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CIL – A system in Flux

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Today...

- Recent reforms and the regulatory regime
- The headlines on implementation
- The importance of timing and phasing –
Case Study
- Conclusions



A fairer, faster more certain system?

- The aim was to introduce a fairer, faster more certain system than section 106 agreements.
- Fairer? – in theory – everyone should pay something to infrastructure. But is CIL an additional charge or an alternative.
- Faster? – but affordable housing is still subject to negotiations with the same time constraints and uncertainty.
- More Certain? (the regulations came into force in April 2010 and have been amended 4 times already with yet another review in the offing)



CIL – The regulatory regime

- The [Community Infrastructure Levy Regulations 2010](#) came into force on 6 April 2010.
- The [Community Infrastructure Levy \(Amendment\) Regulations 2011](#) came into force on 6 April 2011.
- [The Local Authorities \(Contracting Out of Community Infrastructure Levy Functions\) Order 2011](#) came into force on 7 December 2011.
- [The Community Infrastructure Levy \(Amendment\) Regulations 2012](#) came into force on 29 November 2012.
- The [Community Infrastructure Levy \(Amendment\) Regulations 2013](#) came into force on 25 April 2013.

More amendments to follow



Latest amendments

- Aligns CIL guidance with National Planning Policy Framework, reflects Localism Act and regulatory changes
- Addresses interaction between CIL and S106 Agreements – prevents ‘double dipping’
- States that charging schedules should not threaten the delivery of local plan – including making clear that authorities should "show and explain" how their proposed levy supports the plan and development



April 2013 Consultation

- Delay to April 2015 for limitation on the use of pooled planning obligations
- Use of S278 Agreements to fund infrastructure covered by CIL
- Phased payments
- Payments in kind
- Vacancy issue, replacing the test of "6 months in the previous 12 months" with an "abandonment" test
- Stand alone (or "slot in") applications
- Exemptions and reliefs



CIL – headlines on implementation

- First CIL in place was Newark and Sherwood in Jan 2012
- London Mayors CIL – April 2012
- Out of 326 LPA's in England and Wales very few have a CIL in place (less than 30)
- The deadline for pooling is April 2014
- Much still to do.....



CIL – its implications

- Potentially a far more complex procedure than section 106 (more to follow)
- It's continually changing
- Can it achieve its objectives
- Will it survive?



CIL – the statistics

- Planning magazine (July) reported a 20% drop in planning applications post April 2012 in London
- In London, 600 major applications were decided in the quarter before the introduction of the mayoral CIL. The average number of major applications determined per quarter between April 2010 and March 2013 in the capital was 334
- Newark and Sherwood, Shropshire, Redbridge, Portsmouth and Huntingdonshire – also showed a drop in major decisions in the 12 months after the authorities began collecting the levy. On average about 31%



Possible causes?

- The Levy is too high or inflexible?
- The development industry is still getting used to how CIL works?
- CIL will fall by the wayside (in common with every other development tax in the UK) and the development industry is biding its time?

Not enough data to draw a firm conclusion after only 18 months



So how is **CIL** actually calculated?



The formula – what can be charged?

$$G_R - K_R - \left(\frac{G_R \times E}{G} \right)$$

G = the gross internal area of the chargeable development; .

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

E = an amount equal to the aggregate of the gross internal areas of all buildings which—
(a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use; and
(b) are to be demolished before completion of the chargeable development; and .

KR = an amount equal to the aggregate of the gross internal area of all buildings (excluding any new build) on completion of the chargeable development which—

(a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use;
(b) will be part of the chargeable development upon completion; and
(c) will be chargeable at rate R.”



What is eligible for relief?

$$Q_R - K_{QR} - \left(\frac{Q_R \times E}{G} \right)$$

QR = the gross internal area of the part of the chargeable development which will comprise the qualifying dwellings, and in respect of which, but for social housing relief, CIL would be chargeable at rate R; .

KQR = an amount equal to the gross internal area of all buildings (excluding any new build) on completion of the chargeable development which—

- (a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use;
- (b) will be part of the chargeable development upon completion; and
- (c) will be chargeable at rate R but for social housing relief; .

E an amount equal to the aggregate of the gross internal area of all buildings which—

- (a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use; and
- (b) are to be demolished before completion of the chargeable development;

G=the gross internal area of the chargeable development.”;



And don't forget the RPI indexation...

$$\frac{R \times A \times I_p}{I_c}$$

A= the deemed net area chargeable at rate R; .

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.



Case study – Outer London site – conversion from industrial to mixed use residential /retail

- Existing - 49,000 sq. m of occupied commercial space in 'lawful use'
- Proposed scheme circa 700 (circa 54,000 sq. m.) residential units of which 20% affordable plus 6,000 sq. m of A1 retail; 6,000 sq. m. commercial and a care-home and medical centre providing an additional 10,000 sq. m.



Case Study continued....

- Mayor's CIL is imposed at £20 sq. m and applies to all types of floorspace.
- Local CIL is levied at £100 sq. m on net additional residential floorspace and £120 on net additional convenience retail floorspace.
- The CIL formula in simple terms allows the developer to net off existing space and to take advantage of both zero rated charges and exempt accommodation.



Case study continued based on single phase development

LB CIL liability calculation

Residential charge (before relief)

$$(58,000 \text{ sq m} - 0 - 38,860 \text{ sq m}) = 19,140 \text{ m}^2 \times \text{£}100 = \text{£}1,914,000$$

Retail

$$(6,000 \text{ sq m} - 0 - 3,960 \text{ sq m}) = 2,040 \text{ m}^2 \times \text{£}120 = \text{£}244,800$$

In this case, no need to calculate rate for the other uses, as they are charged at £0 (but note that also inevitably means their 'share' of the apportioned demolished space does not give a reduction)

Affordable Housing Relief (calculation is similar to the explanation above)

$$(11,600 \text{ sq m} - 0 - 7,772 \text{ sq m}) = 3,828 \text{ m}^2 \times \text{£}100 = \text{£}382,800$$

$$\text{Total LB CIL is } \text{£}1,914,000 + \text{£}244,800 - \text{£}382,800 = \text{£}1,776,000$$

2. Mayor's CIL liability calculation

Resi (before relief)

$$(58,000 \text{ sq m} - 0 - 38,860 \text{ sq m}) = 19,140 \text{ sq m} \times \text{£}20 = \text{£}382,800$$

Other uses

$$(14,687 \text{ sq m} - 0 - 11,140 \text{ sq m}) = 3,547 \text{ sq m} \times \text{£}20 = \text{£}70,940$$

AH Relief

$$(11,600 \text{ sq m} - 0 - 7,772 \text{ sq m}) = 3,828 \text{ sq m} \times \text{£}20 = \text{£}76,560$$

$$\text{Total Mayor CIL is } \text{£}382,800 + \text{£}70,940 - \text{£}76,560 = \text{£}377,180$$

3. Total

$$\text{£}1,776,000 + \text{£}377,180 = \text{£}2,153,180$$



Liability if all chargeable floorspace brought forward in the first phase of a two phase project

1. LB CIL liability calculation –Phase I

Residential charge (before relief) – Phase I

$$(46,400 \text{ sq m} - 0 - 42,900 \text{ sq m}) = 3,500 \text{ m}^2 \times \text{£}100 = \text{£}350,000$$

Retail

$$(6,000 \text{ sq m} - 0 - 5,480 \text{ sq m}) = 520 \text{ m}^2 \times \text{£}120 = \text{£} 62,400$$

Phase I assumes that all the chargeable accommodation is brought forward in a single phase with no affordable housing or non chargeable space. The whole of this phase is therefore eligible for relief.

$$\text{Total LB CIL is } \text{£}350,000 + \text{£}62,400 = \text{£}412,400$$

2. Mayor's CIL liability calculation

Residential charge (before relief) – Phase I

$$(46,400 \text{ sq m} - 0 - 42,900 \text{ sq m}) = 3,500 \text{ m}^2 \times \text{£}20 = \text{£}70,000$$

Other uses



However if it was a cleared site...

- Everything liable except affordable housing element for Mayors CIL
- Under LB CIL, all market residential and convenience space liable
- Estimated liability £7.2m



Results

| Scenarios | |
|-------------------------------------|------------|
| Actual 106 agreed figure (2010) | £2,800,000 |
| Single phase CIL burden | £2,153,000 |
| Alternative delivery strategy - CIL | £715,000 |
| Cleared site liability -CIL | £7,200,000 |



Conclusions

- The new system is not necessarily more onerous but it does require an alternate approach on phasing and planning to make the best use of existing space that can be netted off against the future liability.
- It will need time to settle down. The section 106 system has been around in various formats for 90 years. CIL is less than 2 years old.
- CIL's lack of flexibility on large, complex multi-phased development could cause problems. It works better for smaller infill development
- Any planning system is prone to creating unintended consequences that can distort markets. CIL especially so.

