 contributions towards a single infrastructure project or type. The Government recognises that this restriction slows down and prevents the delivery of infrastructure and it intends to remove the restriction in all areas. So that CIL remains an effective mechanism to address the cumulative impact of development, the Government will ensure measures are in place to incentivise uptake and continued use of the Levy.

### Comment

***We welcome the removal of the pooling restriction in all areas and for all sizes of development. The restriction has inhibited the use of section 106 funds to deliver necessary health infrastructure, particularly in areas where relatively small section 106 sums have been secured and at present cannot be sufficiently pooled to help deliver larger projects. The majority of London boroughs have a CIL in place and so the take-up and continued use of the Levy is not a major issue in London when compared to other parts of the country.***

### Improvements to the operation of the Community Infrastructure Levy

The Government intends to retain the current CIL exemptions and is already committed to bring forward legislation to exempt Starter Homes from CIL charges. It also recognises the need for additional guidance on extending abatement provisions to phased planning permissions secured before introduction of a CIL and applying indexation where a planning permission is amended.

### Comment

***There is a tension between removing planning restrictions to increase the supply of homes and ensuring that the impact of development on infrastructure is adequately addressed. Exempting particular forms of development from CIL charges and extending permitted development rights has reduced CIL and section 106 receipts and the ability of local authorities to fund supporting infrastructure. Of particular concern has been the impact of office to residential permitted development rights and the current consultation on extending permitted development rights to allow existing buildings to be extended upwards to create additional new homes could exacerbate the issue.***

### Improving transparency and increasing accountability

The Government acknowledges that measures are needed to improve the current system and address a lack of transparency and flexibility. At present, a CIL Regulation 123 list identifies infrastructure projects or types which the charging authority intends to wholly or partly fund from CIL receipts. Section 106 planning obligations cannot be secured for infrastructure included on the list, unless it is needed to address a site-specific impact and make a development proposal acceptable in planning terms. The Government will replace the CIL Regulation 123 list with an annual Infrastructure Funding Statement setting out infrastructure requirements, existing and anticipated CIL and section 106 receipts and how developer contributions have and will be used. The statement is both a monitoring and reporting document and evidence for the plan-making process.

Revised planning practice guidance already refers to the use of Infrastructure Funding Statements ([Viability, Paragraph: 025 Revision date: 24 07 2018](#))

“Using data on CIL and planning obligations, the government recommends that local authorities prepare an infrastructure funding statement using the standard template in an open data format (template to be published in autumn 2018) that sets out infrastructure

requirements, and for both CIL and section 106 planning obligations, anticipated funding from developer contributions, and the choices local authorities have made about how these contributions will be used. Infrastructure funding statements should include information on, but not limited to, contributions made towards and delivery of affordable housing, education, health, transport, green, flood and water management, and digital infrastructure.”

“Infrastructure funding statements should be reviewed annually to report on the amount of funding received via developer contributions and how this funding has been used. Local authorities should use the monitoring tool (tool under development) to help prepare the infrastructure funding statement in a standard format. Infrastructure funding statements should be published annually online. Local authorities can also report this data in authority monitoring reports.”

The Plan-making section of the planning practice guidance has also been revised to refer to Infrastructure Funding Statements ([Plan-making, Paragraph: 055 Revision date: 13 09 2018](#)).

“The government recommends that when preparing a plan, strategic policy-making authorities use available evidence of infrastructure requirements to prepare an Infrastructure Funding Statement. This should set out the anticipated funding from developer contributions, and the choices local authorities have made about how these contributions will be used. At examination this can be used to demonstrate the delivery of infrastructure throughout the plan-period.”

### **Comment**

***We welcome the removal of the requirement for a Regulation 123 List. The list is a rather crude and inflexible indication of CIL infrastructure requirements and CIL expenditure. Whilst the intention was to include specific projects on the list, they often refer to generic infrastructure items such as ‘healthcare’. This has resulted in local authorities unable or unwilling to seek section 106 health contributions, even when a site-specific impact has been identified. Whilst the introduction of Infrastructure Planning Statements and related guidance is welcome there is the need for further guidance to explain the relationship between CIL and section 106, in particular the role of section 106 to address site-specific impacts across a wide range of infrastructure.***

### **A Strategic Infrastructure Tariff**

The Government has decided to take forward a modified proposal to enable Combined Authorities with strategic planning powers to take forward a Strategic Infrastructure Tariff, and to encourage groups of charging authorities to use existing powers to more effectively support the delivery of strategic infrastructure, often cross-boundary, through the pooling of their local CIL receipts.

In the longer term, the Government will bring forward proposals for allowing joint planning committees to charge the tariff and will review options for giving other groups the power to charge a levy.

### **Comment**

***Currently, CIL charging authorities can pass money to bodies outside their area to deliver infrastructure that will benefit the development of the area. However, the allocation of CIL is up to each charging authority and so the provision of strategic infrastructure can be stifled by administrative boundaries and different political priorities. In London, the London Plan has designated Opportunity Areas, many of which cross borough boundaries and require significant strategic infrastructure investment, and the pooling of CIL receipts, or a Strategic Infrastructure Tariff should be explored in these areas to help deliver cross-boundary infrastructure.***

***The Government's intention to review options to allow other groups the power to charge a levy is welcomed. However, it is unclear what is meant by 'other groups' in a London context, particularly in relation to the use of the Mayoral CIL and NHS devolution in London.***