Community Infrastructure Levy: Will it Deliver?

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This paper was originally drafted in June 2012. Since then many more local authorities have produced draft charging schedules and there have been additional examinations and examiners' reports. Furthermore the Department for Communities and Local Government is informally consulting on revisions to the regulations, which may be published prior to the conference. The presentation at the conference will include updates on these matters and the final version of this paper will reflect the position at the end of September 2012.

Summary

Since January 1, 2012 if you wanted to build some new homes in Ilford, Ludlow or Newark you have been required to pay a standard charge to the Council of between £40 and £75 per square metre of private development, equivalent to £3,000–6,000 for an average sized property, for the privilege. By 2014 the majority of Local Authorities across the country are expected to have adopted such charges, some at considerably higher levels, through the implementation of the Community Infrastructure Levy ("CIL").

Has Government finally, after 60 years, got it right and devised a durable means of capturing some of the benefits of increases in land values for the community, which can be invested in roads, utilities, and schools, to support development? Or will it be added to the list of failed measures in the "Betterment and Compensation" chapter of planning textbooks, brought down by perceived or real impacts on the property market, badly drafted regulations, and political opposition?

Firm evidence is hard to come by. When told of the death of President Coolidge, Dorothy Parker was said to have replied "How could they tell?" A similar comment could be made in relation to anything being said to have a negative impact on the UK property market in its current state. To give some indications this paper reviews the early implementation of CIL against some of the lessons of previous attempts at land value taxation and the stated objectives of the Government in relation to growth and infrastructure planning.

It concludes that by working with the grain of the UK planning system, and because at present it appears to have cross-party (and Treasury) support, CIL probably has better prospects for longevity than previous approaches. However it sits increasingly uneasily with wider Government priorities to stimulate growth, including promoting the review of existing planning (s.106) agreements and suggestions in the Montague report that affordable housing requirements might be relaxed to promote the growth of private rented housing. If the recession in the construction sector is sustained CIL could be similarly vulnerable.

If it does navigate these choppy waters it will require careful and considered implementation. The Government will need to consider the balance between certainty and flexibility and, inevitably, to make further revisions to the regulations. Strategic developments, which the UK has been good at planning but poor at building, will face particular challenges and are particularly constrained by the inflexibility of the current regulations. It is likely that they will require a more flexible approach to phasing and instalments, the use of "in kind" provision of infrastructure and "exceptional circumstances" relief to a greater level than anticipated by Government and allowed by current regulations.

However it will not be enough that CIL simply does no harm. In the longer term the UK population is already increasing and ageing rapidly and this is projected to continue even if Government succeeds in reducing net immigration. This will require new homes and infrastructure the development of which, as a result of the recession, has fallen from what were already inadequate levels. To the extent that development

is genuinely held up by a lack of infrastructure there is no guarantee in the CIL regulations that this will be brought forward, even if paid for.

The Government's reforms, brought forward under the "localism" banner, place the onus on local authorities and Local Enterprise Partnerships ("LEPs") to take a pro-active approach to infrastructure development and growth more generally. The extent to which they are willing and able to do this will determine whether CIL can achieve its original objective of helping to increase development overall.

Structure of the Paper

The last paper on CIL was presented to this conference in 2008. Since then, despite a new Government in which the major party had promised to abolish CIL, two sets of regulations have been published and six authorities are now charging CIL. This paper seeks to bring the story up-to-date. Part 1 sets the context for CIL. This includes a (brief) recap of the familiar history of attempts to capture land value for public benefit, alongside changes over time in the planning and delivery of infrastructure. It then describes how two elements were brought together in the Barker Report, subsequent planning and housing policy, and proposals for a Planning Gain Supplement ("PGS"). It concludes with the emergence of CIL as an alternative to PGS.

Part 2 describes the implementation of CIL through the Planning Act (2008), Localism Act (2011) and subsequent regulations (2010, 2011). This includes a basic description of the CIL system, a summary of progress on charging schedules to date, and some of the key issues arising from early implementation including:

- Charge Setting (including viability assessment)
- Consultation and Review
- Relief and Exceptional Circumstances
- s.106 and regs 122 and 123

Part 3 then provides some commentary on how CIL relates to the Government's wider objectives and ambitions for growth as set out in the National Planning Policy Framework and elsewhere, and the role of CIL as part of the wider "toolkit" for regeneration.

Part 1: The Context for CIL

Land Value, Rent and Taxation: The Most Feathers for the Least Hiss

The seventeenth century French statesman Jean Baptiste Colbert famously defined the art of taxation as: "plucking the goose so as to obtain the largest amount of feathers with the least possible amount of hissing". This provides a pretty good description of the history of attempts at taxing land value in the UK.

Starting from first principles there is general agreement amongst economists that in a developed economy the value of land (leaving aside the buildings upon it or other investments in it) takes the form of "economic rent". The value is derived from demand for a scarce resource not from the actions of the landowner, but instead from trends in the wider economy and its location.

It follows from this that, in theory, the taxation of land values or changes in land values should not affect the amount of land supplied to the market, and furthermore that it makes a particularly good target for taxation because it is "unearned" and because (provided the tax makes no distinction between different uses) it does not distort investment decisions between sectors.

Despite strong theoretical support, and a number of committed advocates who regard it as the solution to all taxation and other economic problems, land value taxation has never been substantially implemented

in the UK or elsewhere despite being advocated from time to time.[1] One can understand why if one considers the political outcry that would ensue if capital gains tax were charged on the sale of first properties—which is the most obvious form of rent in the UK. The reluctance of successive Governments to update the valuations on which Council Tax is based since its introduction 20 years ago is another example of Government reluctance to tamper in property taxation for fear of provoking "hissing" from voters.

The original impetus for a land tax was driven by Henry George at the turn of the 20th century and "the land question" was closely intertwined with "new liberalism" and the emergence of town planning. Indeed the majority of the founding text of modern town planning "Garden Cities of Tomorrow" is not about design or land use, but about capturing "rent" to pay for the infrastructure and administration of the Garden City. It can be seen as the acceptable face of "Georgism" deliberately eschewing the more extreme rhetoric whilst adopting some of the key principles.[2] The difficulty that Howard had in putting these principles into practice at Letchworth and Welwyn, despite low land prices and favourable loan funding, may give some pause for thought for current advocates of this for strategic developments but it does demonstrate the attraction of land value taxation for the early planning movement.

Subsequent discussion in planning circles has focussed on the impact of the regulation of land use through planning on the distribution of "rent". Assuming that what the planning system allows to be built is not what the market would have done left to its own devices then Government is playing a major role in determining who will profit and who will lose from development.

The rise in the value of land simply from it being allocated for housing development rather than agriculture, without any input at all from the land owner, gives rise to what has been described as "betterment". Conversely a neighbouring piece of land retained in agricultural use would have a lower value and, in circumstances where no controls were in place before if the use is restricted in a plan, would cause a notional loss in value to the owner, giving rise to calls for "compensation". It is widely acknowledged that the reason for the failure of the inter-war planning system was the requirement for local authorities to compensate landowners for the loss of development rights and the difficulty in taxing betterment. Following the acceptance of the need for an effective system of land use control, as recommended by the Barlow Report, the wartime Government recognised the crucial need to tackle this fundamental problem and set up the Expert Committee on Compensation and Betterment (the Uthwatt Commission), whose recommendations the incoming Government largely ignored.

The 1945 Government effectively nationalised all development rights in land (without compensation but with a £300 million "hardship" fund) and introduced a Development Charge at 100 per cent of development value. This was the first of three post war attempts at a national system of "betterment taxation" but, like the others, also needs to be seen in the context of a wider package of measures, in which Government would take a pro-active role not only in planning development, but assembling sites, providing infrastructure, and directly developing sites or leasing them to developers. The ultimate sanction of Government, should landowners not wish to sell without an uplift in value, was to compulsorily purchase at Existing Use Value.

Cullingworth's voluminous official history of the period[3] gives an insight into the internal debates within Government, based on official records, about the implementation of the Development Charge and its ultimate abolition by the incoming Conservative Government. A number of the practical issues raised at the time find echoes in current debates on CIL.

[1] Examples include the Uthwatt Commission (1942) proposing land value taxation for developed land, and the recent Mirleees Review proposed the replacement of Business Rates and Stamp Duty with a Land Value Tax (Institute for Fiscal Studies (2011), Tax by Design (The Mirlees Review), Ch.16, The Taxation of Land and Property).

[2] Howard makes explicit reference to George in Ch.11, The Path Followed Up, of Garden Cities of Tomorrow (1902).

[3] Cullingworth (1980), Environmental Planning, 1939–1969, Vol.IV, Land Values, Compensation and Betterment, HMSO.

First, the legislation was broadly permissive rather than prescriptive and left the detailed issues relating to valuation to be based on accepted professional standards. Secondly, despite the fact that the Development Charge was intended to ensure that land traded at existing use values, it continued to trade at a premium, due to scarcity exacerbated by the lack of licences to build. The Government had neither the capacity nor finance to compulsorily purchase sufficient land to address this. Thirdly, there was a strong reluctance on the part of Government (and its technical advisers) to allow a lower rate of development tax, on the basis that "market values" would seep back into the land price, and ultimately drive out the ability to tax any surplus.

Anecdotal evidence of a "sellers' strike" in land, highly publicised hardship cases of individuals who had lost out and an "in principle" opposition from the incoming 1951 Conservative Government saw the charge abolished. It should be noted that, by that time, the charge had raised substantial sums, and that the Central Land Commission which administered the charge was of the view that it was working and needed longer to prove its worth. There also continued to be strong pressure from the Chancellor and the Treasury for some form of betterment taxation.

The subsequent two Labour Governments of 1964–70 and 1974–1979, partly in response to property booms and accusations of land speculation (which were in large part the unintended consequences of other planning decisions) introduced what were in effect modified versions of the Development Charge: the Betterment Levy and the Development Land Tax. These both involved national taxation of land values, and both ultimately suffered the same fate as their predecessor, being abolished by incoming Conservative Governments.

As noted by Grant[4] the most durable system for the capture of 'betterment' has been through "Planning Gain", formalised through s.106 of the Town and Country Planning Act (1990). Although not a formal "betterment" taxation system, and to some extent limited by Government Circulars (1/97 and 05/05) and case law, the scope of contributions gradually expanded. The inclusion of Affordable Housing within the scope has had the effect, on schemes where it applies, of testing schemes to the margin of viability (based on a residual value assessment) and 'Open Book' appraisals are now standard practice. In this context it is fair to describe s.106 in relation to affordable housing, as Grant does, as "a national betterment taxation system hypothecated to the provision of a certain public good".

This system has had the advantage of being integrated into the wider UK planning system. It therefore combines central guidance with local discretion and flexibility, and allows authorities to weigh the balance between different priorities—for example between affordable housing and different types of infrastructure investment. It also provides a direct link between the impacts of development and the mitigation of those impacts—an important consideration for schemes for which Environmental Assessments are required and conditions are imposed.

Over time its use matured and many local authorities adopted "tariff based" systems, based on assessments of likely impacts of development on infrastructure, including cumulative effects on transport and social and community facilities.[5]Section 106 therefore, without a "big-bang", became by far the most effective and durable system of "taxing" development and securing contributions to local infrastructure and, increasingly, for wider local purposes.

However, it also faced a range of criticisms. These included an alleged lack of transparency in negotiation and sometimes tenuous links to development impacts, leading to accusations of selling planning permission; uncertainty over what will be charged and high "transaction costs" in negotiating agreements; inconsistency in application across the country and lack of experience or expertise on the part of authorities in negotiating agreements; and the fact that even where they are applied many small and medium sized schemes make no contribution to infrastructure costs.

[4] Grant (1999) Compensation and Betterment in Cullingworth, British Planning, 50 Years of Urban and Regional Policy.
[5] Ashworth and Demetrius (2008), Planning Gains Supplement, Past, Present and Future

CLG has estimated that, at the peak of the boom in 2007/8, obligations worth £4.9 billion were negotiated, of which just over half (£2.6 billion) was for affordable housing. In that year authorities received payments of approximately £560 million, with affordable housing to the value of £1.3 billion delivered.[6] It has therefore, to go back to our original theme, managed to collect a very significant amount of feathers for a very limited "hiss" compared to more formalised approaches.

The Fragmentation of Infrastructure Planning

The introduction of a comprehensive system of land use planning and development control through the 1947 Act was part of a wider historic shift in the role of Government. This involved an expansion in the role (and size) of the state including nationalisation of major industries and the foundation of the "welfare state". This was combined with a (brief) consensus, based on wartime experience, on the need for economic and industrial as well as spatial planning.

Virtually all of those things which come under the modern definition of "infrastructure" (utilities, roads and railways, healthcare, schools and colleges) came under the direct control of Government, and for those that had previously been in its control, national Government took a greater role in setting standards. There was therefore a twin shift, from private to public, and from local to central. Government therefore had land use planning powers through the Planning Acts, and direct control over the planning and delivery of infrastructure through public ownership. The willingness, enthusiasm and ability of Government to use these powers waxed and waned over the next thirty years, but the strengths of the centralised approach can, for example, be seen in the delivery of the New Towns programme.

The position was to change decisively from 1979 onwards first with the privatisation of utilities, and subsequently with increasing fragmentation of the planning and delivery of public services across a range of providers—a trend that looks likely to continue through the current Government's commitment to public service reform.

The table and graph below illustrate the point. Table 1 identifies some of the major items of infrastructure and the pre-1979 responsibility, current responsibility and potential future responsibility for planning and provision.

Table 1: Responsibilities for Infrastructure Delivery

Item	Pre-1979	Current & Future
Roads	Central and Local Government	Central and Local Government. Private sector (Toll Roads)
Railways	Nationalised Industry	Regulated Industry, Network Rail and Franchisees
Public Transport	Locally regulated, mixed provision	Limited local regulation and multiplicity of providers
Utilities	Nationalised Industries with some Regional Sub-Organisation	Regulated Industries with multiplicity of providers
Schools	Local Government Controlled with Mixed Providers	Move towards individual academies, free schools and trusts accountable to Secretary of State
Health Provision	NHS with changing range of sub-national structures, and GP practices	NHS Board, Primary Care Trusts transition to Commissioning Model, and mixed economy of providers
Sports and Leisure	Direct local authority, community, voluntary and private provision	Contracted local authority, community and private provision
Parks and Open Space	Primarily public provision	Public provision with increasing private provision of public space in development schemes

[6] CLG (2010), *The Incidence, Value and Delivery of Planning Obligations in England in 2007–2008*, Final Report

Figure 1 shows "Gross Fixed Public Sector Capital Formation (effectively the public sector stock of infrastructure) as a proportion of national income from 1948 to 2008. Of particular note is the significant decline in public corporations due to privatisation, and the decline in the local Government share in large part due to "right to buy". Overall the combined assets of the state sector are at about *a third of their peak in the 1960s*.

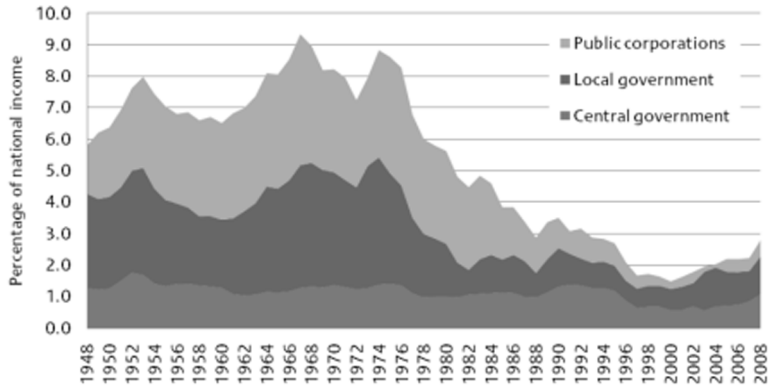

Figure 1: Gross Fixed Capital Formation as a Share of National Income, 1948–2008

Source: Institute for Fiscal Studies (2009), a Survey of Public Spending in the UK

At the same time as the Government has reduced its formal role in the actual delivery of infrastructure, and significantly reduced the direct role of local authorities, it has sought to increase the importance of infrastructure in local planning.

The growth in emphasis on "Spatial Planning", covering wider issues than simply land use allocations, was central to the planning reforms of the last decade, and the previous Government's push for the development of "sustainable communities". The Government policy document, Sustainable Communities: Building for the Future (2003) suggested that in order to facilitate new housing delivery, particularly in London and the South East, it would be necessary to "address public services and infrastructure needs to enable the new communities to function" (para.46).

Infrastructure Planning was given further impetus by the Barker Review of Housing Supply (2004). The review identified infrastructure as a barrier to increased housing supply, both for practical reasons where essential infrastructure, for example road access to support the delivery of a site, was not available, and also that perceived impacts on infrastructure and amenity are one of the principal sources of opposition to development from residents and local authorities. The report identified a lack of co-ordination between providers, a lack of early input from providers into the planning process (which would allow their plans to reflect likely development and site allocations, in turn, to reflect plans), and practical problems with Section 106 agreements as a mechanism to address or mitigate impacts.

As well as recommending a Planning Gain Supplement ("PGS"), which is considered further below, it also suggested the need for more co-ordination between infrastructure providers and their early involvement in the plan making process, and the need to consider the use of area based special purpose vehicles to deliver infrastructure.

In response to Barker the Government established an internal "Cross Cutting Review of Supporting Housing Growth" as part of the *Comprehensive Spending Review* (CSR 2007). Although the report was not published it was summarised in the CSR report itself and in the *Housing Green Paper* (2007) and *Planning White Paper* (2007). It concluded that central Government departments should prioritise infrastructure investment to support housing growth and that this should be reflected in funding decisions,

that local authorities should be formally required to take a more systematic approach to infrastructure planning and that the Government would develop "bespoke vehicles to support front funding" of infrastructure.

Infrastructure planning requirements were taken forward through revisions to Planning Policy Statement ("PPS") 12, Local Spatial Planning 2008. This highlighted the role of spatial planning that "orchestrates the necessary social, physical and green infrastructure to ensure sustainable communities are delivered" (para.2.4).

PPS12 required that:

> "The core strategy should be supported by evidence of what physical, social and green infrastructure is needed to enable the amount of development proposed for the area, taking account of its type and distribution. This evidence should cover who will provide the infrastructure and when it will be provided. The core strategy should draw on and in parallel influence any strategies and investment plans of the local authority and other organisations. (para.4.8)"

The infrastructure planning process was intended to identify infrastructure needs and costs, phasing of development and funding sources, responsibilities for infrastructure delivery and, where possible achieve the buy in from, and alignment of planning processes with, infrastructure providers.

Councils were required to demonstrate that their Core Strategies were based on sound infrastructure planning (para.4.45).

The Planning Inspectorate's review of its experience in examining development plan documents found that "many authorities are finding infrastructure planning very challenging".[7] Problems included getting infrastructure providers to engage, specifying which elements of infrastructure were essential and which desirable, and the extent to which key elements, particularly early ones, can be funded. Inspectors have generally been sympathetic to local authorities' attempts at infrastructure planning and taken a pragmatic approach to the level of evidence required.

To support infrastructure planning the Planning Advisory Service produced best practice guidance on infrastructure planning, which is cited in the PINS report,[8] and Infrastructure Delivery Plans and Investment Frameworks are now a standard element of the evidence base for Core Strategies. As envisaged by PPS12 they also now have a wider role in providing the evidence for infrastructure needs as part of the CIL charge setting process. Advice has also been provided on infrastructure planning for major developments through ATLAS (the Advisory Team for Large Applications) and the British Property Federation.

Unfortunately for those interested in whether all of this additional planning activity would result in more infrastructure being provided, resulting in more homes being built, by the time the systems and practice guidance were in place the property market (and subsequently the wider economy) crashed. Resultant cuts in capital expenditure have meant that the capacity of public agencies to deliver infrastructure as set out in the strategies has been significantly reduced. In addition the commitments of the previous Government to "bend" mainstream funding to underpin housing development appear to have been lost amongst the new Government's policy priorities.

Leaving aside these "timing" issues though there are some more fundamental points about the approach to infrastructure planning which raise questions about the extent to which the planning system can influence and provide for infrastructure, given the fragmentation of providers described above.

First, as noted above, there has been limited sign up from many infrastructure providers to the local frameworks. Whilst some of the more effective and advanced authorities, for example Milton Keynes, have had long term arrangements in place, the day-to-day approach to planning and delivery of infrastructure

[7] PINS (2009), *Examining Development Plan Documents, Learning from Experience*.
[8] PAS (2009), *A steps approach to infrastructure planning and delivery*.

does not appear to have changed significantly and there appear to be no real incentives to encourage agencies and organisations to change their behaviour.

Second there is a wider point about the need for additional infrastructure and the extent to which it genuinely arises from development and therefore should be provided in order to allow it to come forward. Clearly some direct infrastructure items e.g. physical access to a site or utilities/servicing for sites are essential for them to be developed. In other cases though, where needs are "generated" by an "additional" population, what development does is house that population in a particular place. The additional services would be required in any case.

In some circumstances—where there are substantial housing developments on greenfield sites or in locations where there has not been housing development in the past—there may be a clear and direct local need for provision, which it may reasonably be expected that the developer will provide. But in the case of new developments in urban areas with a growing population it is not at all clear that the demand from the population in a housing development creates additional demand in the area.

At a broader level many Infrastructure Delivery Plans apply formulae to the housing pipeline (population and child "yields") to determine likely demand for new infrastructure. These are then treated as "net additional" population for which provision is required, and used as a basis for s.106 negotiations, and now CIL charging schedules. Leaving aside debates about betterment described above, one "good"—providing new homes or workplaces—is taxed to provide other "public goods" for which provision would be required, regardless of whether the housing was built.

In addition local authorities will often apply standards to new development that are significantly in excess of that which they are able to provide to current residents based on a "bidding up" by public service providers who look for "ideal" provision when consulted on infrastructure requirements. This was problematic at a time of high public expenditure, and appears perverse at a time of austerity. It has contributed to Infrastructure Investment Plans which require extraordinarily high levels of funding, and also to the enormous funding gaps identified in the CIL setting process. If the infrastructure requirements identified are actually necessary they must call into question whether the Plan which they support is actually deliverable. This runs the risk of bringing infrastructure planning into disrepute, and encouraging local residents and some local authorities to have unrealistic expectations of what can be, and needs to be delivered by development. We will return to this issue when considering the "residual" role of s.106 agreements in the CIL environment.

The Barker Review, Planning Gain Supplement and the Community Infrastructure Levy

The focus of the Barker Review was a drive from the Treasury to increase house-building, in part to protect the economy from the negative effects of house price inflation. As noted above the review identified both a real and perceived need for infrastructure to increase housing development. By way of context it should be remembered that in the year of the report 155,000 homes were built and annual completions were rising.

Written by an economist and sponsored by the Treasury, the review naturally picked up on the incidence of 'rent' (paras 7.17–7.21 of the Interim Report), and its potential taxation to help contribute to addressing those infrastructure needs. The report identified the reasons for the previous failures of development gains taxes as having been their credibility (landowners did not believe they would last), the complexity of valuing individual developments, poor targeting—with taxation falling on smaller sites and high marginal tax rates—and lack of incentive to bring land to market.

The final report (Recommendation 26) proposed a PGS with Government setting, at a national level, a tax on a proportion of the increase in land value at planning consent, covering at least estimated local authority gain from s.106 agreements (with such agreements being scaled back to focus solely on direct site based impacts of development), with variable rates for brownfield and greenfield sites, and a proportion

of funding given directly to local authorities. In effect this would have been similar to previous attempts at development land taxes, but set at a lower rate, and with some part hypothecated to provide infrastructure.

The report noted (para.33 of the Executive Summary) that, notwithstanding the fact that the incidence of the tax would mainly fall on landowners:

> "In general, imposing a tax on an activity discourages its supply — but given the interaction of land supply with the planning system this effect could be expected to be small, provided that tax rate is not set at too high a level. More importantly, the proposed tax is part of a package of policies set out in this Review, which, taken together, aim to increase the supply of land and planning permissions."

Proposals for a Planning Gain Supplement were published by the Government in 2006 and faced serious criticism from the development industry, and from professional bodies including the RTPI and the RICS. There was strong support for an approach based on a consistent and firm implementation of a "tariff" based system.

Instead, in 2007, the Government included proposals for the "Community Infrastructure Levy" in its Planning Bill, subsequently the Planning Act 2008. The Levy was essentially a halfway house between a formal Land Tax and a development based "Tariff System", with the essential difference from the PGS that it was to be set locally, through an examination process similar to that for development plans and based on a rate per area of development, rather than directly on development value. Now, eight years after the publication of the Barker Review, and in very different economic circumstances, the Community Infrastructure Levy is finally being implemented.

Part 2: The Community Infrastructure Levy

Legislation, Regulations & Guidance

Those currently implementing, or being asked to pay, the Community Infrastructure Levy may find it ironic that one of its stated benefits is its simplicity and certainty.

Less than a year after the first charge was implemented the Levy is covered by two pieces of primary legislation, two sets of secondary legislation (regulations), with a further draft set published which are likely to be subject to further revisions, and a series of statutory and non-statutory guidance and explanatory notes.

In part these revisions are required because the regulations were published significantly in advance of the actual implementation of the charge at the local level, so both Charging Authorities, and developers who have to pay the charge, are only now testing their practicality with real world schemes. This has thrown up a number of unintended errors which include the detail of the charging formulae, the instalments policies for the Mayor of London's CIL (which don't currently allow the Mayor to offer instalments where there is no adopted local CIL), and the fact that s.73 applications for very minor amendments to schemes generate a CIL charge for the overall development as they constitute a new planning permission.

These issues, it is understood, will be dealt with in the revised, consolidated 2012 regulations later this year, along with the revisions required as a result of the amendments in the Localism Act. Other issues which may require amendment or correction include how outline applications with phases are dealt with and the qualifying period for floor space to be occupied in order to be taken into account in the calculation of the net increase.

Any readers who are looking for a detailed explanation of all of the ins and outs of CIL will not find it here, but should refer to the following documents:

> Part 11 of the Planning Act 2008. (*http://www.legislation.gov.uk/ukpga/2008/29/part/11*)
> Part 6, Chapter 2 of the Localism Act 2011.

(*http://www.legislation.gov.uk/ukpga/2011/20/part/6/chapter/2/enacted*)
The Community Infrastructure Levy Regulations 2010.
(*http://www.legislation.gov.uk/ukdsi/2010/9780111492390/contents*)
The Community Infrastructure Levy (Amendment) Regulations 2011.
(*http://www.legislation.gov.uk/uksi/2011/987/made*)
Community Infrastructure Levy: Detailed proposals and draft regulations for reform—Consultation, 2011, and Draft Regulations.
(*http://www.communities.gov.uk/documents/planningandbuilding/pdf/1997385.pdf*
http://www.communities.gov.uk/documents/planningandbuilding/pdf/2004771)
The *Community Infrastructure Levy: Charge Setting and Charging Schedule Procedures*, 2010.
http://www.communities.gov.uk/documents/planningandbuilding/pdf/1518612.pdf
Community Infrastructure Levy Relief: Information Document 2011.
http://www.communities.gov.uk/documents/planningandbuilding/pdf/19021101.pdf
Community Infrastructure Levy: collection and enforcement—Information document 2011.
http://www.communities.gov.uk/documents/planningandbuilding/pdf/1995794.pdf
The most recent Government overview is provided here:
Community Infrastructure Levy: An Overview.
http://www.communities.gov.uk/publications/planningandbuilding/communityinfrastructurelevymay11

The Key Features of CIL

In simple terms the Community Infrastructure Levy is a fixed development charge payable for a net increase in most types of floor space, which is set when planning permission is received and payable when development commences. The charge is set and collected by the charging authority (usually the local planning authority) and is hypothecated to expenditure on infrastructure to support development. It is anticipated by Government (although not on a very scientific basis) that it will raise between £564 and £831 million per year for investment in infrastructure, and will be adopted by between two thirds and three quarters of local authorities.[9]

Local authorities in setting their charge "must aim to strike *what appears to the charging authority* to be an appropriate balance between" the desirability of funding infrastructure from CIL and "the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area" (author's emphasis, but frequently pointed out by charging authorities and their advisers).

In doing so they can make use of their existing infrastructure planning evidence base, as described above, supplemented where necessary, and must demonstrate a gap between the need for infrastructure and the availability of funding from other sources to pay for it. To date this has not proved at all difficult for any authority. They must also undertake an assessment of viability using an accepted methodology. Charging guidance does not seek to provide any detail on valuation methodologies.

Similar to the Local Plan process, authorities must consult on drafts of their Charging Schedule (a Preliminary Draft Charging Schedule and a Draft Charging Schedule), prior to submitting it for independent examination. Inspectors' reports are non-binding, although authorities may not adopt all or part of a Charging Schedule which an inspector has found requires modification. Authorities may set different charges (including zero rates) for different parts of their area, and for different types of use, although this must be based solely on evidence of viability.

However, once the Charging Schedule is adopted, the authority is very much in the driving seat. The charge is non-negotiable. There is no right of appeal against the charge itself but only the technical calculation of the charge against the formula. Although the authority may only spend income raised on

[9] *Community Infrastructure Levy, Final Impact Assessment* (2010).

infrastructure to support development, it is not required to provide any specific items of infrastructure, and need only report on its spending. The definition of infrastructure is in any case so broad as to provide little limitation on its use, and has been widened further still in the Localism Act. It is under no obligation to review impacts on development viability, and there is no "sunset" clause. The charging authority may allow payment by instalments but is not required to do so, and may allow relief in very limited "exceptional" circumstances, but again at its own discretion. The authority has a range of enforcement powers, including the power to stop development and ultimately that debtors may be imprisoned.

Section 106 contributions were, as suggested by Barker, intended to be scaled back to those directly required for a site to be delivered (including affordable housing provision), and the tests for acceptability of contributions have been made statutory as reg.122 of the CIL regulations. In addition local authorities are limited, after 2014 to the pooling of a maximum of five s.106 contributions for any one piece, or type, of infrastructure. These changes are intended to safeguard developers, but as we shall see below, the level of re-assurance is limited given the looseness of the regulations.

Suggested Benefits of CIL and Underlying Rationale

Given the troubled history of previous attempts at betterment taxation and the high levels of contributions achieved from s.106 agreements and emerging tariff systems it is worth briefly summarising the suggested benefits that the Government has promoted, as well as some broader context on capital spending and some of the constraints and considerations (implicit and explicit) that have shaped the design of CIL.

The key benefits identified in the various Government documents arising from CIL, as compared to s.106 are threefold:

- That only a relatively small proportion of developments (the larger ones) currently make s.106 contributions. CIL can deal with the cumulative impacts of small schemes and raise additional funding to support infrastructure.
- CIL will make contributions to infrastructure more transparent, and provide speed and certainty, avoiding protracted negotiations.
- The changes under the Localism Act will ensure that local communities can benefit directly from development, thus reducing local opposition.

The design of the CIL regulations appears to be aiming to combine the local discretion, direct links to development, and consultation and "challenge" elements of the current planning system with a focus on certainty and deliberate inflexibility post-adoption to ensure that the charge becomes reflected in land prices and that landowners and developers recognise its permanence. There also appears to be a (perhaps excessive) degree of caution on the part of Government about the implications of EU State Aid rules which have clearly influenced both the insistence that viability must be the only criterion for variation of charges, and the very narrow approach to relief.

The resulting framework is arguably now the most genuinely "localist" element of the planning system, with a charge-setting process heavily weighted in favour of the authority and an implementation system the flexible elements of which are entirely at the local authority's discretion.

An additional underlying, but largely unspoken, driver for the retention of CIL is the wider context for capital investment. Figure 2, below, shows the real terms capital budgets of the main departments responsible for delivery of the types of infrastructure provided by CIL. These have seen significant reductions (contributing to the downturn in construction output) and even when the economy stabilises are likely to remain relatively low for some years to come. Government therefore urgently needs to find alternative funding sources to provide for the needs of a growing population.

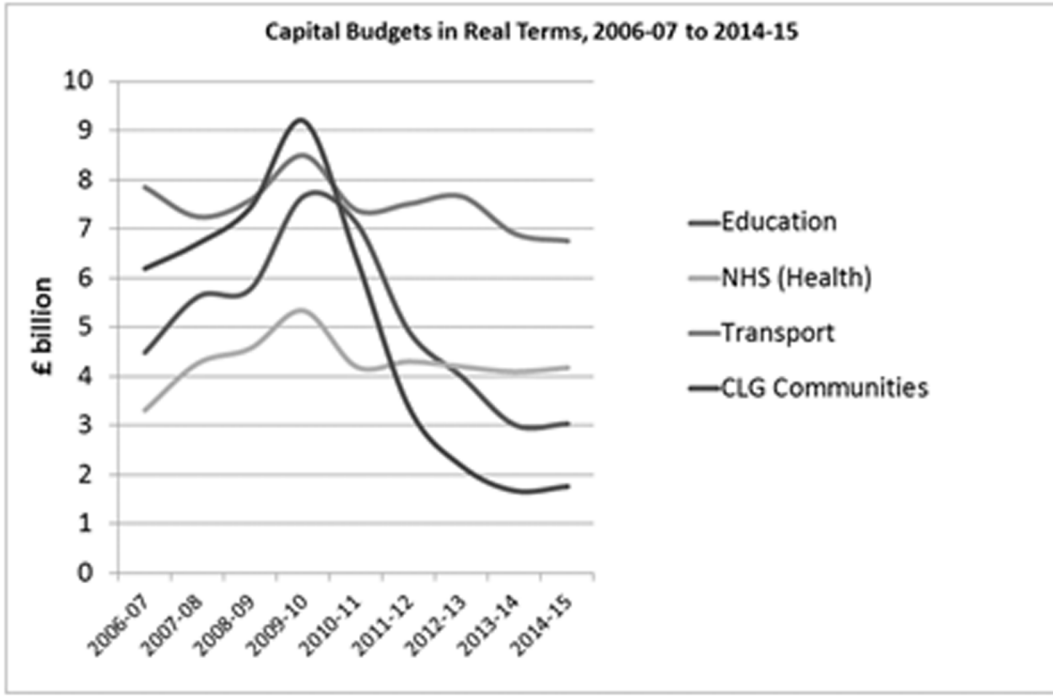

Figure 2: Capital Budgets (Real Terms), 2006/7–2014/15) **Source: PESA, 2011**

Progress to Date

In total there are 337 potential charging authorities for CIL. These are the 91 metropolitan districts and unitary authorities, the 32 London Boroughs, the Corporation of London, the Greater London Authority and Mayoral Development Corporations (currently the London Legacy Development Corporation), 201 district councils, and 10 national park authorities.

Of these six—Newark and Sherwood, Shropshire, Portsmouth, Redbridge, the Greater London Authority and Huntingdonshire—have adopted charging schedules, and Wandsworth's has been approved by an inspector. A further 10 have published draft charging schedules and 23 Preliminary Draft Charging Schedules. This represents just over 10 per cent of authorities. There has been a wide variety of approaches with only Redbridge (adopted), Barnet (Preliminary Draft) and the Greater London Authority, using a flat rate. The remaining authorities have taken a variety of approaches including different charging zones and different charges for different types of development.

Rates have also varied significantly. As shown in Fig.3, below, early adopters have tended to be towards the lower end of the range. Unsurprisingly authorities in London and the south dominate the higher end of the spectrum with the highest proposed rate in the Wandsworth/Nine Elms area, reflecting the release of industrial land for prime residential development.

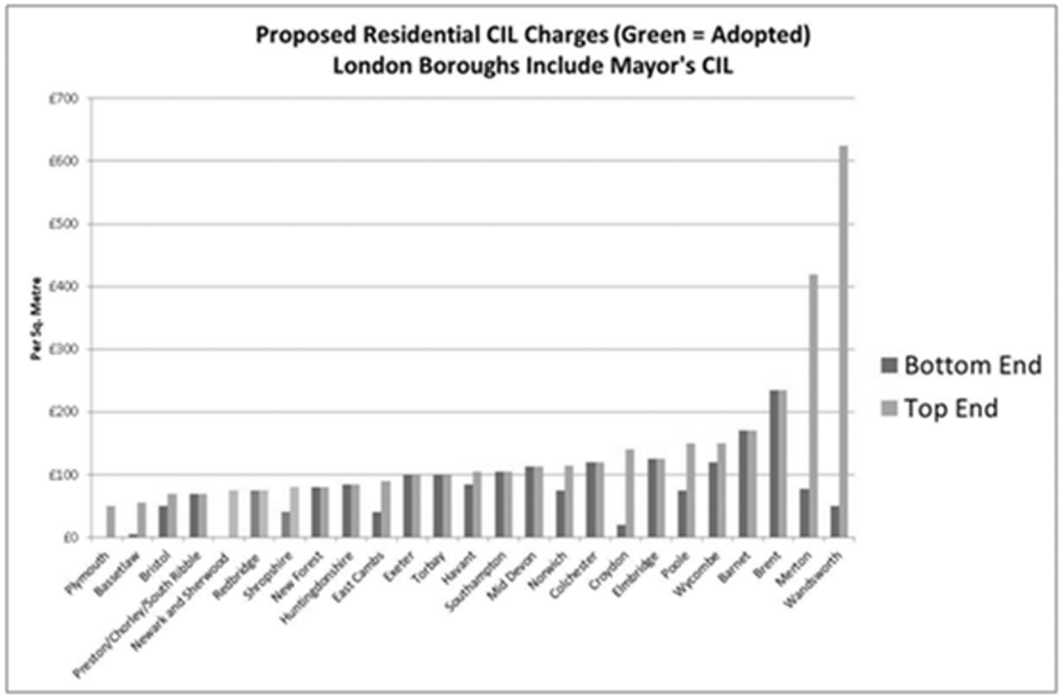

Figure 3: Proposed Residential CIL Charges

The Government, working with the Planning Advisory Service, provided a specific programme of support for a number of local authorities dubbed "Front Runners" to enable them to share best practice and identify issues and to support subsequent authorities in bringing their Charging Schedules forward. The first phase of eight front runners included four of the six authorities that have adopted their charges to date.

The remainder of this section will consider some of the general themes and issues arising from the early charge-setting process and implementation of CIL.

Charge-Setting and Viability Assessment

Much of the early discussion about CIL has been about Charge Setting and Viability as this is effectively the "front end" of the process and the stage that most Councils are currently at. Before discussing some of the issues arising from this it is worth briefly returning to the basic principle of CIL which is to secure for investment in infrastructure some of the uplift in value crystallised at planning consent. As illustrated in Fig.4, below, the overall value of a development is driven by demand. From that value the developer will need to purchase the land, pay the development costs and achieve a reasonable return. The various planning obligations, including CIL, affordable housing and any other contributions will come from that same pot. If these elements exceed the development value, development will not happen. Within this there is a debate about how one should deal with land costs, which is considered further below.

The obvious initial conclusion from this however is that, where developments are already the subject of open book appraisal, which is the case for most major sites which are the subject of affordable housing policies, there is limited scope for CIL to increase the share of development value for "community benefit". But, depending on the level set, it could have a significant impact on affordable housing provision which becomes the residual negotiated element of the scheme. Clearly any remaining "on site" s.106

obligations—for example for community facilities or highway works—also come from the same pot and, given that only land is allowed as an in kind contribution to CIL under the present regulations, the ability to fund such items would also be limited.

The inflexibility of CIL following adoption, could therefore, have significant risks for major strategic schemes which have tended to provide affordable housing and on-site infrastructure.

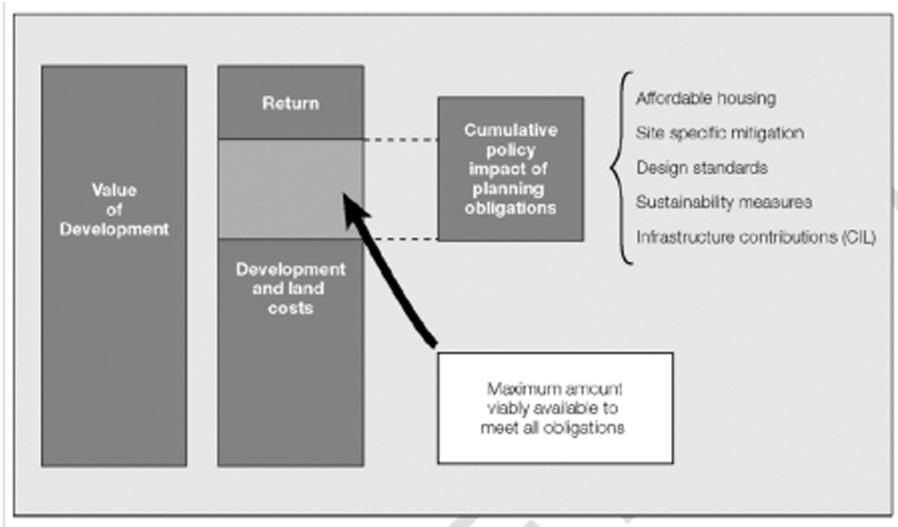

Figure 4: Development Value and Obligations **Source: RICS**

As noted above, a Council's viability assessment must strike a balance between funding infrastructure and impacting on the viability of development. They are required to have regard to "appropriate available evidence", but should predominantly focus on "taking a strategic view across an area" and not the implications for specific sites. Furthermore "In view of the wide variation in local charging circumstances, it is for charging authorities to decide on the appropriate balance for their area and 'how much' potential development they are willing to put at risk through the imposition of CIL". (para.7, Guidance on Charging Schedules). Whilst the examiner should consider the implications for the development plan and its targets, it is not the role of the examination to question an authority's choice of the "appropriate balance" unless it puts development across the area at serious risk.

The way the guidance is worded therefore makes it quite possible that a District-wide appraisal based on a series of high level assumptions could be sufficient to justify the adoption of a CIL charging schedule at a rate that would make one or more strategic sites unviable. Indeed providing evidence to an examiner that your major site is unviable as a result of CIL is likely to be insufficient to demonstrate serious risk "across the area". Most developers only have interests in specific sites in a given local authority area and it would be unreasonable to expect them to produce an alternative "area-wide" appraisal to submit to an examiner to challenge the local authority's case. Little wonder that there has not been much appetite on the part of the private sector to engage in the charging examination process despite its obvious significance.

Approaches to Viability Assessment

Such debate as has taken place to date has tended to focus on the methodological aspects of viability assessment. The Charging Guidance currently states:

> "There are a number of valuation models and methodologies available to charging authorities to help them in preparing evidence on the potential effects of CIL on the economic viability of development across their area. There is no requirement to use one of these models, but charging authorities may find it helpful in defending their CIL rates to use one of them. (para.22)"

The majority of appraisals that have been undertaken for charging schedules thus far have used what can be described as the "Existing Use Value (EUV) Plus" model for identifying the proportion of development value available to support planning obligations. On this model a land owner will need EUV plus an appropriate percentage "mark up" to be incentivised to sell land for development. The difference between the development value and this added to the development cost and return is the proportion available for planning obligations although guidance advises that schemes should not be pushed toward the margin of viability.

This approach has been criticised by some practitioners at examinations and the RICS has produced a Guidance Note to its members[10] which proposes an alternative "Market plus Assumptions" approach to assessing the land value component of the appraisal. This states (Box 7) that:

> "Site value should equate to market value subject to the following assumption: that the value has regard to development plan policies and all other material planning considerations and disregards all that is contrary to the development plan."

In the case of CIL appraisals (Box 8) it adds:

> "When undertaking Local Plan or CIL (area-wide) viability testing, a second assumption needs to be applied to the above: Site value (as defined above) may need to be further adjusted to reflect the emerging policy/CIL charging level. The level of adjustment assumes that site delivery would not be prejudiced. Where an adjustment is made, the practitioner should set out their professional opinion underlying the assumptions adopted. These include, at a minimum, comments on the state of the market and delivery targets at the date of assessment."

Critics have pointed out that inputting land price at the outset arguably undermines the purpose of CIL, in that it is intended to effectively tax the land price, but to a level which land will still come forward for development. Paragraph 3.3.6 of the guidance note appears to acknowledge this (although the wording is rather opaque) by suggesting that there is a "spectrum" in area wide assessments and that the weight given to existing market value should reflect this. It does however assert that there is a 'boundary' to this spectrum so that the effect of policy does not result in a reduction in value which would "provide a competitive return to a willing landowner". In this context the difference in principle between a percentage uplift on an existing use value and a percentage reduction on a current market value is not entirely clear. Presumably they meet somewhere?

The RICS guidance is not the only recent publication to seek to throw light on the issue of viability. The Local Housing Delivery Group, chaired by John Harman and involving public and private sector representatives has also published guidance on viability testing for local plans.[11] This broadly sets out the approach that has emerged as "best practice" from viability assessments to support local plan policies to date. This includes the suggestion that the Threshold Land Value—the value required to see land brought forward for development—"is based on a premium over current use values and credible alternative use values" although it acknowledges that local information on market values and transactions will be helpful to determine this threshold level.

Whilst this may be seen as an endorsement of the approach taken in early CIL viability assessments, it is also clear that most fall well short of the best practice described in the document, particularly in relation

[10] RICS (2012) *Guidance Note: Financial Viability in Planning*, 1st Edition (GN 94/2012).
[11] Local Housing Delivery Group (2012) *Viability Testing Local Plans, Advice for Planning Practitioners*.

to the testing of sites critical to the delivery of the plan, the level of consultation and agreement on approach with key stakeholders, the detail and range of data used and a proper assessment of the costs of other requirements and obligations that may be placed on developments. In part this is because the CIL charging guidance actively discourages the consideration of individual sites, and makes no reference to the importance of sites which are critical to the delivery of the plan.

The debate illustrates two conflicting issues described earlier in relation to the initial post war development charge.

On the one hand in conditions of scarcity, as will continue to be the case in high demand areas, land tends to trade at a margin above current development value due to competition from developers who see their expertise in producing the potential for an additional margin, because of general "hope value" and, for the time being at least, the "flight to quality" amongst investors. Thus if EUV plus models leave too low a margin, even if obligations are a relatively small proportion of development cost they may deter development. This would imply the need for use of market benchmarks.

On the other hand, the observation that "market values" seep upwards into land prices, reducing the proportion that may be taxed is clearly a risk with the 'market value plus assumptions' approach. The theory of CIL assumes that it will, by definition, secure some share of the current market value. In addition to this the literal application of planning policy requirements (particularly affordable housing) to many schemes, if then subtracted from market value would often result in a value below current EUV.

To date examiners have been reluctant to get involved in debates on appraisal methodology. The examiner's report for the Mayor of London's CIL[12] explicitly referred to representations on the merits of the methods described above and concluded that EUV plus was a reasonable method to use. This debate is likely to continue, particularly now that the RICS has published its guidance. The City of London Corporation has employed consultants who are seeking to use the "market value plus assumptions" approach to viability assessment and it will be interesting to see whether this results in different levels of proposed CIL to neighbouring authorities, although given the unique nature of the City property market, they may not in any case be directly comparable.

Appropriate Available Evidence

Possibly of more immediate concern is the lack of definition in the guidance of what constitutes "appropriate available evidence". The Charging Guidance makes reference to information on land values and property market reports. It also suggests that local authorities may wish to undertake some "limited sampling" of sites, but they are under no obligation to do so.

As noted above CIL is probably a greater risk to larger strategic sites which have abnormal costs and may be required to provide substantial on site infrastructure as well as significant levels of affordable housing. Many local authorities have information on the viability of such sites from previous open book appraisals, but are under no obligation to use such information, or even to consider site specific issues. Such sites are particularly important to the delivery of councils' housing pipelines. Research by Savills[13], suggests that 45 per cent of local authorities' five year housing pipelines is in such sites and many face significant viability issues.

Some authorities have reviewed CIL charges against previous appraisals and other market knowledge and paid particular concern to key strategic development locations. However the lack of requirement to do so and the implication in the Charging Guidance that authorities can choose to render some development unviable must be a concern and a potential conflict with the requirement to meet objectively assessed needs and support growth set out in the National Planning Policy Framework.

[12] *Mayoral Draft CIL Charging Schedule, Examiner's Report* January 2012.
[13] Savills Research (2011) *Spotlight on Strategic Development Sites*.

Issues around impacts on strategic sites have been raised in a number of the CIL examinations. The general approach taken by examiners has been (in a number of cases word for word) similar to the following quote from the Huntingdonshire Examination report[14], namely:

> "the Council has made it clear that the economic viability of any scheme that is otherwise acceptable in all other respects would be assessed for all other possible non CIL contributions on an overall basis. This would mean taking into account the fixed CIL liability first and then, if necessary, where the overall viability is in genuine doubt, any further site specific infrastructure needs in a flexible and negotiated process. With this in mind it is reasonable to conclude that the standard rate should not materially reduce the delivery of new housing through insufficient profitability for developers, in most cases, including on the larger sites."

As noted above the other elements to be negotiated would be affordable housing and other on-site infrastructure. It is not clear from this conclusion whether such schemes would genuinely be deliverable, and therefore meet the "soundness" tests for a strategic site in a local plan.

Relief and Exceptional Circumstances

The CIL regulations allow for three forms of relief: Charitable Relief, Social Housing Relief and Exceptional Circumstances relief.

Like all aspects of CIL, things are not as simple as they may first seem. First, although it is commonly suggested that all affordable housing is automatically "exempt" it is not. Applicants have to calculate their liability and apply for the relief, which does not cover all products which currently meet the definition of affordable housing, although this is intended to be rectified in updated regulations. In relation to charitable relief, there are three types, one mandatory and two discretionary, but they do not necessarily cover all of the activities of "charitable bodies".

Exceptional circumstances relief is only allowed in very narrow circumstances. This is ostensibly for two reasons: first because relief from a "tax" can constitute "State Aid"; and second because the Government does not want CIL to become seen as a "negotiable item", partly to address the concern for the credibility and certainty of the charge with developers and landowners.

Exceptional circumstances relief is therefore only available if the charging authority has decided that it wishes to offer relief and considers that:

- the cost of complying with the s.106 agreement is greater than the charge from the levy payable on the chargeable development;
- requiring payment of the charge would have an unacceptable impact on the economic viability of the chargeable development; and
- granting relief would not constitute a notifiable State Aid.

As noted above, depending on where the CIL level is set, most schemes which include a significant proportion of affordable housing and which have been subject to viability assessment would probably meet the first and second tests.

The issue of State Aid could be the subject of a separate paper in itself. Both central and local Government are extremely risk averse to the prospect of state aid challenge, and this has influenced a number of the parts of the CIL regulations including requirements for differential charges to be based on evidence of viability and limitations on the use of "in kind" contributions as well as rules on relief. The requirement for a planning obligation to be equal to the notional CIL charge for exceptional circumstances relief to

[14] *Report On The Examination Of The Draft Huntingdonshire Community Infrastructure Levy Charging Schedule* (2012).

apply may result from a desire to demonstrate that the applicant is not receiving an advantage because they are making contributions of at least as much as a notional competitor who was required to pay CIL.

It is for the Charging Authority to determine whether this constitutes 'State Aid' under EU law, and if it did whether it was below "de minimis levels" (€200,000 to any one undertaking over three years, assuming that Euros still exist by then).

Where relief is granted other reliefs (e.g. affordable housing or charitable relief) are not available and commencement of development must happen within one year of relief being granted. To date the Mayor of London has chosen not to allow exceptional circumstances relief, but other authorities have.

Consultation and Review

The regulations provide for statutory consultation periods, when the Preliminary Draft Charging Schedule is published and when the Draft Charging Schedule is published. Interested parties also have the right to be heard at the examination. Of the seven examinations held to date six have had public hearings, with one being undertaken in writing.

Experience to date suggests that there has been little change in the contents of Charging Schedules between the publication of Preliminary Drafts and the finally adopted versions. There have been some minor tweaks to charges for certain uses, and to the boundaries of charging zones. This is again likely to contribute to the lack of interest of the development industry in engaging with the process.

Some authorities have gone beyond the basic requirements set out in the regulations by holding consultation meetings with interested parties on their approach to viability assessment and using "developer sounding boards". Developers with a significant interest in an area are well advised to engage with the authority at the earliest opportunity, and also to consider "deliverability" issues, such as payment by instalment, exceptional circumstances relief and site specific issues as, although these are not a matter for the charge setting process, they can have a significant impact on individual developments.

In addition to consultation in the charge setting process, a number of authorities are committed to going significantly beyond the basic monitoring requirements set out in the regulations and provide detailed delivery plans for infrastructure and seek commitments from partners to work with them to ensure that it is provided. In addition some authorities, Wandsworth and Newark and Sherwood for example, have committed to a three year review of the adoption of CIL—which will coincide with the Government's commitment to review CIL as a whole in 2015.

Section 106, and Regulations 122 and 123

Regulations 122 and 123 are intended to provide re-assurance for developers that they won't be required to contribute more than once for the same piece of infrastructure and that s.106 contributions will be scaled back.

Regulation 122 gives, for the first time, a statutory basis for the tests that a planning obligation should be necessary, directly related to the development, and fairly and reasonably related in scale and kind to the development. Nevertheless, given current approaches to Environmental Assessment and the scope and requirements of mitigation, it is far from clear that this places any significant limits on planning obligations.

Regulation 123 requires local authorities to either produce a list of "relevant infrastructure" now commonly known as a "Regulation 123 list", on which CIL may be spent and for which they may not charge s.106 contributions, or, if they do not produce a list, not to charge s.106 for anything.

It also limits the pooling of planning obligations to five for any one item, or type, of infrastructure after a CIL charging schedule has been adopted, or 2014, whichever is the sooner. This is intended both as an incentive to local authorities to adopt CIL, by effectively outlawing "tariff" systems, and a safeguard to

developers in 'scaling back' obligations. In practice local authorities have interpreted the regulation as allowing them to pool up to five obligations for each single piece of infrastructure and each type, enabling them to receive up to five payments for schools generally and five for specific schools as part of developments. This would appear to largely negate the purpose of the regulation.

Regulation 123 lists need not contain more than one item of infrastructure. Some list detailed specific infrastructure schemes, but others, for example Redbridge, have a high level list of headings but reserve the right to charge for specific items which might come under the generic headings (e.g. a specific school) through s.106 if it is regarded as directly mitigating the impacts of the scheme. In effect this approach, which is legally consistent with the regulations, removes any safeguards that developers may be thought to have had in relation to limitations on s.106 requirements.

Regulation 123 lists have no formal link with the infrastructure planning process or the definition of what CIL may be spent on by local authorities. They are only required when a CIL charging schedule comes into force, may be revised at any time, and are therefore not considered as part of the charge setting process. This effectively means that it is not possible during the charge setting process to have confidence that assumptions in the viability assessment about the (usually low) assumed residual levels of s.106 requirements are accurate.

Part 3: The Wider Challenge

The introduction of CIL should not be regarded as an end in itself. When it was originally conceived it was intended as part of a co-ordinated package of actions which would release more land for housing, provide additional infrastructure, and therefore help support additional housing growth.

In its final incarnation it has become a tool to support all kinds of growth, and is no longer focussed on uplift in value on greenfield housing sites. Since the 2010 General Election there have also been significant wider reforms to the planning system and, at least in rhetorical terms, a commitment to a transformed role for local government and local communities in shaping and delivering development.

This final section therefore considers CIL in the context of the National Planning Policy Framework (NPPF) and the wider drive towards "localism".

CIL and the NPPF

As we have noted above the current guidance on producing Charging Schedules for CIL makes limited reference to Local Plans, actively discourages any consideration of strategic sites, and allows local authorities to set CIL at a level which may result in an unspecified level of development not being brought forward provided it does not jeopardise "development across the area".

Such an approach may work in the case of a city-wide CIL charge pitched at a relatively low level and contribute to a single piece of strategic infrastructure as is the case with the Mayor's CIL in London but would, arguably, be inappropriate and contrary to the thrust of other policy objectives for local authorities in seeking to encourage and facilitate growth, and particularly the delivery of key sites.

This dis-connect is further emphasised by the adoption of the NPPF which says that Local Plans must "meet objectively assessed development and infrastructure requirements", be based on evidence and be deliverable. (p.182) It requires authorities to identify key sites critical to the delivery of the strategy, including "deliverable" sites (with a buffer) for the first 5 years of the strategy and "developable" sites or broad locations for the following 5–10 years. (para.47) It also requires local authorities to identify strategic employment sites.

The NPPF has a strong focus on viability and deliverability. It suggests that the "cumulative impact of these standards and policies (all obligations including affordable housing and CIL) should not put

implementation of the plan at serious risk, and should facilitate development throughout the economic cycle." (para.174)

In relation to CIL it explicitly states that: "Where practical, Community Infrastructure Levy charges should be worked up and tested alongside the Local Plan. The Community Infrastructure Levy should support and incentivise new development, particularly by placing control over a meaningful proportion of the funds raised with the neighbourhoods where development takes place."(para.175) It also suggests that affordable housing and infrastructure costs need to be assessed at plan making stage and kept under review.

The combination of these policies means that local authorities will need to make a proper assessment of the deliverability of their plan, including an assessment of all obligations, with a focus on strategic sites. The corollary of this is that where local authorities have set inappropriate CIL levels or not taken into account properly their potential impacts on strategic sites, they will either have to reduce other requirements, notably affordable housing, or face challenges to their plans or appeals against other obligations, or sites with fewer abnormal costs than typically "brownfield" or "regeneration" sites. Effectively authorities will have a choice between a Viability/Deliverability "Merry-go Round" as illustrated in Fig.5, or a co-ordinated approach to plan making and the setting of obligations as shown in Fig.6. Clearly, given the imperative for Charging Schedules to be adopted by 2014, such a co-ordinated approach will take time to become aligned, but in the meantime it would be sensible for the CIL charge setting and review process to have regard to the delivery of sites critical to the delivery of the plan and to have tailored approaches to the delivery of critical infrastructure of those sites agreed with developers.

Figure 5

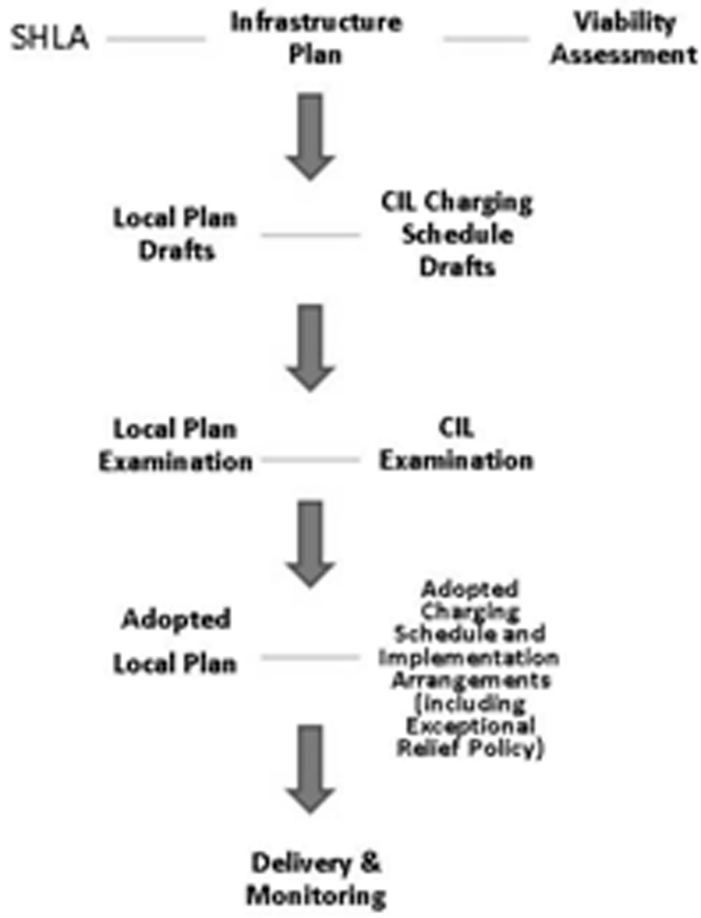

Figure 6

Localism & Delivering Infrastructure

Readers will have picked up a note of scepticism about the ability of the "rational planning" model of infrastructure delivery described in the context section above to actually plan for the right infrastructure and ensure that it gets built. In addition, in areas without new greenfield sites or "mega" regeneration schemes it's difficult to see whether it's either possible, or indeed useful, to try to distinguish between demand for infrastructure generated by the population of a development, and that required anyway by a rapidly expanding population, or to support a modern economy.

Provided that the first call on development value through planning obligations and CIL is used to deal with "showstoppers" for that development (otherwise it will never be realised as development will not be commenced) and that consequently "significant impacts" are deemed to be mitigated, both developers

and authorities should probably be more relaxed about whether expenditure on wider needs is the result of the "cumulative impacts" of development or simply to meet local needs and aspirations.

This is not to play down the role of local authorities (or groups of local authorities, or LEPs or other delivery vehicles). Indeed with the fragmentation of infrastructure delivery, the local level is probably the only place where such things can now be joined up, as a number of the CIL Front Runners have shown. Rather than, as happened previously, producing reams of plans and prospectuses, the most effective role of central Government is to co-ordinate the large scale investments for which it is responsible and to incentivise utilities (and possibly their regulators) to engage in local infrastructure delivery.

For local authorities CIL will be only one of a number of potential funding sources that they will need to consider in seeking to invest in infrastructure in their areas. The potential for Business Rate Retention, new mechanisms for investment such as Tax Increment Financing and the reform of Council Housing finance and the New Homes Bonus will in some places be more important than the potential of CIL, which is likely to be of most significance in places of relatively high land value where by definition there is "rent" to capture. On major schemes business rate retention alone could be worth multiples of what would be likely to be available from CIL and councils will need to consider the relative merits of different funding sources carefully.

To date only Bristol and Newcastle of the "Core Cities" have published draft charging schedules for CIL. However, it is likely that in these places CIL will form a small part of a wider package of investment as is likely to be the case in Manchester and its "City Deal" agreed with the Government, which includes a long term infrastructure fund secured against future growth. On the other hand, in high value areas like Wandsworth, there may be sufficient value for CIL to help underpin a Tax Increment Financing model for investment in the proposed London Underground extension. In other areas CIL might be part of the new "Garden Cities" model, which would take us full circle to the original UK approach to capturing betterment.

It needs to be recognised that, if this happens, it will be a long term shift and will require Government to follow through on its commitment to provide more financial freedom for local authorities, which will not be easy when the priority is to reduce pubic borrowing. At the same time it will require local authorities to change their mindset from one where they are responding to the latest central Government initiative to one where they seek to determine their own destiny. It also provides significant risks to those authorities facing particularly difficult economic circumstances, and those that do not have the capacity to respond.

It is likely that those authorities that make it work are those whose first question is "how can we use CIL to help deliver development?", not "how can we maximise income from CIL?".