

RTPI response to the Community Infrastructure Levy Review Questionnaire: 13 January 2016

General background

Thank you for the opportunity to respond to the above consultation. The Royal Town Planning Institute (RTPI) is the largest professional institute for planners in Europe, representing some 23,000 spatial planners. The Institute seeks to advance the science and art of spatial planning for the benefit of the public. As well as promoting spatial planning, the RTPI develops and shapes policy affecting the built environment, works to raise professional standards and supports members through continuous education, training and development.

Our interest in the Community Infrastructure Levy (CIL) stems from work we have done to identify how planning can deliver great places, including ways in which the uplift in value of land can be used sensibly to provide infrastructure necessary to ensure places remain effective, sustainable and vibrant. The success or otherwise of CIL helps us to understand what factors are currently influencing the success of planning in the current political and economic climate and, drawing on the breadth of experience of our professional members across all sectors of the development and planning industry, we hope this will inform our understanding to compliment our existing work on “Delivering large scale housing” and “strategic planning,” which ultimately we hope will feed into the long term planning policy and strategy of government.

As a related point, our members working in Wales believe that here, CIL should be devolved to the Welsh Government, particularly in the context of the Planning Wales Act. This is a key tool which is out of the control of the Welsh Government and therefore not possible to develop it to work in harmony with the planning system as a whole.

Notwithstanding the above, the remainder of our answers to the questionnaire are informed by our policy team and from input from our members to give as wide a picture as possible. Where appropriate, we have used examples given to us by members.

Infrastructure

To what extent is CIL contributing, or will it contribute, to infrastructure to support development and is that infrastructure being delivered?

CIL is only a small percentage contribution to overall infrastructure being delivered in England and Wales, but we understand that it was never the intention to do more than make up for the funding gap left in Authorities’ Infrastructure Delivery Plans (IDPs).

There is a significant disparity in the take up of CIL nationally, generally with those authorities in the Southeast and some urban areas, where land values are higher, more commonly adopting CIL, than those in the north and/or rural areas.

Some authorities are reluctant to develop a CIL charging schedule for fear that the priority of CIL over s106 will mean lower levels of affordable housing in areas where development viability is marginal.

Many sites end up with a “zero” charging rate (and there appears to be a “push” in the regulations for this). This works for sites that will benefit from a larger contribution from bespoke s106 agreements rather than a flat rate, but does not sit well with the pooling restrictions of no more than 5 s106 contributions for a particular site, as strategic sites are likely to have a large number of landowners / phases / planning permissions and thus likely to require more than five S106s.

Problems also arise when “funding gaps” (identified through CIL adoption strategy) are larger than thought due to funding from other streams not being forthcoming as planned or, conflicting priorities resulting on long an protracted regulation 123 list as a result of conflicting spending, priorities – example West Northamptonshire Joint Core Strategy and Northamptonshire Arc.

Members have also made the point that the signing of an agreement or the levying of a CIL charge is no guarantee that the income will be forthcoming as many developments do not come forward, or are delayed. This can particularly be the case in rural areas, where other sources of infrastructure funding are limited and there is no certainty of such funding being secured. This emphasises that CIL should not be seen as a substitute for mainstream capital funding of transport, health and education infrastructure.

Has the role of the Planning Authority changed with the introduction of CIL and if so where has this worked most effectively?

No comment.

How are large items of essential infrastructure critical for key sites or growth locations being secured in the CIL and s.106 system?

CIL makes small (but significant and important) contributions to essential infrastructure with other funding streams providing the bulk of it. These other streams include Councils’ own Capital project funds, funding by local initiatives, lottery funding, central government funding (e.g Dft, DoH, DoE, NSIP funds), passenger fares (in the case of transport projects), Local Enterprise Partnership (LEP) Funding. Most Authorities appear to rely more heavily on funding agreed through s106 agreements, evidence of this is clearly visible by looking at any planning authorities’ infrastructure development plans (available online). This is particularly the case for Major Development Areas (MDAs), for which a “Nil” rate is adopted (as encouraged by NPPG CIL 021).

As mentioned above, with many zero CIL rates set for strategic sites, the impact of CIL on strategic sites / key sites / growth location is difficult to assess.

What role are CIL and s.106 playing alongside other sources of infrastructure funding and could changes to CIL (e.g. the ability to borrow against it or in kind contributions) allow it to be more effective?

Many places, such as the case of Growth Areas in Plymouth, need large scale infrastructure improvements to be delivered in advance of some or most of the development. Consequently the expenditure on infrastructure comes ahead of the CIL and s106 income. Our members believe that changes to allow borrowing would almost certainly help. There is some reservation about “in kind” contributions amongst members and their effectiveness.

What has been the impact of pooling restrictions? Is there a difference between authorities which have adopted CIL and authorities which have not adopted CIL?

We understand the intention for the systems of planning obligations to be more transparent and fair, and therefore the incentives to adopt CIL over s106 agreements (such as restrictions on pooling them). But in the short term there are concerns about the impact this is having for authorities ability to plug their infrastructure funding gap.

The limitation on the number of s106 agreements that can be pooled under the regulations applies regardless of whether or not an authority has adopted CIL. There is therefore a danger in the short term (or even in the long term if CIL is not adopted) for authorities who are unable to plug the infrastructure funding gap. In some cases LPAs can use other forms of agreement to circumvent this (eg section 278 highways agreements) or by being very specific on the location and infrastructure required in a legal agreement, but in many cases the limitation cannot be overcome.

On another but related note, whilst it is proper that an applicant should not have to pay the CIL contribution and s106 on the same site (“double dipping”), our members have also reported that the regulations are being interpreted in a way that prevents a piece of infrastructure being secured through s106 from one development and CIL from another. There are cases where this would be entirely appropriate. For example (which has been used more than once by members); a large housing development might generate the need for a 1 Form Entry (1FE) primary school – which could be secured through a s106. Other development in the area, cumulatively may generate the need for a further 1FE of capacity at the same school. Whilst it is possible to derive this through appropriate wording in the r123 list and careful drafting of s106 obligations it is an unnecessarily cumbersome process which could be avoided by simple administrative monitoring. An amendment of wording of the regulations would help in this respect.

There is also a resourcing point to be made here. For LPAs monitoring the location of agreements, checking if they have lapsed or been implemented, considering issues of different catchments for different infrastructure types and setting thresholds which will maximise the '5' agreements is a large task with potentially significant legal ramifications if a mistake is made. It also means that in some cases a development will not be able to demonstrate that it can deliver the necessary infrastructure to support the need it generates.

Overall, it is recommended that other ways of incentivising authorities to adopt CIL are explored, the pooling restrictions on s106 seem unduly arbitrary.

What impact do exemptions and reliefs have on delivering infrastructure?

One of the original intentions of CIL was “mitigating the pooling failure that results because the cumulative impact of individual developments...” and being about spreading the unfair “burden of funding” across all scales of development, not just the “major developers” (Page 3, CIL Final Impact Assessment (DCLG) February 2010).

In many boroughs, especially those with urban areas development relates to incremental extensions, the self-build reliefs and exemptions mean that most development does not contribute CIL, and therefore does not contribute to addressing the cumulative demand on infrastructure. This is concerning if the funding gap is not accounted for in the borough’s Infrastructure Development Plans.

Proposed exemptions for new “starter homes” are also of concern. New homes, whether affordable or not, still require the proper infrastructure to make them work. The exemption from CIL or 106 will leave a wider funding gap.

How are local authorities who have not adopted CIL making provision for infrastructure and how effective are these approaches?

Rural authorities may not have the same need for infrastructure or benefit from land values that would make a CIL rate viable. We understand therefore that these authorities are reliant on s106 contributions. The same concerns over pooling as mentioned above apply here. See also answer to question 5.

On Viability

Has a lack of viability resulted in a failure to develop a CIL?

We have no evidence to suggest it has, although this may well be the case for some authorities in rural areas or in the north of England.

Have viability concerns resulted in a low CIL level and has this had an adverse impact on the delivery of infrastructure to support development?

In speaking to members in CIL charging authorities, we have learned that CIL has to be set at a relatively modest level because it is a ‘blanket charge’ in many respects, usually less than what a site-specific s106 can be set at. Relatively speaking, because it has already been pointed out that S106/CIL makes a modest contribution to funding overall infrastructure/service needs, it has undoubtedly had an adverse impact on ability to deliver the necessary infrastructure in a timely manner.

Are there appropriate tools available for establishing viability? Would standardisation using just one methodology be helpful or feasible?

Our members have stated that it is the assumptions feeding into these ‘tools’ which have too much scope for variation/conflict and where the focus on a solution should be. Acceptance of more standardised viability evidence bases may be helpful to reduce consultancy costs to Councils and to avoid conflicting conclusions by developers using different models. However, care should be taken as standardisation may have a negative impact on strategic sites where expert advice is likely to remain appropriate.

Do you have specific examples where non-viability on account of CIL has prevented development?

It has been reported in some cases, especially those who have a pro growth agenda, that CIL charges are set quite low and it is normally S106 which is negotiated down when viability becomes a valid issue.

Is CIL impacting on affordable housing provision?

Anything which ‘adds’ a cost to development can reasonably be considered to impact on affordable housing provision through planning contributions. NPPG on CIL requires evidence supporting CIL Charging Schedule to take into account costs of development, including affordable housing provision.

Members have reported that in practice, when undertaking the viability assessment that underpins the charging schedule, the impact that CIL might have on affordable housing provision is an important consideration particularly in areas where the need for affordable housing is great. This will mean that the level of CIL may be reduced to enable affordable housing to continue to be provided.

Overall, it has been suggested that Council CIL evidence bases generally suggest that CIL only has a minor impact on affordable housing provision and other factors such as affordable housing grant, sales prices, build costs, land costs and wider market factors have a much greater impact on viability.

In setting a CIL Charging Schedule has the development community played their part and been properly consulted on issues of local viability?

On the whole, members report that great lengths have been gone to involve the development community on issues of local viability, such as the setting up of development forums.

On Charge-setting

Is the EIP process suitably robust?

According to our members, yes.

Should there be a requirement to review charging schedules at set times, if so when and why?

Our members suggest no. Councils are best-placed to decide when to review Charging Schedules. Councils already report on housing and other development trends in their (annual) Monitoring Reports and must already report on CIL receipts and expenditure on an annual basis so there are already transparent ‘checks’ to ensure no adverse effects. This enables them to take into account other, more relevant, triggers e.g. changes in costs, sales, indices, policy etc.?

Setting arbitrary time limits to Charging Schedules may not align with wider Local Plan timescales and could cause significant unintended effects (e.g. if a Charging Schedule does ‘expire’, how can anyone be sure that infrastructure can be properly secured through S106s if the Local Plan policy / R123 List has been designed for a ‘CIL’ world?).

Some have suggested about possible ways to make Charging Schedules more resilient to market changes etc, index linking rates for example.

Should partial reviews (eg. types of use or location) be possible?

This would seem reasonable, yes. This would save having to unnecessarily re-open whole evidence bases of rates which do not need to be changed in order to address one small part only.

On CIL Regulations and Guidance

Are the CIL regulations and guidance easy to use and understand?

Our members have different views on on this. Simplification always helps but not if it results in ambiguities which can lead to long protracted debates and delay. One suggestion has been that it would help if consolidated versions of the CIL Regulations were made available free of charge.

Are there improvements that could be made to the arrangements for collecting and spending CIL?

Suggestions that have been made to us include;

That self build reliefs and exemptions are complicated and time consuming to administer.

More guidance may be welcomed on the ‘in use’ test.

A nationally-adaptable CIL calculator may assist Councils and developers in quickly calculating complex CIL liabilities. For example, Royal Borough of Kensington and Chelsea has a detailed CIL calculator which can deal with many of the nuances of the regulations (www.rbkc.gov.uk/cil).

Another suggestion has been that basing indexation on the RICS BCIS All-In Tender Price Index, which is not freely-available and for which figures are frequently ‘revised’, is regrettable and unnecessarily complicates matters. However, changing this to something else may cause even more complicated transitional measures.

Other suggestions include, for collecting, to review the interest charges for late payment. 2.5% above base rate is not a deterrent.

Further, authorities report that customers sometimes do not pay Demand Notices on time and then blame not receiving an invoice in addition as the reason. So it would be helpful if the regulations included additional comments to make it clear to the volume house-builders that complying with the Demand Notice is their responsibility, including meeting instalments – and it is not the responsibility of the LPA to issue invoices or reminders in advance to fit in with payment runs.

In terms of spending, it has been suggested that there be a rolling period for management fees, rather than in-year only from year 4. For example, purchase of new software during one particular year could require further funding than that being collected within that year.

There should be clarity on what happens if a scheme paid both CIL and S106, then a project listed within its obligations is added to the Reg 123 list. Should LPAs be tracking spend from site to project on the Reg 123 list in the same way as with S106 to ensure that a particular scheme cannot contribute towards the same projects through both sources.

On Neighbourhood issues

How have the requirements for the Neighbourhood proportion of CIL been implemented?

We have heard of a number of examples of how this is happening. A couple of examples include; RBKC is considering using an existing Council programme called ‘City Living Local Life’ (which allows residents and Councillors in each Ward to decide how to spend a budget of £14-20,000 per ward per year) to implement the Neighbourhood CIL requirements.

As another example, Crowdfund Plymouth is a pioneering project in which Plymouth City Council has chosen to distribute the ‘meaningful proportion’ of CIL to support local projects through a partnership with Crowdfunder.

Crowdfunder is an online platform that helps turn ideas into reality with the power of the crowd. A community project and accompanying video is uploaded onto the Crowdfunder website and people back a project by pledging funds in return for rewards. It’s an all or nothing model, if the fundraising target is hit the project gets the money, if it is unsuccessful no money is taken. For financial year 2015-2016, £60,000 of the ‘meaningful proportion’ of CIL is to be distributed through Crowdfund Plymouth.

By using an online platform such as Crowdfunder they are able to remain fully transparent on decisions that are made, enable fast and immediate payment to local projects, without the need of an application form, and the match-funding element of the project enables a little to go a long way and boost projects which may otherwise not get funded.

Another issue that has been raised on a separate note, is that the original intention of CIL was to unlock “additional funding for infrastructure that is required to deliver sustainable local

communities” and “better resource public authorities to deliver infrastructure” (Page 3, CIL Final Impact Assessment (DCLG) February 2010). This contrasts with the more recent statements on the purposes of CIL (and the 15-25% neighbourhood proportion regulation) which are about incentivising communities to accept development. The 15-25% neighbourhood proportion will significantly affect Councils’ ability to deliver on the original intention of CIL. A re-clarification of the purpose of CIL would be useful.

Is this encouraging communities’ to support development?

Although we have examples of innovative ways of implementing the neighbourhood portion of CIL it is too early to provide an evidence-based response to this question.

Finally, on the overall system

Has the introduction of CIL made the system for securing developer contributions and delivering infrastructure simpler, fairer, more predictable, transparent and efficient?

Members’ views are mixed on this as the situation stands. However, there is a general feeling that given time, these aims will be achieved. In some instances, cases are still ‘transitional,’ in that CIL rates did not impact on the land sale or were conceived ‘pre-CIL’.

There are still varying degrees of transparency cases where they can be vague, raising uncertainty between what infrastructure projects/types are covered by CIL and what remains under Section 106.

Members have reported, in cases of re-consultation on R123 lists post-CIL examination and Examiner’s report, which has moved infrastructure between CIL and S106 thereby potentially impacting on the S106 pot i.e. greater S106 requirement than what was tested in the viability assumptions, ultimately leading to a greater S106 on top of a fixed CIL rate and any affordable housing requirement.

Is the relationship between CIL and s.106 fit for purpose and how is this working in practice?

It is clear from members that the restriction on pooling s106 is too arbitrary.

Is there a better way of funding the infrastructure needed to support development?

In the longer term, we believe that there should be a fairer way of sharing land value uplift between landowners and the community, to fund the housing and infrastructure the country needs, once planning permission is granted, which could work in parallel to CIL. We recommend that government should link together infrastructure expenditure, policies and planning with policies and planning for housing in order to unlock potential sites, for example through budgetary processes or guarantees against future income streams.

The level of the annual shortfall in housing delivery suggests that a step change is needed in the very mechanisms whereby houses are delivered . This, however, is not just about



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mediation of space · making of place

building houses; it's about place creation, which means delivering social, environmental and physical infrastructure alongside housing.

In the present climate we cannot look only to public spending to do this. It is time to look for additional funding from the windfall in value which goes directly to private landowners when public investment in infrastructure is made, or planning permission is granted on a piece of land. There needs to be a fairer way of sharing this land value uplift between landowners and the community, to fund the housing and infrastructure the country needs.

The success of Innovative funding mechanisms in funding infrastructure projects such as the northern line extension (Tax Increment Financing) + Crossrail (Land Value Capture) should be considered to be extended/generalised to national policy

Given how much latent wealth sits in the hands of property owners, re-routing a proportion of the additional value of property that is created by public investment to the public purse seems a viable and fair way of funding infrastructure.