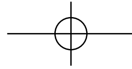

The Path to the Community Infrastructure Levy—Past, Present, Future

Stephen Ashworth and Joanne Demetrius

Context and Summary

Many factors influence land values—inflation, inward migration to an area, fluctuations in national economic conditions, rating[1] and of course planning control. From birth, planning has been interested in and has affected land values, and it has often trespassed into value capture or betterment. In broad terms betterment is any increase in the value of land that can be attributed to factors other than the individual efforts or investment of the owner of that land. Who should have the benefit of betterment has been the subject of a long and continuing debate that covers many areas—political, economic, ideological and practical. The emergence of the Community Infrastructure Levy offers an opportunity to refocus that discussion.

This paper is in three sections. The first section looks at some of the historic approaches that have been adopted to planning and to capture land value changes. The second section reviews several tariff arrangements within the existing planning system. The third section looks at the Community Infrastructure Charge. This final section plagiarises mercilessly from the Communities & Local Government (CLG) Paper on the Community Infrastructure Levy (CIL) published in August 2008. It sets out, in the form of a simple policy paper, how CIL could work, editing and adapting the CLG paper to offer a workable solution.

In broad terms the paper argues that although value capture is a consequence of the planning system, both history and recent practice demonstrate that land values and value capture should not be a driver of either planning frameworks or planning decisions. If CIL is to work it has to understand the politics and economics of value capture but, critically, it has to avoid treating value capture as part of the architecture of a workable mechanism.

Section A: Historical Background

A series of legislative games

Early attempts at systematically capturing land value go back as far the Housing, Town Planning &c. Act 1909.[2] While this legislation was primarily concerned with housing reform, it gave local authorities a discretionary power to prepare schemes:

> *"as respects any land which is in course of development or appears likely to be used for building purposes, with the general object of securing proper sanitary conditions, amenity and convenience in connection with the laying out and use of the land and of any neighbouring lands."*[3]

[1] Professor Malcolm Grant—Betterment Again (JPLC 1991). This usefully reminds us that rating is a clear and simple way of capturing value. Using the rating system as a replacement for planning benefits was discussed by the British Property Federation as an alternative to Planning Gain Supplement before promoting a tariff based mechanism.

[2] There were earlier ad hoc attempts. In the 14th Century land taxes were raised to pay for "castells and forts" on the premise that the additional security offered by the castles would raise land values.

[3] Section 54 Housing Town Planning &c. Act 1909.

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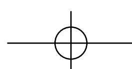
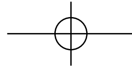




These schemes applied on the whole to suburban land and their preparation and approval was a lengthy process. In 1932[4] the power to prepare planning schemes was extended to all land in England and Wales. The concept of the planning scheme was born and for a time was useful in obtaining a degree of uniformity in terms of amenity, convenience and controlling changes in use of existing buildings. However, the schemes were ill equipped to deal with the social and economic changes which followed—population growth, increases in the size of towns and cities and the relocation of many industries.

One of the side effects of these early planning controls was the need to address contentious issues of compensation and betterment. Simply put, where controls resulted in an increase in value local authorities were able to recover from owners 50 per cent of any increase in the value of land as a result of the making of a scheme.[5] Any decrease in value gave owners a right to receive compensation from the local authority where they had been "injuriously affected" by any of the provisions in a planning scheme (subject to certain exceptions) or by the carrying out by the authority of any work under the scheme. The 1932 Act later increased betterment which local authorities could recover from owners from 50 per cent to 75 per cent. This payment however could be deferred until the increase in value was realised i.e. on the sale or disposal of the land.

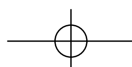
The administrative and financial burden that this created proved to be too much for many local authorities. In attempts to control development in their areas many would leave themselves exposed to large liabilities for compensation which could only be offset where significant development was allowed to bring forward the funds required in the form of betterment. More often than not it was impossible to recoup any betterment because of the provisions in the 1932 Act which allowed a landowner to defer payment until he had realised the increase in value of his land. As a consequence these policies largely failed to deliver the anticipated contributions.

A series of examinations into the land use system followed. The first of these was the Royal Commission on the Distribution of Industrial Population.[6] The report championed the merits of relocating industry from congested urban areas and the redevelopment of those areas.[7] This was later followed by a report of the Committee on Land Utilisation in Rural Areas.[8] Both reports expressed concerns about the need to exercise control over development and recommended:

(a) the extension of development control across the whole country;
(b) a central planning authority; and
(c) a national plan governing the location of industry and people.

Two Acts were subsequently passed specifically in response to these findings.[9] In 1941 the Government appointed the Expert Committee on Compensation and Betterment[10] under the chairmanship of Uthwatt J. to consider issues including betterment and compensation. The Committee recommended the "nationalisation" of development rights in land located outside already built up areas. That land would remain in private ownership but any development would

[4] Town and Country Planning Act 1932.
[5] Housing Town Planning &c. Act 1909 Sch.4.
[6] Cmd 6153—The Barlow Commission.
[7] The Barlow Report 1937.
[8] Cmd 6378—The Scott Report dated 1942.
[9] Ministry of Town and Country Planning Act 1943 and Town and Country Planning (Interim Development) Act 1943.
[10] Cmd 6386—The Uthwatt Report (Final Report) September 1942.



need the consent of the State which would then acquire that land either for development by a public authority or for sale or lease to a private developer.[11]

Cash strapped authorities, ineffective legislative and poor administrative procedures meant the initial attempt at land use planning had failed. It became clear that planning legislation based purely around regulatory control was not sufficient to deal with the changing environment. The Second World War bombings created an impetus to reconstruct older towns and cities and although local authorities already had powers to carry out town centre improvement schemes (through Local Acts) there were no national powers to control or carry out redevelopment schemes.

The recommendations made by the Barlow, Scott and Uthwatt Reports informed the system of land use control established by the Town and Country Planning Act 1947. This Act repealed all the previous planning legislation[12] and a new modern system of planning was established which took effect from July 1, 1948. The main features of the Act were:

(a) the creation of planning authorities which had to prepare a development plan for the area;
(b) all land was subject to planning control, not just within a scheme;
(c) where permission was granted for development falling outside the existing use of land, a development charge was payable to the State equal to the value of the permission;
(d) where planning permission was refused, no compensation was payable;
(e) any compensation to landowners affected by (c) & (d) above could be claimed against a special fund of £300 million provided that the land was purchased before the Act came into force;

Consistent with the Uthwatt recommendations the Act effectively nationalised development value in all land for £300 million. However, it did not however provide for the acquisition of all land by the State for development purposes, although extensive compulsory purchase powers were given to public authorities.

As a result the Government had to deal with the question about where new development should be allowed and how to deal with the resultant speculation in land. Planning control directly affected the distribution of land values. The Uthwatt Report had called this concept the "*shifting value*" of land, arguing that the "*public control of the use of land, whether it is operated by means of the existing planning legislation or by other means, necessarily has the effect of shifting land values. . . .it increases the value of some land and decreases the value of other land, but it does not destroy land values"*.[13]

The 1947 Act led to a restriction on the supply of land for development. There was insufficient incentive for landowners to free up land for development. It was also opposed by the Conservatives. In 1952 the Churchill Government published a White Paper[14] announcing the proposed revision of the financial provisions in the 1947 Act. It was proposed that development rights should be placed back in the hands of private ownership.

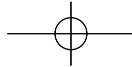
The 1953 & 1954 Town and Country Planning Acts were subsequently passed leaving intact the non-financial provisions of the 1947 Act. If permission was granted, the owner no longer had to

[11] Uthwatt Report—para.56.

[12] With the exception of the Ministry of Town and Country Planning Act 1943.

[13] Paragraph 26—Uthwatt Report 1942. The report also refers to the concept of *floating value*—"the monetary value of the expectations of landowners who hope that a particular land use would fall to their land".

[14] Cmnd 8699 Proposals for Amending the Financial Provisions of the 1947 Act.



pay a development charge. If permission was refused or granted subject to conditions, owners were entitled to compensation provided that loss of development value had been established under the 1947 Act.[15] The provisions for compensation for planning restrictions in the 1954 Act were left untouched and re-enacted in all the Planning Acts up to 1990.[16] The relative ease with which the betterment provisions were removed from the 1947 Act is, perhaps, an indication of the lack of complete union between planning control and land value capture/betterment.

Following the 1964 general election another attempt was made to address the compensation-betterment problem. In 1965 the Finance Act was passed which introduced a system of capital gains taxation. This managed to capture some of the windfall profits from development of land but taxation of development value still remained a political hot topic. Again there was no clear cross party support for the proposals.

The Labour Government passed the Land Commission Act 1967. This set up the Land Commission charged to acquire land for development at current use value with an increment to the owner. At the same time a betterment levy would be imposed on development value at a rate of 40 per cent of the net development value. Upon its return to government in 1970, the Conservative Party abolished the development charge and repealed the Land Commission Act before it had even got off the ground.

In 1974 the Labour Government published a White Paper[17] which again attempted to address the issue of land value. The Community Land Act 1975 and the Development Land Tax Act 1976 followed. The Community Land scheme was intended to function as an instrument of land policy by giving the community control over development in accordance with its needs and priorities. Local authorities were given powers to acquire land for development and Development Land Tax was payable when development value was realised.

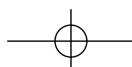
The Community Land Act was abolished in 1980 by a Conservative Government but Development Land Tax (which had had considerable cross party support when introduced) was retained for another five years. Development Land Tax was eventually recognised to be a disincentive to development and, critically, the tax had proved to be largely avoidable.

Both the 1967 and 1975/76 legislative approaches reflected an underlying desire to capture land values, and a sense that it was unfair for the benefits associated with development (and implicitly associated with the grant of planning permission) to be retained in private hands. However, both approaches failed to address this issue in a manner that was politically or administratively acceptable.

The emergence of planning gain

As the Community Land Act and Development Land Tax proposals failed, different ways of capturing land value were explored. The 1932 Town and Country Planning Act (and later the 1947 Act) had given local authorities the power to enter into planning agreements with landowners to regulate the development and use of land. That power subsequently followed through into s.52 of the 1971 Town and Country Planning Act . When the planning legislation was consolidated in 1990, s.52 was replaced by s.106 of the 1990 Town and Country Planning Act.[18]

[15] 1947 TCPA s.58.
[16] The Planning and Compensation Act 1991 repealed them.
[17] Cmnd 5730, para.16.
[18] and later replaced by a new Section 106, 106A and 106B under the Planning and Compensation Act 1991—PCA 1991 s.12.



Planning agreements started to be used fairly extensively in the late seventies. It became relatively commonplace for applications to require the provision of some kind of public benefit/planning gain. Planning gain emerged in part as a response to the failure and repeal of legislation designed to capture value and was designed to claw back some of the gains for the community on a negotiated case by case basis. The agreements came under increasing criticism as more often than not the benefits had very little to do with the actual development.

In an attempt to deal with the criticisms about inappropriate uses of planning agreements, in 1981 the Government's Property Advisory Group[19] called for and suggested guidelines to indicate circumstances in which local planning authorities were entitled to ask developers to provide planning gain, stressing that bargaining for planning gain should be discouraged. In 1983 the Department of the Environment responded with Circular 22/83 (later replaced by Circular 16/91). This endorsed measures which overcame obstacles to development or avoided "planning losses" by counteracting the adverse effects of developments but provided clear policy boundaries to what was "necessary". Circular 16/91 was later superseded by Circular 1/97 which re-affirmed the guidance given in the previous Circular but went further in trying to clarify matters in the light of various judicial pronouncements.

The *Tesco*[20] case clearly demonstrated that there was a divergence between law and policy at the time. It was recognised that whilst the Secretary of State's policy was a lawful policy, it was nevertheless more restrictive than the law. While a material consideration, the policy could be given limited weight by local authorities and developers looking for different outcomes. Circular 1/97 was an attempt to limit the effects of the *Tesco* decision and so it introduced the concepts of fairness, openness and reasonable negotiation of planning obligations. In particular the Circular advised that planning authorities should not seek contributions through planning obligations unless it was relevant to planning; directly related to the proposed development; fairly and reasonably related in scale and kind to the proposed development; and reasonable in all other respects.

The Secretary of State's policies are now contained in Circular 05/2005. That policy states that planning obligations should only be sought where they meet *all* of the following tests, namely:

(a) relevance;
(b) necessary to make the development acceptable in planning terms;
(c) directly related to the development;
(d) fairly and reasonably related in scale and kind; and
(e) reasonable in all other respects.

Circular 05/2005[21] states:

> *"contributions may either be in kind or in the form of a financial contribution. In the case of financial contributions, payments can be made in the form of a lump sum or an endowment or, if beneficial to all parties and not unduly complex, as phased payments over a period of time, related to defined dates, events and triggers. Policies on types of payment, including pooling and maintenance payments, should be set out in Local Development Frameworks. The local authority's generic policies on payment types should be*

[19] "Planning Gain" 1981. Paper by the Property Advisory Group.
[20] *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 W.L.R. 759.
[21] Paragraph B17.

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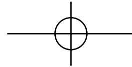

contained in Development Plan Documents and the details of their application in Supplementary Planning Documents.''

Although this remains the nominal policy basis for planning benefits in the present planning system, it failed and still fails to reflect the broader scope offered by the legislation, the increasing need for development funding of infrastructure and the challenge of dealing with incremental increases in demand on infrastructure created by a series of small developments. The approach failed and still fails to address the ability of local authorities to promote planning benefit policies through the development plan regime (supported by the cost and delay associated with the appeal system) that systematically ensure that development make a broader contribution towards community costs. There remains an absolute mismatch between the limited ambitions of policy and the opportunities offered by a legislative framework that was, after all, designed partially as a structure for securing land value contributions.[22]

In 2001 the Government issued a Green Paper[23] which criticised the system of planning obligations as being over-complex, the cause for delays and a lack of transparency which in turn created an atmosphere of uncertainty and unfairness. A consultation paper accompanied the Green Paper[24] which was unapologetic in its description of planning obligations as economic instruments used to secure a wide range of infrastructure and other community benefits by the private sector. Equally it openly admitted that the system operated in a way that was inconsistent, and that it clearly needed to be changed. The recommendation was the introduction of a system of tariffs to meet a number of planning objectives including the provision of affordable housing. It did not seek to reopen the debate over betterment tax ''other than to acknowledge the nature of the relationship between planning obligations and land betterment''.[25]

The Government's preferred solution was to introduce standardised tariffs for different types of development through the plan making process. These tariffs would only be supplemented or substituted by negotiated agreements where they were clearly justified. Whilst seen as a radical move by some, it was acknowledged that the proposals were not a betterment levy. However, following heavy criticism from the House of Commons Select Committee, the ODPM (July 2002) decided to abandon the original proposals.

The Planning and Compulsory Purchase Bill was first introduced to Parliament in December 2002. It contained no provisions related to planning obligation reform. A further consultation followed[26] which resulted in the Government's proposals for reforming the system and the proposed new optional planning charge. New clauses were tabled for inclusion in the Planning Bill.

The provisions in ss.46 and 47 of the Planning and Compulsory Purchase Act 2004 give the Secretary of State considerable discretion as to the circumstances where developers must make a contribution. The Secretary of State may by regulations make provision for the making of a planning contribution in relation to the use and development of land in the area of the local planning authority. Under s.47 of the 2004 Act the regulations may stipulate maximum and minimum amounts in relation

[22] As noted in Section B, although tariff policies arguably trespass beyond the wording (if not the spirit) of Circular 505 local planning authorities have not used policies directly as a value capture mechanism. Instead they have sought to recover identifiable costs, acknowledging that those costs will inevitably be paid for out of changes in land value.

[23] Planning: Delivering a Fundamental Change, DTLR 2001.

[24] Reforming Planning Obligations: a consultation paper/delivering a fundamental change January 2002.

[25] Supra.

[26] Contributing to Sustainable Communities—A New Approach to Planning Obligations, ODPM, 2003.

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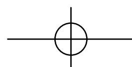

to payments made (as required by the local planning authority's Development Plan Document). In addition the regulations may require the planning authority to apply receipts from the planning contributions to specified purposes.[27]

Running concurrently with this was the review of housing supply commissioned by the Treasury which was chaired by Kate Barker. The Barker Report[28] recommended that the Government introduce a Planning Gain Supplement (PGS) which would be tied to the grant of planning permission so that development gains could be recouped for wider community benefits—harking back to the post war attempts to tax development gains such as the development charge under the 1947 Town and Country Planning Act and the Development Land Tax Act of 1976 (see above). The Barker Report also recommended that the use of planning obligations should be scaled back to cover the direct impacts of development and the mitigation of its effects along with the provision of affordable and social housing.

The Treasury announced that the introduction of a PGS would be considered whilst ODPM decided to press ahead with implementing changes to the current system of negotiated agreements and in July 2005 issued Circular 5/05 and a Practice Guide on planning obligations.[29]

After intensive lobbying from both industry and Government PGS has now been discarded[30] in favour of the proposed Community Infrastructure Levy. The strongest resistance came in the form of proposals to ''institutionalise'' tariffs, offering an alternative way in which to secure a greater level of developer contributions. One of the ironies is that many of those who opposed the tariffs in 2001/2002 became the advocates of standardised obligations as an antidote to PGS.[31]

As discussed in Section C, law and practice has now moved on to the proposed Community Infrastructure Levy. At it's heart those CLG still looks at issues of value capture, albeit in a slightly half hearted way. It says:

> *''It is also right that those who benefit financially when planning permission is given should share some of that gain with the community to help fund the infrastructure that is needed to make development acceptable and sustainable.''*[32]

and

> ''*In drawing up its [CIL] charging schedule, the charging authority may, amongst other things, make reference to the likely increase in value arising from the grant of planning permission in its area.''*[33]

It would seem that we are in part back to where we started, with planning controls and value capture being pursued together. Little appears to have been taken from past experience about the difficulties associated such a joint endeavour.

[27] The optional planning charge was not brought into following the Minister for Housing & Planning's statement to Parliament on June 17, 2004 (Hansard Column: 44WS).

[28] Review of Housing Supply, March 2004.

[29] Circular 05/2005 and Planning Obligations: Practice Guidance, July 2006.

[30] Although an enabling Act remains on the statute book, the Planning Gain Supplement (Preparations) Act 2007.

[31] ''Don't Kill the Goose : the case for Tariffs not Tax'': British Property Federation September 2005.

[32] Paragraph 1.22, CIL August 2008.

[33] Paragraph 3.51 CIL August 2008.

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Lessons from the wreckage

The post-war system of town planning in the 1947 Act was a response to the need to co-ordinate the renewal of areas devastated after the war, to meet new housing demands, overhaul the transport system, and accommodate new industries and other amenities.[34] Controls over the use and development of land were married with financing issues in a complex system of compulsory purchase and compensation. Funding was achieved through a system of land value capture.[35] All of these matters were reflected in the 1947 Act with the unhappy effect that planning became associated with land value capture. The ease with which they were decoupled suggests that they are not natural or equal partners.

The case for recouping or capturing betterment is based on the idea that landowners of benefited properties have received an uplift whilst accepting that owners of other properties have suffered ‘‘worsenment’’.[36] Planning permission released value in those locations where development was allowed and prevented it accruing elsewhere. The idea was that the Government or local authorities should be entitled to participate in such increases in value in order to recover all or part of this increase to help pay for improvements deemed necessary at public expense. This justified the introduction of a development charge based on the difference between existing use value and development value. Although there has been endless dispute about how this should work there has been consistent acceptance of the equity of the approach.

Betterment taxation (i.e. development charge based) was enacted and repealed three times in the second half of the twentieth century. The first was the development charge introduced in 1947 and repealed in 1953. The second was the betterment levy introduced in 1967 and repealed in 1970 and the third was the Development Land Tax introduced in 1976 which was abolished with effect from 1985. These early measures failed for three fundamental reasons. First, political with all three attempts introduced by Labour Governments subsequently repealed by Conservative governments. Secondly, an administrative inability to bring land onto the market because landowners hoarded land to avoid paying the tax. Thirdly, the marriage between the ownership of land, planning control and land value capture has always been awkward and forced.

It is always difficult to draw clear lessons from history. Times change and analogies are imperfect. It is clear, however, that it is difficult to find a way to capture betterment. A variety of different measures have been tried without success. It is even more difficult to try to capture betterment if the process is tied to planning control so that value shifts become, effectively, a planning consideration. Although it is not a necessary conclusion from the evidence, there is a reasonable argument that value capture should only have a semi-detached relationship with planning control. While land value changes are a necessary consequence of development plan allocations and the grant of planning permission, planning control should not directly seek to shift or capture that value. Value changes should be used to inform rather than to drive the planning system.

Section B : Present Practice

Planning benefits are still, too often, dealt with in an opportunistic and ad hoc way. Too few developments are subject to proper and properly considered planning obligations. Where planning

[34] Uthwatt Report, 1942.
[35] Land Value Taxation: *McGill and Plummer.*TS27-Valuation Techniques and Applications.
[36] Prof Malcolm Grant—Betterment Again—JPLC 1991.

obligations are negotiated they often reflect, necessarily, the skills base and experience of the planning officers involved.[37]

As a consequence many authorities have moved towards a more standardised approach often on a topic by topic basis. Around 50[38] planning authorities have developed more comprehensive tariff proposals. Many of these have been in existence for some time but tariffs were given a headline presence when the Milton Keynes Partnership (MKP) developed a tariff approach for the major expansion areas around Milton Keynes. It is worth reviewing the Milton Keynes experience and other existing tariff arrangements to see if there are lessons that can be drawn out to inform the CIL debate.

Milton Keynes

The Milton Keynes tariff is based on a detailed business plan for the two major development areas to be east and west of Milton Keynes. Around £1 billion worth of infrastructure is required to serve 15,000 houses and several million square feet of commercial development. The business plan assumes that around £310 million will be raised from developer contributions. This cost is apportioned between the uses leading to a charge of £18,500 per house (including affordable housing units) and roughly £250,000 per hectare of commercial land.

The cost allocation bears a broad relationship to the impact of each class of development, so that education costs are only charges to residential development. The charge is in addition to a requirement to provide affordable housing and meet appropriate sustainability standards. There is no land cost in the charge but there are provisions to ensure broad cost equivalence between developers.

The charge is levied on residential development on an area wide basis at 10 per cent of the charge when an implementable consent for that area is granted, and a further 15 per cent when planning permission is implemented. The balance is paid on a per unit basis on completion of the dwelling. For commercial development 25 per cent of the charge is payable on implementation, 25 per cent on completion and the balance on occupation.

All payments fall due on a longstop date normally 10 years after implementation (and conditional on implementation) for the maximum permitted number of units/floor space. In order to protect MKP against a failure to make future payments, MKP can ask for security for payment towards the end of the longstop period.

If there is agreement with MKP, developers can provide infrastructure in kind.[39] If they do so then, once they have provided the infrastructure, they can deduct the cost (up to an agreed cap) from future tariff payments.

MKP accept a best endeavours obligation to provide the infrastructure in accordance with the business plan and the programme within it. The business plan can change so there is a degree of flexibility and an ability to respond to changes in circumstance. MKP do not have contractual relationships with the infrastructure providers, although there are memoranda of understanding with Milton Keynes Council and the Highways Agency. Infrastructure delivery is co-ordinated in a series

[37] Alongside CIL August 2008 CLG published a paper on valuing Planning Obligations in England: Update Study for 2005–2006, Sheffield University 2008. This is testament to the way in which planning obligations are still relatively ad hoc in application.

[38] Estimate in the British Property Federation submission to CLG on the Planning Gain Supplement 2007.

[39] A range of considerations are taken into account. These include compliance with the procurement regime, the relative importance of the infrastructure, and value for money issues.

of programmed meetings and payments to infrastructure providers are only normally made by MKP when there is a commitment to the delivery of that infrastructure.

The approach was initially developed outside the Local Development Framework. Milton Keynes Council then promoted Supplementary Planning Guidance that provided policy support for the approach. In practice the tariff arrangements were agreed with the principal landowners and developers in the area, to provide a common basis for agreement for all, so development plan support was not pivotal.

MKP have carried out some soft market consultation on the ability to raise capital on the basis of the committed income streams. Although there is an acceptance in principle that capital funding should be available, the terms quoted were too high and did not recognise the relative absence of risk.

Horley

The Milton Keynes proposals built on similar work that had been carried out by Reigate & Banstead Borough Council (RBBC). RBBC developed a tariff approach to address the infrastructure needs associated with two major urban extensions for around 2,600 houses around Horley. All necessary infrastructure was costed and a per unit charge calculated for residential development. Different charges are levied for different size units to a level of £13,000 per house. Affordable housing does not pay. The figures are reviewed regularly. Payment is due within 28 days of a material operation although this is tailored/phased for larger developments.

When infrastructure costs were calculated it was assumed that there would be a shortfall in collection—in particular that not all 2,600 proposed houses would be built together. A cost contingency was also built in. This increased the level of charge. In negotiations it has been accepted that if there is a cost over-recovery then repayment will be made. For some infrastructure it was accepted that the cost should be shared between existing residents and the new development, with rough proportions of the cost (based on headcount) being identified for the provision of a new leisure centre. An allowance was made for land costs, although at historic prices.

Commercial development is not charged but there is an expectation that there will be a commensurate charge if development comes forward. There are emerging proposals for Horley town centre and if these are progressed the commercial element will be expected to make appropriate contributions.

Although developed mainly for the two main development areas the charge also applies to all residential development in Horley. A standard form unilateral undertaking sets out payment obligations and applies to all residential development. In practice the small sites have been making contributions ahead of the major sites. Over £1 million has been committed/collected; money that would not have been collected in a non-tariff regime.

Surrey CC is a party to the agreements for the major developments. RBBC have informal arrangements with the Council about the delivery of the necessary infrastructure.

The charge is supported by a Supplementary Planning Document that is now in a second edition, updated to take account of changes in costs and timings.

London Thames Gateway Development Corp

London Thames Gateway Development Corp (LTGDC) has developed a two tier standard obligation, with different amounts being charged in the Lower Lea Valley (LLV) and the London Riverside

(LR) areas, reflecting differing abilities to pay in each area. LTGDC identified the infrastructure requirements in each area. They concluded that commercial development was unlikely to make a significant contribution in initial years. On this basis infrastructure costs per house came to £22,000 in the LLV and £28,800 in LR. After analysing development viability, and consulting widely, an initial discounted charge of £10,000 and £6,000 in each area was settled. This is payable at 25 per cent on implementation of a phase for all units in the phase and 75 per cent on occupation of each unit.

When calculating the infrastructure costs, LTGDC assumed that there would be no public funding. They did not include any land costs for schools or other major infrastructure, although there is provision for some land acquisition costs for some elements of the works. A two year rolling review programme is envisaged with charges changing (up and down) as infrastructure is delivered and new requirements identified.

LTGDC have built in provision in their policy for a deferred charge. Recognising that, because of viability issues, the full amount that could have been justified is not being charged, there is a mechanism on larger sites to secure an additional contribution if it can be afforded. When settling the planning obligation the developer can opt either to pay an increased amount depending on either sales values or the then prevailing discounted charge, or to agree at the outset a fixed amount higher than the discounted charge.

LTGDC agree to deliver the infrastructure in accordance with a development programme and business plan.

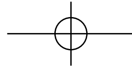
LTGDC do not have plan making powers. A process similar to the consultation exercise on a Supplementary Planning Document was carried out, and underpins the LTGDC policy. The approach has been adopted by some of the underlying local planning authorities in determining applications adjacent to the Development Corp area.

Kent Thameside Transport Tariff

When the proposals for Eastern Quarry were being negotiated one of the main outstanding issues was the level of contribution towards off-site transport works. Kent CC and the Highways Agency, together with the planning authorities at Dartford BC and Gravesham BC, recognised the need for a comprehensive solution on the A2 corridor to secure acceptable traffic conditions. Over a dozen transport schemes were identified and costed, effectively schemes of sub-regional significance. As part of the discussions with Land Securities a mechanism for sharing the costs among the public and private sectors was developed.

Land Securities agreed to pay £40 million in relation to the 6,250 houses and 2 million square feet of commercial development, breaking back to a contribution of around £5,000 per residential unit. This will be paid in fixed annual instalments starting on implementation. An important component of the eventual arrangement was that in return for fixed and certain payments there are no Grampian conditions in relation to tariff infrastructure.

Dartford and Gravesham developed a contributions policy alongside this for the balance of development in the A2 corridor. So far Dartford BC either have agreements or are in discussions with owners on smaller sites able to contribute £3.5 million. It was recognised that there would be a requirement for public funding, and CLG and the Department for Transport have committed to



pay around £50 million towards the schemes. The Highways Agency has also committed to carry out a particular junction improvement by 2014 at a cost of around £25 million.

Over time the £5,000 per unit residential contributions and contributions from other development should meet the overall scheme costs. However, it has been accepted that there will be a cash flow deficit and Kent CC has agreed, in principle, to borrow to fund that gap. The County Council will be repaid as later tariff contributions are collected by Dartford and Gravesham. To have the confidence to borrow and commit to infrastructure provision on this basis all parties are entering into a series of commitments to each other to collect tariff, make payments and work collectively to deliver the infrastructure necessary to support the proposed growth.

Lessons from present practice[40]

Tariffs are easy. They can be used on greenfield sites. They can be used in brownfield areas. They can apply to large schemes. They can work on small schemes.

The costing of infrastructure is not a science. Indeed it is almost always flawed. However, since the projected costs are normally less than the amount being collected there is always a significant safety margin to allow for the inevitable errors of calculation. When calculating costs not all infrastructure will be assessed, and there will doubtless be cost over-runs. Amounts can and should be built in for these uncertainties. A process for review is probably necessary, although the form that this should take is less clear.

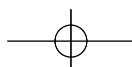
Who should pay is a matter of informed choice. Some authorities charge a similar amount on all residential units regardless of size; some tailor contributions. Some tariff regimes apply to commercial development; others do not. All payments are timed to relate to traditional steps in the development process—implementation and occupation. Each approach seems to work. To date there have been no problems with enforcement, hardly surprising since the enforcement mechanisms are identical to those in normal planning agreements.

Where charges have been levied differently on different types of development the apportionment of cost has tended to be on an impact related basis. This has universally been a crude analysis. All development makes transport contributions, normally on a vehicle trip generated basis. Education costs have traditionally been borne by the residential development. Training obligation costs have often been borne solely by commercial developers.

Infrastructure delivery obligations are important. Developers want to know that infrastructure will be provided. If they are paying they do not want to run the risk that the public sector will fail to deliver. Most authorities accept a delivery obligation. As a consequence there is an acceptance in most regimes that either the developer can provide the infrastructure themselves or that there should be no negative Grampian conditions.

Since the total infrastructure cost is rarely recovered, there appears to be a growing acceptance that further ‘‘deferred’’ contributions are acceptable if the viability assumptions prove pessimistic. Ironically this is being reinforced in the present market. If developers argue down the initial level of charge (leaving more of the infrastructure burden to the public sector) they almost necessarily have to accept the logic of an increased charge if/when market turmoil ceases and values recover. There are a number of ways that this is developing and limited evidence of the most practical approach.

[40] These lessons have been drawn from a review of around 20 tariff arrangements in addition to the four outlined.



All standard charge approaches assume that other planning requirements will still be met. On site infrastructure will still be provided. Site-specific works will still be secured. Sustainability, affordable homes and design standards will still be met.

There is also an acceptance that there may need to be site-by-site negotiations. Tariff policies cannot uniformly (and mindlessly) be applied. There is always a level of discretion. In practice, there are limited requests for the exercise of discretion. On small sites the price of arguing about the amounts is outweighed by the costs potentially saved. On large sites the delay avoided is often higher than the cost reduction that might, potentially, be secured. Only where there are genuine reasons for not paying—significant listed building refurbishment requirements, remediation obligations, a land use with a high value that needs to be displaced—is the argument worthwhile.

Where there is a dispute it is largely a question of competing viability assessments, and then a compromise on both parts. This draws on the type of valuation exercise common in arguing about levels of affordable housing. Financial models are readily available to provide a sensible foundation for discussions.

There are weaknesses in the existing tariff regimes. Although consultation during the policy making has often been good there has rarely been the opportunity for a real examination of the approach, assumptions or figures. There is a real inconsistency in the level and quality of information provided by infrastructure providers. Some are good; most aspire even to be poor. Too many promoters fail to recognise that tariff regimes represent the public sector taking responsibility for delivering infrastructure. That should mean an acceptance of both cost and programme risk. It rarely does. It should mean that a developer is entitled to expect Grampian conditions related only to the timetable in the delivery programme and not to actual haphazard and uncertain delivery of infrastructure. Too often local planning authorities treat tariff payments as a free lunch. Like the concerns arising out of the historic value capture regimes CIL needs to designed to avoid these concerns.

Postscript

There is an elephant in the room in the CIL debate. Given that tariff arrangements are working, why is there a need for legislation? The most honest answer is that the CIL proposals themselves are the main reason since they reflect a perceived need for change. In reality tariff proposals could have and would have evolved within the existing Local Development Framework process using planning policy and planning agreements. There is a strong argument that the resulting system would have been better considered than the "big bang" that will result from the present CIL proposals. One benefit of CIL is, however, that we will all escape sterile inquiries that seek to challenge the legitimacy rather than the adequacy of proposed tariff regimes.

Section C : The Community Infrastructure Levy

The August 2008 CIL paper sets out the present CLG thinking on how CIL will be developed. The CIL paper has been criticised for failing to set out clearly the way in which CIL will work in practice. Although not a formal consultation paper[41] it sets out a number of possible arrangements that need to be considered further. For a variety of reasons it does not set out a clear and comprehensive approach to CIL that is capable of working.

[41] It is assumed that there will be consultation on the CIL regulations in due course.

There are some difficult decisions to take but, drawing on the history of past attempts at value capture and looking at present planning practice, the structure of a sensible system almost writes itself.

This section of the paper outlines how CIL should work. It follows the same format as the August CLG paper and comments in the footnotes on areas where there are differences in approach. The core areas of difference are:

(a) promoting CIL within the existing planning system within Development Plan Documents (CIL DPD[42]);
(b) ensuring that CIL is mandatory by 2017, and removing the ability for planning conditions and planning agreements to duplicate CIL infrastructure requirements;
(c) making it absolutely clear that the apportionment of CIL infrastructure costs must be dealt with on a broad impact basis and not, in any way, in a manner related to value. There is no reason to repeat the historic mistake of trying to use the planning system to capture value rather than treating that as a happy (and necessary) incident of a proper planning process;
(d) removing the slavish desire on CLG's part to take out any level of discretion from the planning system. Instead it proposes that we trust local planning authorities and the planning system to decide how to calculate and charge CIL, including allowing, in some circumstances, development to proceed without paying CIL;
(e) committing the public sector to the delivery of CIL infrastructure and ensuring that infrastructure providers as a whole make long term delivery and funding commitments and, as a consequence, removing Grampian conditions as absolute constraints on development.

A number of "principles" need to be identified in advance to ensure that CIL will work :

(a) CIL will always be crude. It cannot and should not be too sophisticated. The relationship between the impacts of a development and the payment that is made will at best be broad brush. Both historic and recent approaches have attempted to be too scientific, pretending greater uniformity in development than exists;
(b) there will be winners and losers, particularly when CIL is introduced. CIL will decrease land values so there will be some who will make less (if any) profit as a consequence of the introduction of CIL. In time residual values will adjust to ameliorate most of these effects but there will be some harsh immediate consequences. This is unfortunate but inevitable;
(c) there will always be sites where CIL is not applicable, or not applicable in full. The key questions are how to limit these and how to provide a sensible and transparent mechanism for adjusting or abating payments.

The following sections largely use the headings in the August 2008 CLG Paper and set out, largely using and developing the CLG text, a way in which CIL could operate in practice. The footnotes explain why other options have been rejected, including options suggested by CLG.

Introduction (Chapter 1)

Introduction

CIL will be a new charge which local authorities in England and Wales will be able to levy on most types of development in their areas. CIL charges will relate to the size and character of the

[42] For ease in this paper, reference is made to a CIL DPD. In reality CIL will be addressed in a variety of documents including the Core Strategy and multiple DPDs.

development paying it. The proceeds of the levy will be spent on local and sub-regional infrastructure to support the development of the area.[43]

Providing supporting infrastructure for development is vital to ensure that new homes and jobs are sustainable. Various studies have identified the central importance of transport for growth. Therefore it is possible that in many areas a substantial proportion of the levy receipts will be spent on transport infrastructure. [44] Each authority will have to balance competing demands for CIL funding between different types of infrastructure. A balance will also need to be drawn between the need to ensure that the planning system continues to deliver high quality sustainable development and the potentially competing requirements for funding and the financial constraints imposed by CIL.

Why should development pay for infrastructure?

Almost all development has some impact on the need for infrastructure, services and amenities, or benefits from it, so it is fair that it should pay a share of the costs. The burden of those costs needs to be spread equitably across all development. However, developers should also have more certainty as to what they will be expected to contribute, thus speeding up the development process, and that the money raised from developer contribution should be spent in a way that developers feel worthwhile; namely on infrastructure to support the development of the area.[45]

Benefits of CIL

CIL will deliver a number of benefits. These include more legal certainty enabling sub-regional infrastructure and the mitigation of cumulative impacts to be funded from CIL, a broader (and therefore fairer) range of developments contributing, improvements in transparency, and greater certainty and predictability as to the level of contribution which will be required.[46]

Spending CIL : Infrastructure Delivery (Chapter 2)

Additionality of CIL

CIL will make a contribution towards the costs incurred in providing infrastructure to support the development of an area.[47] CIL should not be used to remedy pre-existing deficiencies in infrastructure provision, except to the extent that they will be aggravated by new development.[48]

[43] This is an amended version of para.1.1 CIL August 2008, revised to omit the reference to authorities being "*empowered, but not required*" to levy CIL. There is no rationale in the CIL August 2008 for CIL being discretionary (as implied) although later paragraphs hint that if CIL is not introduced then there will be no other opportunities to secure contributions to CIL infrastructure. Former Ministers have previously suggested that CIL should not be mandatory. If not mandatory there will be a real temptation for local planning authorities to continue to develop tariff regimes away from the scrutiny of the DPD process and without adequate levels of delivery obligation. If the concern is that some authorities might be forced to go through a redundant CIL DPD process, then there could easily be a short form DPD process for authorities who do not wish to charge CIL at all; albeit with the consequence that they cannot then use planning conditions/planning agreements to secure contributions to CIL infrastructure. Note that paras 1.2–1.15 of CIL August 2008 have been omitted since they add little of substance.

[44] This repeats para.1.16, CIL August 2008, omitting the qualification about the need for CIL to fund other infrastructure. The CIL debate will require local planning authorities (and Central Government) to be clearer about infrastructure priorities, and to balance competing infrastructure and planning requirements. As noted below there are some classes of infrastructure that should never be supplicants at the CIL altar. Note that paras 1.17–1.21 of CIL August 2008 have been omitted.

[45] This covers paras 1.22–1.24 of CIL August 2008, omitting the ill-considered reference to financial benefits and gain-sharing as being a determinant or justification of the system. Paragraphs 1.15–1.34 and 1.41–1.58 simply provide background and have been omitted.

[46] Paragraph 1.35 CIL August 2008. As can be seen from Section B there has been little difficulty in practice in securing contributions to sub-regional infrastructure or to address cumulative impacts. Unhappily CIL itself may have cast some doubt over that but CIL will address that provided that there is transitional guidance that emphasises that tariffs are an appropriate means of addressing the concerns pending CIL. Paragraphs 1.36–1.40 of CIL August 2008 have been omitted since they largely elaborate on the advantages.

[47] Clause 198, the Planning Bill.

[48] Paragraph 2.14 CIL August 2008.

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CIL should provide funding for infrastructure that is additional to existing funding streams, filling gaps that remain once existing sources have been allocated.[49]

What CIL may be spent on

The Planning Bill contains a broad definition of "infrastructure".[50] Infrastructure on this list should only be paid for from CIL (CIL infrastructure). It should not form part of any residual planning agreement, except where the developer/land owner wishes to make an additional contribution.[51] Demand management related infrastructure may be CIL funded where it creates capacity to be used by new development.[52] Section 106 TCPA will be amended and restricted so that it cannot be used to double charge.

The Government recognises that there will be many calls on CIL. Although the Bill contains provisions that would allow for infrastructure provided by national bodies to be funded (in whole or in part) from CIL, these provisions will not be brought into effect other than in relation to infrastructure provided by the Environment Agency.[53]

Sub-regional infrastructure is infrastructure that serves more than one local authority area. Examples include hospitals, larger transport projects and waste facilities.[54] Where these are genuinely required (in whole or in part) to support new development then they may form part of the infrastructure funded by CIL contributions. This type of infrastructure is necessarily planned well in advance of delivery so it will only be able to seek a CIL contribution if :

(a) it is recognised as a scheme that is required to support new development in a Regional Spatial Strategy;
(b) there is a clear programme for delivery;
(c) the appropriate local development document (LDD)[55] includes it as part of the infrastructure assessed for the purposes of determining CIL.[56]

In order to make CIL work the Government will need to commit over the longer term to levels of infrastructure funding. Without such a long-term commitment local planning authorities will not be

[49] Paragraph 2.16 CIL August 2008.

[50] Section 202(2) Planning Bill.

[51] At the moment the Bill suggests that affordable housing is, potentially, a form of infrastructure. This is wrong and reflects an historic confusion about affordable housing. A new market house does not "need" an affordable house in the same way that it needs a road, open space or drainage. Affordable housing is required to create a balanced community, with different types and levels of affordable housing being required in different areas. Conflating affordable housing and infrastructure is misleading and should be removed from the Bill.

[52] Paragraph 2.24 CIL August 2008.

[53] Paragraph 2.23 CIL August 2008 suggests that CIL could fund Highways Agency and other national schemes. Almost by definition Highways Agency schemes are of national importance and should be funded nationally from redistributive taxation. Part of the process of making central Government funding commitments should involve looking at where new Highways Agency infrastructure is needed to release major new development and allocate funding, through the Regional Funding Allocation, accordingly. A similar logic applies to all other national agencies with the exception of the Environment Agency. Where the Environment Agency has a developed catchment based infrastructure requirement without which it believes that development should not proceed, it should be able to seek CIL contributions. This does not mean that it will necessarily receive contributions since the DPD process may conclude that other infrastructure is more important.

[54] Paragraph 2.28 CIL August 2008.

[55] As noted below the local development document process will be the ultimate arbiter of the maximum CIL contribution towards different specified items of sub-regional infrastructure. Until reflected in an LDD (or 2017) the infrastructure provider will simply have to seek a contribution as part of the normal planning process. If there is already a CIL LDD in place it will not be until the CIL LDD is amended that any CIL (or other) payment towards sub-regional infrastructure can be secured. Importantly, a decision reflected in the CIL LDD not to make a CIL contribution towards sub-regional infrastructure cannot be treated as an issue of non-conformity.

[56] Paragraph 2.34 of CIL August 2008 suggests a similar overall approach although it fails to recognise that a LDD may, quite rightly, conclude that there is no justification for a CIL contribution to the sub-regional infrastructure or that there are more important items of infrastructure to fund. It also assumes that there is a hypothecated element of the CIL payment that is automatically passed on. As noted below this cannot be right.

able to make accurate assessments of the ‘‘funding gap’’ that remains to be filled by CIL. The length of funding commitments will need to mirror the periods for which local planning authorities are now meant to plan, probably around the 15/20 year mark.[57]

CIL is meant to cover the capital costs of constructing new infrastructure, and fitting it out where appropriate, not the future maintenance of it. Future maintenance responsibilities should be borne from existing public sector funds. The Government notes that some infrastructure providers have sought contributions towards revenue expenditure based on calculations that assume that there will be a delay between the date of provision of the infrastructure and the date when central Government funding streams for that infrastructure become available. Costs of this nature will not be able to form part of CIL.[58]

Timely Delivery

Infrastructure delivery will need to be co-ordinated across all infrastructure providers and agencies. Government will require all parties seeking CIL contributions to have a clear programme for the delivery of the infrastructure and be willing to provide a reasonable endeavours obligation (at least) that delivery will take place in accordance with that timetable.[59]

CIL will provide a future revenue stream for part of the overall cost of the infrastructure needed to support development. There will be a need, in many cases, for the infrastructure to be provided before all CIL payments are made. Capital funding will be made available to infrastructure providers who commit to deliver infrastructure ahead of CIL revenues.[60, 61]

Monitoring and transparency

CIL setting and collecting authorities will need to take responsibility for ensuring that CIL contributions are only spent on CIL infrastructure. They will be expected to set up systems that allow them to monitor expenditure where delivery is the responsibility of third parties. In most cases, it will be for the local planning authority to decide where CIL contributions should be spent having regard to the programmes informing the CIL DPD. Importantly, infrastructure providers do not have any entitlement to CIL contributions even if their infrastructure forms part of the justification in the CIL DPD for the CIL charge. Local planning authorities will, however, need to maintain programmes of anticipated receipts and payments so that infrastructure providers understand the payments that they are likely to receive.[62]

[57] The CIL August 2008 paper is silent in relation to any funding commitment from central Government. Much is made of the past and existing levels of infrastructure investment, but no guidance is given on what assumptions should be made about the future. This needs to be remedied. Without it, the approach is wholly flawed. Local planning authorities will not be able to make sound judgments about funding in their infrastructure plans.

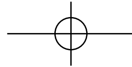
[58] Contributions of this nature are often sought by health and police authorities. If the infrastructure is genuinely needed (justifying a CIL contribution towards the capital costs) then central Government needs to revise funding calculations so that national revenue funding becomes available at the correct time rather than asking the CIL system to compensate for a faulty funding arrangement.

[59] One of the weakest parts of the CIL August 2008 paper is the lack of real discussion of the delivery of infrastructure. It is focussed far too much on the collection of funds and far too little on the obligations that must flow from that in terms of funding and delivery commitments. This paragraph seeks to remedy that omission.

[60] Paragraph 2.39 discusses this in very brief terms. It notes that CIL revenues will be predictable, and therefore potentially bankable (although this is not the experience to date with tariff payments). It also notes that English Partnerships or Regional Infrastructure Funds may be able to forward fund. There will need to be central Government support for the first capital funds, not least because the costs of settling a model and of borrowing are likely to be high.

[61] Paragraph 3.36 CIL August 2008 notes the importance of ‘‘feed-back’’ between decisions about CIL levels and the infrastructure planning process. This should be at the heart of the overall planning process, not hidden way in a review of the proposed charging schedule.

[62] This recasts paras 2.20–2.43 of CIL August 2008, making it clear that it will be for local planning authorities (who will be collecting CIL) to choose where it is spent having regard to the DPD infrastructure programmes.



Setting the CIL (Chapter 3)[63]

CIL will be set as part of the Local Development Framework. All documents required in order to set CIL will be Development Plan Documents. This will allow there to be a full and transparent analysis of the infrastructure requirements, the projects costs of infrastructure, the apportionment of those costs and the ability of development to bear the costs. It will also allow this to be an iterative process so that if the level of infrastructure proposed cannot make an appropriate contribution then the proposed levels of development and the spatial arrangements can be revisited.[64, 65]

CIL Setting Authorities[66]

The term ''charging authority'' has been used in the Planning Bill to date. This was meant to refer to those bodies able to levy CIL and was meant to include all planning authorities (with exceptions) entitled to prepare Development Plan Documents.[67] This has caused confusion and will be removed. Instead reference will simply be made to ''CIL setting authority''. This will be the lower tier plan making authority including

- District Councils
- Metropolitan District Councils
- London Borough Councils
- Unitary Authorities
- National Park Authorities
- The Broads Authority.

This will exclude :

(a) the Mayor in London.[68] CIL levels in London will be set by the London Borough Councils, taking account of any infrastructure proposals in the London Plan. This avoids the need to identify ''strategic infrastructure'', and allows London's sub-regional infrastructure to be treated in the same way as infrastructure elsewhere in the country, with the Mayor needing to make out a case for a CIL contribution alongside other potential infrastructure providers. The ability of the Mayor to identify sub-regional infrastructure in the London Plan allows him adequate input into the planning and CIL setting process;

[63] This chapter has had to be substantially rewritten to reflect the inclusion of CIL in the development plan and to make sure that the CIL setting process relates to impacts not values.

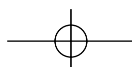
[64] CIL August 2008 proposes a mechanism outside, but parallel to, the DPD system as a way to set CIL at least for the CIL charging schedule. The reasoning for this is not explicit in the paper. Indications in the property press suggest it is because of a concern about state aid. If so this is unnecessary. Although there is a need to monitor the arrangements there is no doubt that, legally, the Planning Bill could set out an architecture for CIL that is state aid compliant.

[65] CIL August 2008 suggests, because the CIL charging schedule will be outside the DPD process, that a schedule can only be promoted where the local authority certify that the development strategy is up to date. If CIL is part of the development plan this process of certification is unnecessary since the examination will necessarily review this issue.

[66] Although a detail where the development control authority is not a plan making authority it will need to be made clear that CIL will not be introduced until the underlying authority either formally adopts CIL or ceases to exist. Relevant authorities include the three UDCs , the ODA and the Milton Keynes Partnership and any designated authorities set up by the Homes & Communities Agency.

[67] Paragraph 3.2 CIL August 2008.

[68] CIL August 2008 is unclear on how to treat the Mayor. Although the Mayor has both plan making powers and development control powers for some applications there is no reason why London should be treated any differently to elsewhere in the Country in terms of sub-regional infrastructure. It is important that the final decision about CIL levels and expenditure should rest with the local planning authority. A possible exception to this is that where a CIL payment is made in relation to applications for which the mayor is (potentially) responsible then CIL payments should be made the Mayor. However, this raises significant issues in relation to the use of CIL for other infrastructure in London and although it partially addresses the need to use CIL to secure funding for Crossrail, it seems too complicated.



(b) the County Councils. Any infrastructure requirements associated with minerals and waste development will have to be reflected in DPDs.

The process of setting CIL

The development strategy for an area will be set out in the Core Strategy. This will be in conformity with the relevant Regional Spatial Strategy. It will set out the proposed levels of development and should, given the emphasis in PPS12 on infrastructure planning, set out the infrastructure that needs to be provided alongside new development. All CIL proposals must be set out in a DPD that will be subject to scrutiny at an examination.[69]

Infrastructure requirements will broadly take two forms. The first will be specified items of infrastructure for which there is an identified need—major road or flood relief schemes. Only schemes that will deliver during or shortly after the plan period should be considered. The second class will be infrastructure that is required, on a generalised basis, to support new development, new school places and additional open space.

A CIL DPD must cover all CIL infrastructure. It cannot address the costs of some elements of CIL infrastructure, leaving others to ad hoc negotiations later. However, a CIL DPD may choose to collect nothing for certain classes of infrastructure.[70]

It is recognised that CIL infrastructure costs are not fixed and are not always susceptible to forensic analysis. The figures should broadly reflect the cost of past provision of similar infrastructure. Account should be taken of existing capacity in the systems. Some consideration should be given to demand management investment. The overall costs should be identified in broad terms, making appropriate allowances for contingencies and administrative costs.[71] The final costs will necessarily be based on broadly acceptable approximations derived against a background of some uncertainty.[72]

Once the overall CIL infrastructure costs have been established there should be a dialogue with the Government and other infrastructure providers. Local planning authorities preparing CIL DPDs have a right to expect long-term commitments from third party infrastructure providers to non-CIL funding streams for infrastructure. Where commitments cannot be given or are not received local planning authorities will have to make reasonable judgments about the likely levels of future funding.[73] After taking account of other funding sources there is likely to be a ‘‘gap’’ that CIL needs to fund.

[69] Paragraphs 3.26–3.34 of CIL August 2008 refer to the need to test infrastructure planning. If CIL is addressed as part of a DPD that testing will automatically form part of the DPD process and there is no need for any separate assessment or certification of whether the development strategy or infrastructure planning process is up to date.

[70] A nil charge for certain classes of infrastructure may be appropriate if, for example, the health authorities fail to make an adequate case for that infrastructure as part of the DPD process. In some cases the development plan strategy may be that no new health infrastructure is to be provided.

[71] In broad terms these two paragraphs mirror what is said in paras 3.13–3.20 of CIL August 2008, shortened to make it clear that the infrastructure list will have to be broad brush. Paragraph 3.18 of CIL August 2008 approaches this from the other direction—advising against an ‘‘overly complicated’’ system. Instead any CIL policy paper should make it clear that infrastructure assessments will always be broad brush.

[72] Paragraph 3.40 CIL August 2008.

[73] As a matter of practicality if Central Government or other agencies are unable to give commitments then CIL setting authorities will have to make sensible judgements. This may mean that they start to look carefully at the body’s underlying statutory responsibilities. For example, in relation to education they may conclude that the education authority should provide education facilities in any event and relate CIL solely to other classes of infrastructure.

Apportioning costs to different classes of development[74]

CIL setting authorities will need to apportion the CIL infrastructure cost between classes of land use. This should reflect the broad relative impacts of different types of development.[75]

CIL setting authorities should develop their own mechanisms for apportionment depending on the nature of the infrastructure that has been identified. These can then be tested in the CIL DPD process.[76]

Setting CIL to reflect development viability[77]

If CIL is set at unaffordable levels, development will not be delivered and CIL will not meet its objective of helping to unlock development.[78] Accordingly CIL must be set at a level that would not materially prejudice the supply of land required to meet the development needs identified in the development plan.[79]

In drawing up CIL charging schedules the CIL setting authority will also need to take into account the wider range of development costs placed on developers. This assessment should include, for example, the assumed level of affordable housing contributions.[80]

If CIL is set at a level lower than the net cost (after other funding) of funding CIL Infrastructure, then consideration should be given to deferred charges where CIL is low because of low revenue protections.

Differential rates

A CIL DPD may promote different approaches to CIL in different parts of the local planning authority area. This may be necessary where some element of infrastructure, for example flood relief systems, has no connection with parts of the area. It may also be justified by different economic

[74] CIL August 2008 deals with apportionment (paragraphs 3.58—3.60) after looking at viability. It is back to front in doing so. If, as suggested, costs are allocated on a broad class impact basis then the CIL infrastructure cost must be apportioned between classes before assessing the ability of a class to pay. The CIL August approach would, wrongly, allow costs to be apportioned on the basis of ability to pay (which would then simply be taxation and value capture) rather than any land use implication.

[75] Paragraph 3.58, CIL August 2008.

[76] The three paragraphs in CIL August 2008 on apportionment are noticeably weak. As they indicate, a great deal of work has been done in existing tariff arrangements to identify broad linkages (satisfying the *Tesco* "*more than tenuous*" test) between infrastructure and classes of development. Transport infrastructure tends to be apportioned by reference to traffic generated. Drainage infrastructure tends to be allocated according to water required and waste generated. Much work needs to be done to develop these linkages so that, for example, commercial development starts to bear a proportion of the cost of education. Although it would be possible to prescribe the linkages it would be better to evolve and refine the process and the arguments through the DPD system reflecting the effects and benefits arising from different forms of infrastructure.

[77] Curiously, the section in CIL August 2008 on development viability (paras 3.50 et seq) follows on after the section on formal adoption of the CIL charging schedule (paragraphs 3.48–3.49)

[78] Paragraph 3.50 CIL August 2008.

[79] This is one of the options referred to in paragraph 3.53 of CIL August 2008. Earlier suggestions relate back to land value increases (and this orphan appears unhappily on the face of the Bill). This is a concern since it is likely to mean that land value increases are used as the mechanism for both apportioning CIL responsibility and for identifying acceptable CIL levels. This would move CIL away from being an analysis of the broad impact of the development class and convert it back into a PGS type model, of the type vehemently opposed by both the property industry and many planning authorities.

[80] This is largely drawn from the first half of paragraph 3.55 of CIL August 2008. The second half of the paragraph in CIL August 2008 and the similar sentiment in paragraphs 5.23–5.24 is difficult to understand unless affordable housing requirements are to be treated nationwide as being absolutely paramount. The paragraphs suggest that CIL will not affect the level of affordable housing contribution. Given that the policy level of affordable housing, as well as tenure mixes, are a matter of local discretion there will always be a trade off between affordable housing and CIL. If affordable housing requirements are high then CIL levels will inevitably be lower than they would be with a lower affordable housing requirement. The issue is even more relevant at the development control stage where affordable housing requirements are often "traded" off against other planning benefits or are subject to a potential abatement if the development would otherwise be unviable. At both development plan and development control level a balancing act will be required between CIL and affordable housing levels.

conditions in different areas.[81] Infrastructure that has no relationship whatsoever with a class of development or with an area will be difficult to justify as part of a CIL charge at a DPD examination and CIL DPDs should seek to ensure that there is an adequate relationship between the costs of infrastructure and new development.

Metrics; what is the unit of development being charged?

CIL setting authorities should develop their own metrics depending on the nature of the infrastructure that has been identified and the types of development that are anticipated in the development strategy. These can then be tested in the CIL DPD process.[82]

Indexation

CIL will be expected to be indexed in accordance with an index set out in the CIL DPD. The appropriate index will need to reflect the make up of the infrastructure.[83]

Testing CIL in an examination

CIL will need to be tested rigorously. The underlying infrastructure requirements will need to be tested. The costs will need to be tested as will the cost that is properly attributable to new development. The apportionment between classes, and the effects of any proposed charge on the delivery of development will need to be tested. As CIL provisions are included in CIL DPDs they will be the subject of examination and review by an independent inspector in the same way as other DPDs.

Reserve powers

The Government will no longer reserve powers to cap CIL. Since CIL proposals will be tested as part of the DPD process this protection is unnecessary. If required the Secretary of State can always address issues when applications are appealed, if necessary making it clear as part of the decision making process whether any abatement of CIL is site specific, land use class specific or area specific.[84]

Reviewing the CIL DPD

CIL DPD should, like all DPDs, be monitored and kept under review. Where monitoring evidence shows that economic circumstances have changed significantly since the adoption of the CIL DPD, the CIL setting authority should assess whether there is a need to revise it. If the development strategy for the area changes there will, almost inevitably, be a need to review the CIL DPD at the same time.[85]

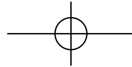
[81] This reflects paras 3.61–3.63 of CIL August 2008 without the apparent reservations. If different approaches in different areas can be justified in a CIL DPD then the approach should be encouraged. Variety of approach and tailoring must be better than treating each local authority area as an homogenous whole.

[82] Although it would be possible to prescribe the metrics it would be better to evolve and refine the process and the arguments through the DPD system. Different approaches have been used in tariff arrangements to date and there seems little point in preventing further metrics being tested and used.

[83] Paragraph 3.69 CIL August 2008 suggests a national prescription of indexation. No justification is given and it would be better to allow local variation to reflect the nature of the infrastructure being provided.

[84] Paragraph 3.70 CIL August 2008 refers to the power in the Bill for the Secretary of State to cap CIL. There is no reason why any such power needs to be retained.

[85] This draws on paras 3.71–3.73. Given that it is proposed that CIL is covered in a DPD there will necessarily be a continuing obligation to keep it under review. It will, potentially, be tested if CIL related provisions are discussed/debated in planning appeals.



Paying CIL (Chapter 4)

Paying CIL will be part of the overall development process. It will not be treated differently from obligations to make other payments or provide other on-site requirements. There will be a deemed condition in all relevant planning permissions requiring payment of CIL in accordance with the CIL DPD unless an alternative condition is included in the planning permission or an appropriate planning obligation is entered into. Compliance with, and enforcement of, that condition should be the same as any other planning condition.[86]

Establishing CIL Payment and Payment

CIL will become conditionally payable when development in accordance with a planning permission[87] commences. The normal definitions in the Town & Country Planning Act 1990 will be used.

CIL can only be charged where a CIL DPD has been adopted at the date of the grant of planning permission.

CIL will be payable by reference to the CIL DPD in force when planning permission is granted.[88]

For CIL purposes where there are multiple planning permissions on site, for example where a s.73 TCPA 1990 consent has been secured, the relevant planning permission will be the one which identifies the highest CIL payment for the proposed unit of development.

CIL will be paid in accordance with the standard payment provisions set out in the CIL DPD unless the CIL condition or obligation indicates otherwise. Alternative arrangements can be agreed on complex or large-scale permissions. As a guide it is expected that an initial contribution of at least 25 per cent of the total contribution due for a site (or a phase on a large site) will be paid when development commences, with the balance in relation to any unit of development being paid before occupation of that unit.

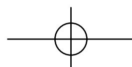
The normal planning mechanisms for identifying the commencement and completion of development will be used. There is no need for separate commencement or liability notices.

Payments of CIL will be indexed from the date of the adoption of the relevant CIL DPD until the date of payment on the basis set out in the CIL DPD.

[86] Section 4 of CIL August 2008 (and the Bill) spends far too much time worrying about liability and enforcement. All of this is avoided if CIL is part of the planning process. The planning system effectively ensures that payments are made, usually by requiring development/occupation to cease if there is a breach. In the absence of any evidence that this is ineffective it seems unnecessary for any changes (with two exceptions) to be made to a well understood and clear process. The first proposed change is to make CIL payment subject to a deemed condition akin to the outline conditions in ss.91/92 TCPA 1990. The second change is to treat an LPA as a chargee for the purposes of CIL collection. They would then be able to exercise a right of sale to secure CIL payment. It may be necessary to limit this to prevent enforcement against residential occupiers although there is an argument that they should insist on seeing a CIL receipt from the LPA as a condition of sale.

[87] At the moment CIL August 2008 is unclear about whether CIL should be charged in relation to development consents granted by the Infrastructure Planning Commission. This reflects a failure in the draft IPC regime to address how best to ensure that necessary supporting infrastructure is provided and impacts addressed. Although not the topic of this paper, as a matter of equity, major infrastructure providers should address infrastructure externalities in the same way as other development. As a matter of law they will probably need to do so in order to ensure that there is a level playing field for state aid purposes for infrastructure projects regardless of size.

[88] Paragraph 4.14 CIL August 2008 suggests that the applicable CIL schedule should be the one in place when the application is validated. This seems unnecessary. It raises a risk of there being a further incentive to delay validation and potentially ignores later and better information on infrastructure provision. It fails to address what happens if there are appeals, call-in inquiries or High Court challenges. Simplicity suggests that the CIL scheme at the date of grant of permission should be the one that is applied.



There should be CIL longstop dates in all cases that provide for the entire amount of CIL to be paid by a clear and certain date if development commences.[89] As a consequence all planning permissions must state the maximum level of development they permit so that the long stop payment can easily be calculated. Changes to the standard application forms will be made to enable this.

Exemptions

There are no exemptions to CIL other than for:

(a) permitted development, on the basis that it is administratively unworkable to track all permitted development and levy a CIL charge;
(b) householder development.

CIL may, however, be set at a nil rate for certain classes of development or for fixed periods of time as part of a CIL DPD.

Exceptions

Only in limited circumstances[90] will CIL not be payable. This will only be where two tests are fulfilled:

(a) the local planning authority think that, despite a potential failure to pay a full CIL contribution, there are good planning reasons why the development should be allowed to proceed[91] ;

and

(b) the applicant can demonstrate that development would not otherwise proceed within a reasonable period of time. The applicant will be expected to pay the costs of an independent verification of the evidence submitted in support of such a case.

Where a local planning authority accepts that CIL is not payable the application will be referred to the Secretary of State unless:

(a) it is an application for development of less than 100 units or 1,000 square metres of other floor space; or
(b) there are appropriate deferred contribution arrangements within an associated planning agreement.

Cross boundary development

Where development straddles local planning authority boundaries with different CIL charges, CIL will be charged on the basis of the proportion of land area in each authority.

[89] There is no mention of longstop dates in the papers. If the intention is to use CIL to raise capital then there must be certainty as to payment and longstop dates, as referred to earlier, will be required.

[90] This test should be a test that is difficult to meet. Rarely should it be capable of being satisfied.

[91] If CIL is not paid then that would lead to a shortfall in the monies available for the CIL infrastructure. Unless the local planning authority is satisfied that there are good reasons for this then permission should be granted subject to the normal condition requiring full CIL payment (which could then be subject to a s.73 appeal). Only if the applicant persuades the local planning authority that there are good planning reasons for CIL to be abated is there a need to address viability issues. Put another way, lack of viability is a necessary but not sufficient condition for CIL abatement.

Enforcement

Collecting authorities will be expected to prevent development continuing if developers pass thresholds without making payments properly falling due. Enforcement of CIL conditions or obligations will be identical to enforcement against the breach of planning conditions and planning agreements. As an additional protection a failure to pay CIL shall be treated as a charge on the property benefiting from the planning permission and the local planning authority shall have the normal rights of a mortgagee to enter into possession and dispose of land.

Works in Kind

Works in kind may be accepted by collecting authorities in lieu of payment of CIL. This will only be possible where the following conditions are met :

(a) the collecting authority agrees that the developer can carry out works in kind;
(b) the specification and a timetable for delivery have been agreed;
(c) the maximum cost of the infrastructure has been identified;
(d) the infrastructure has been provided and the cost agreed;
(e) the works are not public works for procurement purposes.

Where these conditions are met the agreed cost can be set off against future tariff payments. An alternative approach may be set out in a CIL DPD.

Disputes

If there is any dispute about CIL related matters the planning appeal system should be used. This can be used to identify whether a proposal raises circumstances justifying a lower or nil CIL payment, as well as resolving disputes about payment arrangements or calculations as to the amount.[92]

Planning permission should never be refused because of disagreements about CIL. If there are CIL related issues then, unless there are other reasons for refusal, permission should be granted subject to the CIL conditions that the local planning authority believe to be appropriate. If the applicant has concerns about CIL related issues then the route for challenging those issues should be an appeal.

CIL collection

CIL can only be spent on CIL infrastructure. The collecting authority will receive payments and will then need to use reasonable endeavours to secure the necessary infrastructure. In most cases the collecting authority will not actually be the body delivering the infrastructure and will need to put in place arrangements that ensure that monies are properly spent in a programmed manner.

Although part of CIL may have been collected to fund sub-regional, third party or other infrastructure this does not normally give any party a right to that funding. In the absence of alternative provision in the CIL DPD it will be for the collecting authority to determine how to spend or allocate the money having regard to its commitment to deliver infrastructure in accordance with the programme in the CIL DPD. It may be appropriate, for example, only to pay CIL contributions to a third

[92] As others have pointed out the appeal system needs to be reviewed to ensure that it focuses on the issues in dispute. If there is a CIL related argument the appeal should be able to consider that issue alone rather than the wider development.

party once they have demonstrated their ability to deliver including having secured other funding streams.[93]

This will be a difficult process since all infrastructure providers will have some funding expectations. An ongoing and transparent delivery process and programme will need to be developed by all CIL collecting authorities.

Planning Obligations and Planning Conditions (Chapter 5)

CIL will be mandatory.[94] After a period for transition, planning conditions and planning agreements will not, with one exception, be able to be used to secure contributions in relation to CIL infrastructure. There will be an exception where a developer certifies that they are willing to pay above the CIL amount to secure delivery of items of infrastructure to a certain specification or timetable.[95] The Secretary of State will have no hesitation on appeals in removing conditions and varying planning agreements that contain or secure inappropriate provisions, and will award costs against local planning authorities that transgress.

Planning conditions and planning agreements will still be required to deal with planning requirements unrelated to CIL infrastructure. They may include:

(a) affordable housing requirements. The Government is aware that each local planning authority has, largely, bespoke affordable housing requirements. Standard provisions with appropriate cascade provisions[96] will be issued to bring some uniformity to the arrangements;
(b) design requirements;
(c) sustainability requirements;
(d) where DPDs for CIL have identified land requirements, the provision of the land necessary for CIL infrastructure at the value set in the CIL DPD[97];
(e) the provision of land properly required for other planning purposes;
(f) provisions for the maintenance of on site community facilities on-site.

Like its predecessors Circular 05/2005 has proved ineffective in setting clear boundaries for planning obligations. It is intended to amend the Planning Bill to set out an exhaustive list of the character of obligation that can properly form part of a planning agreement after a CIL DPD is in place. This should enable planning agreements to become further standardised, shortening the time required for them to be completed.[98]

[93] For example London Boroughs will be expected to collect CIL to pay for Crossrail. There is no reason for them to pay contributions to the Mayor unless and until it is clear that Crossrail will be delivered and needs the CIL contribution. If the project does not require the contingency that has been built into the project cost it may be better to reallocate that element of CIL to local schools instead. A residual flexibility is needed to ensure that a sensible analysis and balancing exercise can be undertaken.

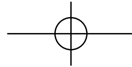
[94] Supra

[95] This is to accommodate the developer who is willing to fund, for example, an entire school in order to be able to make a site more marketable.

[96] Cascade provisions will have to relate entirely on levels of Registered Social Landlord (RSL) payments for land, service land or units, rather than being a complete viability assessment. The top of the cascade will be set at the level of affordable housing that should be provided assuming that grant is available.

[97] If a DPD allocations process has allocated land for a public purpose then that will affect its value and the land should be transferred at that value, which will normally be the higher of the existing use value or the public use value. In other cases, then the land will be valued at open market value assuming development value for land bearing an appropriate CIL charge (and that CIL charge will have a land component).

[98] Ideally, a committee report should set out the heads of terms. If a developer then offers a unilateral undertaking that meets the requirements of the heads of terms permission should be granted. A short form expert appeal process to assess, simply, whether an undertaking satisfies the heads of terms (which should take no more than four weeks for a paper assessment) should be sufficient.



If a proposed requirement falls outside the scope of those revised provisions and cannot properly be subject to a condition then it cannot be secured.[99]

Implementation (Chapter 6)

The Bill has not yet proceeded to the Lords. If the Bill is passed it is unlikely that draft regulations will be issued before the middle of 2009 and, after consultation, final regulations will be issued in early 2010. Local planning authorities will then be able to proceed with CIL DPDs. It is likely to take at least 12–18 months for a DPD to be submitted to the Secretary of State and then adopted.

While CIL DPDs will be given a high priority there will also need to be a review of the supporting Core Strategy, and separate allocations DPD, the LDDs that relate to infrastructure and a review of the evidence base on infrastructure costs and programmes. Adoption of CIL DPDs is likely to commence in early 2012, with the expectation that the process of adopting DPDs will take a further five years. On the basis of this provisional timetable, all local planning authorities will be barred from securing contributions to CIL infrastructure other than through CIL from the end of December 2017.[100]

Until a CIL DPD is adopted, local planning authorities will have to apply the existing guidance. As indicated above Circular 5/05 will be refined in due course to make it clear that the Government considers that properly evidenced tariff or standard obligation approaches are acceptable and, indeed, encouraged.[101]

Although CIL requires a new level of infrastructure planning and costing, neither the basic exercise nor the related viability analysis should be new to planners or planning authorities. A best practice website will be maintained by CLG that will outline emerging tariff and CIL experience and practice to inform authorities. The resources required to establish either a tariff or CIL regime should not be great.[102]

Local planning authorities should remember that the exercise of setting a tariff or CIL is not a science. Provided that the estimates and assumptions support a set of tariff levels that will not, in broad terms, materially prejudice the supply of development land required to meet development plan requirements, the DPD process should not become too involved in settling the precise attribution of individual costs. A rough nexus[103] is all that is required.

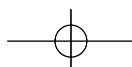
[99] It is not the subject of this paper but the continuing dogma reflected in paras 5.31–5.32 of CIL August 2008 that conditions are preferable to planning obligations needs to be reviewed. The review needs to address the inconsistency reflected in the present policy refusal (despite the legal power to do so) to use conditions to require cash payments. The balance between the two mechanisms should be re-geared, perhaps as part of the ongoing Killian Pretty review.

[100] Paragraphs 6.2—6.6 of CIL August 2008 set out a timetable for the implementation of a CIL. The timetable is unrealistic as it stands and needs to be extended to look at the timetable for all authorities to have a CIL DPD in place. The paragraphs also suggest that examinations will be prioritised. Provided that examinations are run sensibly, with proactive Inspector involvement, and looking at the core tests rather than a forensic examination of minutiae, there should be capacity in the system to address all CIL DPDs. The present slowdown of mainstream development and a reducing number of appeals will assist.

[101] Paragraphs 6.7 and 6.8 refer to best practice and the Circular. All that needs to be said is that tariff systems will continue to be encouraged (both as a matter of common sense and as preparation for CIL) and that guidance will be amended as necessary to reflect that position.

[102] Paragraphs 6.9–6.22 are an extended and unnecessary suggestion that there is limited capacity and skill in the planning system to devise sensible CIL proposals. That is simply not true. It is not complicated and the policy paper should not suggest that it is. There are some difficult choices to make but there is nothing inherently difficult in the architecture of CIL.

[103] "Rough nexus" is the language used in some of the American impact fee cases to assess whether a fee could properly be charged to a development. If that is the scrutiny level for a constitutionally protected property right it is more than adequate in the context of a system where development is, effectively, at the discretion of the State.



Once implemented Government will continue to review CIL's effectiveness in securing additional funding for infrastructure and in ensuring that infrastructure is in place to meet the demands of new development.[104]

Section D : Conclusions

The planning system changes and shifts land value. That is, however, a consequence of good planning rather than the reason for it.

The planning system must, as it has now started to do, pay far closer attention to the need to deliver infrastructure to support development. Where that new infrastructure is required to meet the needs of, or address the impacts of, new development then there is clearly a strong case for development to make, at least, a contribution towards the infrastructure costs.

Inevitably, that contribution will only be possible if new development is viable. In many cases, viability will depend on whether land values have changed or been shifted.

However, simply because value capture is funding infrastructure, that does not mean that value capture should be the aim of the planning system when it is reviewing infrastructure provisions and securing funding. Sixty years of legislative history suggests that trying to capture value, as an aim in itself, is fraught with problems. More recent experience suggests that where the planning system limits itself to the recovery of costs, rather than the capture of value, a workable approach can be designed.

Unhappily, the present proposals for CIL start from the premise of value capture. Starting from that point means that they are, unwieldy and, probably, unworkable. Because they are aimed at capturing value, rather than cost recovery, they also trespass potentially into areas of state aid. That has led to CLG designing an approach that operates outside the planning system.[105] If CIL operates within the planning system, and concentrates instead on cost recovery, then existing planning mechanisms can be used to assess, test, charge and collect CIL. If CIL is used to capture value then, almost inevitably, a parallel system (in effect almost a parallel world) needs to be invented that operates alongside and duplicates the planning process.

As presently designed, CIL will be administratively cumbersome and difficult to manage. The proposed prescriptive nature of it will cause difficulties and tensions, particularly given the limited discretion allowed to local authorities to lower or abate CIL payments.

The challenge is to refine the present CIL proposals. As the outline policy paper in Section C makes clear, this can be done relatively easily. The legislative changes required are limited (because so much is left to the regulations). If CIL is redesigned to concentrate on cost recovery and to operate in the planning system then it is capable of working well. The present tariff regimes demonstrate that. If it focuses on value capture in a parallel, albeit linked, universe then it will fail. Previous betterment charges have had a five year life expectancy. If CIL is betterment driven it will have a similarly short shelf life.

[104] Paragraph 6.23 CIL August 2008 simply refers to monitoring the objective of raising additional funds. Any sensible process of monitoring also needs to assess whether CIL has succeeded in allowing development to proceed without unnecessary infrastructure constraints.

[105] As an aside, if the desire is to capture value then it would be far better to look at the property tax system to do so. Both national non domestic rates and the community charge could, if rateable values were reviewed annually, directly address issues of land value capture. If necessary, different charges could be levied on existing buildings and new development to reflect the value consequences for each from new infrastructure. Where new infrastructure is provided, differential rates could be charged to those that benefit from that infrastructure. This would be a far better, and more sharply focused, mechanism for dealing with value capture than one that simply relates to a planning charge on new development.