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Community Infrastructure Levy: More Changes Proposed

By Sebastian Charles & Rebecca Daniels

The Government is consulting on further changes to the CIL (Community Infrastructure Levy) regime. CIL allows local authorities to raise funds from developers undertaking new building projects in their area. The funds are put towards the provision of infrastructure. Below we set out five of the key changes that the Government is considering:

1. Extending the transition period from April 2014 to April 2015

The CIL regime currently provides that from 6 April 2014 local authorities will be restricted in their use of planning obligations for pooled contributions. General infrastructure contributions (e.g. for health or transport) can only be sought from five separate planning obligations. The idea is to incentivise local authorities to get on and adopt charging schedules. The Government now proposes to push the transition back one year, to allow local authorities extra time to adopt CIL.

2. Differential CIL rates set in relation to the size of a development

Local authorities can currently set different CIL rates by reference to area and to use. The Government now proposes to allow CIL rates to be set in accordance with different sizes of development as well. There will need to be local market and viability evidence to justify differential rates related to scale.

3. Hybrid permissions and phased development

The regime currently allows for different phases in outline permissions to be considered as separate 'chargeable developments', which means that CIL is payable on each phase. The Government acknowledges that many complex schemes are submitted as 'hybrid' applications (part full and part outline). As the CIL regime differentiates between full and outline applications - the treatment of hybrid applications has caused some confusion. The Government proposes that all types of planning permissions be capable of being considered as multi-phased schemes.

4. Removing the vacancy test from calculation of CIL liability

Existing floorspace can be offset from the CIL calculation if a) it is in lawful use for a continuous period of at least six months within the period of 12 months ending on the day that planning permission first permits the chargeable development; and b) it is situated on the relevant site on the day that planning permission first permits the chargeable development. The Government is looking to remove the first limb, as it is aware that it has not been working effectively and is difficult to enforce. The effect of this change is that CIL would generally only be payable on any increases in floorspace in refurbishment and redevelopment schemes.

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5. Provision of infrastructure as "CIL in kind"

Currently local authorities can accept one or more land payments in satisfaction of the whole or part of the CIL due on a scheme. The Government appreciates that there will be circumstances when it may be a priority for a local authority to ensure the delivery of infrastructure - to facilitate a particular development, and that the developer may be the best placed to provide it quickly, and in a cost-effective way. The Government proposes that local authorities can accept the provision of infrastructure in satisfaction of the whole or part of the CIL payable. This would only apply to infrastructure which the local authority has listed as part of its policy on its website.

Summary

As CIL is adopted in more places, further flaws in the mechanics of how the regime is working have come to light. The Government seems keen to iron out these problems, and this is to be welcomed. The problem of double charging on applications to vary planning applications has already been addressed ([click here](#) to link to our previous alert on 11 December). We will have to wait until the draft amendment regulations are published be sure what changes will be carried forward and whether they will be implemented effectively.

Please contact one of the authors or your usual K&L Gates real estate contact if you require assistance in formulating a response to the consultation or you want advice on the potential implications for a development scheme.

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