

Joint Planning Unit
Developer Contributions
Supplementary Planning
Document and Community
Infrastructure Levy

DLP BRIEFING NOTE 39

Prepared by
DLP Planning Ltd

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DLP Planning Ltd

Bedford
Sheffield
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North Northamptonshire Joint Planning Unit to cease preparation of Development Contributions SPD in favour of CIL Levy

The North Northamptonshire Joint Planning Unit (JPU) has sought legal advice over the production of their Development Contributions SPD, particularly in light of a number of representations which were submitted relating to compliance with the Community Infrastructure Levy (CIL) Regulations.

The Joint Planning Committee has now resolved to terminate preparation of the SPD in favour of the preparation of a draft CIL charging schedule for independent examination.

The Community Infrastructure Levy

The CIL is a levy local authorities can choose to charge on new developments in their area. The charging schedule will apply to most new buildings and charges are based on the size and type of new development. The money will help pay for the infrastructure required to serve the new development; the type of infrastructure it is spent on is decided by the local authority.

Decentralisation Minister, Greg Clark, announced on the 18th November that it was the Government's intention to retain the CIL system which was originally introduced by the previous Government in April 2010. The Localism Bill, published in December 2010, confirms that CIL is retained, although the Bill introduces three key changes:

- provisions to make regulations requiring some of the contributions to be passed directly to the neighbourhoods where development has taken place;
- funds can be spent on ongoing infrastructure costs as well as the initial new infrastructure costs; and
- more control for councils over the levy - although independent examination remains a requirement.

Under the CIL Regulations the use of S106 planning obligations will be significantly reduced. Regulation 122 of the CIL Regulations makes it a statutory requirement that S106 obligations are:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind.

Concerns with the draft JPU Development Contributions SPD

The draft SPD was produced under the framework of Circular 05/2005, setting out a number of formulae and charging schedules to be used when requesting development contributions which were to be sought **in addition** to any site specific mitigation. This approach, and the lack of reference to the CIL Regulations 2010, and specifically Regulation 122, was its fundamental flaw and this was highlighted by DLP Planning Ltd in their representations.

DLP Planning Ltd also argued that the SPD lacked transparency and that its proposed planning obligations were unjustifiable, highlighting the fact that in contrast, the CIL charging schedule requires public consultation and independent examination prior to adoption; it therefore establishes fairness, viability and validity.

Legal Advice to the JPU

Following the submission of representations by DLP Planning Ltd on behalf of a number of clients objecting to the proposed SPD, the JPU sought legal advice on how they should take this matter forward.

This advice wholly supported the objections submitted by DLP Planning Ltd and stated that, unlike the guidance set out in Circular 05/2005, the CIL Regulations had a statutory force and meant therefore that contributions **must** be directly related to the development. The approach taken in the SPD would likely result in developers being able to challenge any contribution on this basis, even if it were contained within an adopted SPD.

The second problem identified related to the methodology used to calculate the “per unit” (per dwelling) sums contained within the SPD. The JPU were advised that developers were again likely to challenge this on a case by case basis at appeal and that if an Inspector were not happy with the calculation it would likely be determined that the contribution could not be supported, resulting in development contributions well below viability level.

The legal advice to the JPU was to not adopt the SPD and instead use the work done in preparation of a *“full-blown CIL for examination”*.

The advice also made reference to viability issues, stating that it made good sense for Local Planning Authorities to negotiate with developers on a site by site basis to seek to agree viable levels of contributions.

The Outcome

JPU Officers have taken this advice on board and recommended to the Joint Planning Committee that the draft SPD was not adopted as a Supplementary Planning Document and instead re-framed as a technical document and used to inform the preparation of a CIL charging schedule. It was resolved at the Joint Planning Committee that the JPU would now proceed on that basis.

If you would like to discuss the proposed changes and how these may affect you/your future development projects, please contact us.

Bedford (Design)

3rd Floor
8 Goldington Road
Bedford
MK40 3LG
T 01234 261 266
F 01234 347 413

Bedford (Planning)

4 Abbey Court
Fraser Road
Priory Business Park
Bedford
MK44 3WH
T 01234 832 740
F 01234 831 266

Bristol

2A High Street
Thornbury
Bristol
BS35 2AQ
T 01454 410 380
F 01454 410 389

Reading

2 Richfield Place
12 Richfield Avenue
Reading
RG1 8EQ
T 0118 939 1004
F 0118 939 1005

Cardiff

Sophia House
28 Cathedral Road
Cardiff
CF11 9LJ
T 029 2064 6810

Sheffield

11 Paradise Square
Sheffield
S1 2DE
T 0114 228 9190
F 0114 272 1947

briefing

BEDFORD

DLP Planning Ltd
4 Abbey Court
Fraser Road
Priory Business Park
Bedford
MK44 3WH

t 01234 832 740
f 01234 831 266

bedford@dlpconsultants.co.uk

DLP Design Ltd
8 Goldington Road
Bedford
MK40 3LG

t 01234 261 266
f 01234 347 413

bedford@dlp-design.co.uk

Accounts & Admin
2nd Floor
8 Goldington Road
Bedford
MK40 3NF

t 01234 221420
f 01234 353715

BRISTOL

DLP Planning Ltd
DLP Transportation Ltd
2a High Street
Thornbury
Bristol
BS35 2AQ

t 01454 410 380
f 01454 410 389

bristol@dlpconsultants.co.uk

CARDIFF

DLP Planning Ltd
Sophia House
28 Cathedral Road
Cardiff
CF11 9LJ

Tel: 029 2064 6810
cardiff@dlpconsultants.co.uk

READING

DLP Planning Ltd
2 Richfield Place
12 Richfield Avenue
Reading
RG1 8EQ

t 0118 939 1004
f 0118 939 1005
reading@dlpconsultants.co.uk

SHEFFIELD

DLP Planning Ltd
11 Paradise Square
Sheffield
S1 2DE

t 0114 2289 190
f 0114 2721 947
sheffield@dlpconsultants.co.uk

