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Briefing on Community Infrastructure Levy, Section 106 Agreements & 123 regulation CIL list

1. COMMUNITY INFRASTRUCTURE LEVY

Community Infrastructure Levy (CIL) is a charge on developments introduced to help finance the infrastructure needed to support an increase in housing. It came into force through the Community Infrastructure Levy Regulations 2010. Some changes also came into force in February 2014 (e.g. mandatory exemptions for self-build housing).

In London, the Mayor, the London Borough and the two Mayoral Development Corporations (LLDC and OPDC) have powers as CIL charging authorities.

Setting a CIL: In setting a CIL levy rate or charge, a planning authority must consider the evidence of infrastructure need within its boundaries and the gap in infrastructure funding having considered what other sources of funding are available. It must also consider the potential effects of its proposed levy on the economic viability of development across its area.

Charges set, are based on the size and type of new development and at different rates across the planning authorities' geographical area. A charge per square metre of floorspace is applied on most developments above 100 square meters.

The draft charging schedule is subject to public consultation and an examination prior to being implemented. At the examination the charging authority has to set out a draft list of projects of types of infrastructure that are to be funded in whole or in part by the levy.

In London, the boroughs and Mayoral Development Corporations must take into account any levy rates set by the London Mayor.

Relief from the levy: Social housing relief is a mandatory discount that applies to most social rent, affordable rent, intermediate rent and shared ownership (if provided by a local authority or private register provider). Self-build housing is also exempted from CIL.

CIL payments: are due when the development starts. Where phased, each phase of the development is treated as if it were a separate chargeable development for levy purposes.

The money raised through CIL can be used to fund a wide range of infrastructure – including transport schemes, schools, hospitals, other health and social care facilities, parks, green spaces and leisure centres – but can't be used for delivering affordable housing.

Neighbourhood Portion of CIL: Fifteen percent of CIL receipts are passed to Parish and Town Councils, where developments take place. Otherwise, the charging authority retains the

receipts, but should engage with communities where developments are taking place and agree with them where best to spend the neighbourhood funding.

Communities that draw up neighbourhood plans or neighbourhood development orders (including a community right to build order) and secure the consent form local people in a referendum get 25% of the levy arising from the development that takes place in their area.

Mayor of London CIL: The Mayor of London is not required to allocate any receipts to neighbourhoods. He must only spend the levy on strategic transport infrastructure.

2. SECTION 106 AGREEMENTS

A system of charging for infrastructure associated with development has long been in place through section 106 agreements, sometimes known as "planning obligations", which stem from agreements made under section 106 of the Town and Country Planning Act 1990.

These are agreements made between the developer and the Council to meet concerns about the cost of providing new infrastructure or about the impact of the development on the local area. Section 106 agreements are legally binding and may be either in cash or kind.
The obligations may be used for three purposes:

- prescribe the nature of the development (e.g. a proportion of housing that is affordable)
- compensate for loss or damage created by a development locally (e.g. loss of open space)
- mitigate a development's impact (e.g. through increased public transport provision)

In order to ensure that planning obligations and the CIL can operate in a complementary way, the CIL regulations place limits on the use of planning obligations in three ways:

- the planning obligations must meet three statutory tests;
- the use of CIL and planning obligations must not overlap;
- a limit on pooled contributions from planning obligations towards infrastructure that may be funded by the levy is imposed.

3. REGULATION 123 INFRASTRUCTURE LIST

The Community Infrastructure Levy regulations require charging authorities to set out a list of those types of projects or types of infrastructure that it intends to fund, or may fund through the levy. This is based on the list that the charging authority prepares for the examination of their draft charging schedule.

For transparency charging authorities are also required to set out at the examination how their section 106 policies will be varied and to the extent to which they have met their 106 targets.

Authorities are able to revise their regulation 123 list – but may not remove an item from the list just so that they can fund this through a new section 106 agreement.