

How do we solve a problem like CIL? A ten point plan

Iain Gilbey

Planning Partner, Pinsent Masons LLP



Pinsent Masons

Community Infrastructure Levy: A short history

- Development Land Tax
- Planning Gain Supplement
- The Barker Review
- CIL
- Exists side by side with “scaled back s106 agreements”

CIL: Problem 1 – Charging Schedule Evidence

- The Problem: Partial evidence base, biased against consultees
- Earlier opportunity to engage – before Preliminary Charging Schedules are prepared
- Active consideration of impact on strategic sites
- Clear rationale and understanding of CIL vs. s106 requirements
- More time to respond

CIL: Problem 2: CIL Rate Setting

- The Problem: Rates are set too high, skewing the balance away from “economic viability” towards the funding imperative
- Set rates at realistic level, not the maximum viable level
- Keep Regulation 123 list short – funding genuinely strategic infrastructure
- Less disincentivisation of development
- More flexibility in what can then be secured via s106 agreements

CIL: Problem 3: CIL Rate Setting: Differential Rates

- The problem: Double differential rates e.g. for “small” and “large” retail
- Regulation 13: “different intended uses of development”
- Requires fine grain viability analysis
- Inconsistency of approach to size thresholds – range from 280m² to 3,000m²
- Rejected as being “arbitrary” in Newark and Sherwood
- Solution: Flat rate CIL, limiting use of differential rates

CIL: Problem 4: Double Payment: Regulation 123 list

- The problem: The draft Regulation 123 emerges too late in the day for proper scrutiny
- Unclear as to what will be funded by CIL and demarcation with “scaled back” s106 Agreements
- The solution: Publish at same time as draft charging schedule to allow for joined up and adequate scrutiny

CIL: Problem 5: Regulation 123:

Constraint on delivery of infrastructure

- The problem: Potential overlap between Reg 123 and infrastructure ordinarily required to be delivered through s106
- Impact on the delivery of strategic infrastructure required to make a development acceptable in Reg 122 and EIA terms
- The solution: tightly drawn Reg 123 list and revision to Regulations to allow for works and payment in kind

CIL: Problem 6: s73 applications

- The problem: the grant of a s73 consent creates a chargeable development consent: double counting
- Section 73 is very useful tool in evolving multi-phase developments
- Many developments straddle the period pre and post adoption of Charging Schedule
- Reform required to exclude s73 applications from double charging – save for the additional floorspace created
- But..doesn't deal with slot-in applications

CIL: Problem 7: Regulation 40: Off-setting or tax credit

- The problem: On its face an attractive provision designed to provide credit for existing floorspace – but the hurdle is set too high
- Requires continuous use for a period of 6 months in 12 months preceding the date on which planning permission first permits chargeable development
- Invert requirement so that it is linked to vacancy rather than occupancy – 2 years
- Allow for phased drawdown of credits on a multi-phase scheme

CIL: Problem 8: Phasing of payments

- The problem: CIL does not easily accommodate multi-phased schemes
- Requires early phase setting to mitigate against cashflow impact – unnecessarily constraining remaining flexibility in the outline planning permission regime
- Requires detailed phase setting too early – removing the inherent benefits of the OPP approach
- The solution: agree CIL Framework or allow calculation at the reserved matters stage

CIL: Problem 9: The commencement of development trigger

- The problem: inclusion of demolition within the definition of commencement of development
- Removes flexibility to seek a different development consent later – the demolition and development phases become an indivisible package
- Further erosion of the flexibility that is required
- The solution: remove demolition from the definition of commencement of development

CIL: Problem 10: Social Housing Relief

- The problem: exclusion of discounted market rent products
- Impact of viability, funding and delivery
- Regulation 49 – Condition 1: social rented housing and Condition 2: shared ownership – neither recognise low cost homes for sale or rent – even those that comply with long-term affordability criteria in NPPF
- The solution: amend the Regulations to allow for both forms of tenure/disposal to be captured

CIL: Problem 11: The principle

- The problem: taken together an unworkable package?
- The solution: abolition, coupled with support to adopt a tariff based approach through England and Wales and clearer guidance on the meaning of Regulation 122 and the use of s106 agreements

Reform

- HBF
- BPF and London First
- DCLG Working Party
- October changes to deal with Section 73 applications

Further Guidance

- Out-Law.com
- Fortnightly CIL Tracker
- <http://www.out-law.com/en/topics/property/planning/>



Pinsent Masons

*Combining the experience, resources and international reach
of McGrigors and Pinsent Masons*

Pinsent Masons LLP is a limited liability partnership registered in England & Wales (registered number: OC333653) authorised and regulated by the Solicitors Regulation Authority, and by the appropriate regulatory body in the other jurisdictions in which it operates. The word 'partner', used in relation to the LLP, refers to a member of the LLP or an employee or consultant of the LLP or any affiliated firm who is a lawyer with equivalent standing and qualifications. A list of the members of the LLP, and of those non-members who are designated as partners, is displayed at the LLP's registered office: 30 Crown Place, London EC2A 4ES, United Kingdom. We use 'Pinsent Masons' to refer to Pinsent Masons LLP and affiliated entities that practise under the name 'Pinsent Masons' or a name that incorporates those words. Reference to 'Pinsent Masons' is to Pinsent Masons LLP and/or one or more of those affiliated entities as the context requires. © Pinsent Masons LLP 2012

For a full list of our locations around the globe please visit our websites:



www.pinsentmasons.com



www.Out-Law.com