

**Welsh
Government
Guidance on the
Preparation of a
CIL Charging
Schedule**

DLP BRIEFING NOTE 69

Prepared by
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Welsh Government Guidance on the Preparation of a CIL Charging Schedule

Introduction

The Community Infrastructure Levy was introduced through the Planning Act 2008 and is controlled via the Community Infrastructure Levy Regulations 2010 and the Community Infrastructure Levy (Amendment) Regulations 2011. Although it is not a *devolved matter* (i.e. the jurisdiction for it remains with Westminster) the Welsh Government (WG) has published guidance to assist the Welsh Local Planning Authorities in preparing their charging schedules. This guidance is for Wales only, but the guidance already published by the DCLG is also relevant to Wales.

Local Authorities have the power to charge a levy to fund the provisions of infrastructure (e.g. flood defence, schools, health care, transport, green space, district heating - but not affordable housing). However CIL is supplementary to, rather than a replacement for, public funding:

"CIL should not be used to remedy existing deficiencies unless those deficiencies would be made more severe by new development. CIL can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure."

Although LPAs are not obliged to introduce CIL, post April 2014 their powers to rely on planning obligations to provide infrastructure will be reduced.

Community Infrastructure Levy

CIL is levied on net additional increases in floorspace as a result of development, provided the gross internal area of new build exceeds 100m² (or on any new dwelling irrespective of size). It is charged in pounds per square metre on the additional floorspace. Significantly there may be different rates within a Local Authority for different developments and in different locations.

The concept of viability is crucial to CIL, because it is only viability evidence that can justify a differential CIL charge (i.e. geographic differences within an authority), rather than a policy approach. *"Moreover, a nil rate can only be set if it can be shown that development would not be viable or would be at the margins of viability."*

Regulation 14 sets out the balance that authorities will aim to achieve:-

- *"the desirability of funding from CIL (in whole or in part) the actual and expected cost of infrastructure required to support the development of its area taking into account other committed and expected sources of funding, s106 implications and administrative costs;*
- *the potential effects of the imposition of CIL on the economic viability of development across the whole area."*

The WG Guidance

The guidance explains that LPAs:-

- should identify the total cost of infrastructure it wishes to fund from CIL (through engaging with infrastructure providers);
- can include administrative costs (no more than 5% of total receipts);
- should use appropriate available evidence to inform their draft charging schedule (possibly the LDP evidence);
- should work with colleagues in other departments, plus cross borders with adjoining authorities and with the WG.

The WG expect the evidence base to include an up to date development plan. It is for the LPA to decide if their extant plan is suitable, but it is doubtful that plans other than an LDP would suffice (i.e. most UDPs, structure plans and local plans are likely to be out of date for the purpose). It is noted that draft LDPs may suffice if submitted for examination alongside a charging schedule, but the guidance does caution about the resource implications of doing so and also the potential for LDPs being found unsound and thus jeopardising the work on CIL.

According to paragraph 2.12 of the guidance:-

"LDP Wales states that, in areas where significant development is proposed, LDPs should identify any new infrastructure required to bring it forward. Local planning authorities must be able to show that they can deliver the development planned in their LDPs. LDPs should, therefore, be supported by evidence of good infrastructure planning. Done properly, infrastructure planning should be able to be used to support a charging schedule."

The guidance explains that:-

"infrastructure planning of a scale appropriate to demonstrate delivery of the LDP should identify, as far as possible:-

- *infrastructure needs and costs;*
- *phasing of development;*
- *funding sources; and*
- *responsibilities for delivery."*

A draft charging schedule must be consulted on. Welsh Ministers and adjoining authorities are required to be consulted, along with residents and businesses. However the regulations do not specify how consultation should be undertaken. The guidance expects a minimum of six weeks and says that it may be appropriate to follow the participation strategy for the LDP (as set out in the Community Involvement Scheme). Representations must be taken into account before a draft schedule is published for examination.

A draft schedule must also be published for at least four weeks before it is then formally submitted for examination, along with the supporting evidence. Representors at this stage have a right to be heard in front of the examiner.

It is for the charging authority (i.e. the LPA) to appoint an examiner, who does not necessarily need to be an Inspector, even though the examination should proceed in a similar manner to an LDP examination. There is no requirement to appoint a Programme Officer, though they may be needed depending on the complexity of the examination. Similarly, a Pre Hearing Meeting will only be required in certain circumstances.

As set out in paragraph 4.11:-

"The role of the examiner is to ensure that:-

a) procedural and legislative requirements have been met as specified under section 221 of the Planning Act 2008 (this will probably be covered in a PHM if there is one),

b) the draft charging schedule and proposed rate/s are supported by and consistent with the appropriate available evidence and,

c) the evidence provided demonstrates that the proposed rate/s would not put overall development in the area at serious risk."

The examiner may approve, modify or reject the draft charging schedule. It can only be approved by the authority if recommended to be so by the examiner, if it has been modified as recommended (the report is binding) and it meets the legislative requirements.

It should be noted that the emerging Localism Bill would alter the regulations so that the examiner's report is no longer binding: *"examiners will only be able to ensure charging authorities do not set unreasonable charges."*

Once approved and published, the charging schedule takes effect.

It should be noted that *"liability to CIL does not arise in respect of development if, on the day planning permission is granted for that development, it is situated in an area in which no charging schedule is in effect."*

Conclusion

This WG guidance is intended to assist Welsh LPAs with the preparation of CIL charging schedules. Until now, most Welsh authorities have been hesitant about CIL, probably due to few having adopted LDPs. As English LPAs begin to make progress with CIL and as more LDPs emerge, it is likely that Wales will start to see CIL come forward. Whether this WG guidance will help with the practicalities remains to be seen, for it reads more as a summary of the regulations.

DLP Planning Ltd has an understanding of CIL and the practicalities involved. Should you have any projects that you feel may be implicated by CIL, DLP would be pleased to discuss the issues with you.

If you require more information or would like to discuss the issues mentioned in further detail please contact:

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