client - briefing

CIL Amendment Regulations & New Guidance

DLP BRIEFING NOTE 119

Prepared by
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On 29th November 2012, the **Community Infrastructure Levy (Amendment) Regulations 2012** came into force. The regulations make provision for:

1. Developments granted consent under Neighbourhood Development Orders (including Community Right to Build Orders) to be liable to CIL.
2. The calculation of CIL liability.
3. The calculation of social housing relief.
4. The application of CIL to reflect changes made to Section 216 of the Planning Act 2008 (application) by Section 115(5) of the Localism Act 2011.
5. To make provision for the payment periods where the Mayor of London charges CIL in an area where a London Borough Council does not.

The regulations contain a number of changes to amend the relationship between CIL and **Section 73 applications** i.e. applications to change conditions attached to planning consents. These are often used to make changes to a scheme. In legal terms, these are new planning consents and therefore, under the old regulations, triggered CIL liability.

The amendments make it clear that when a change to an application under Section 73 does not change the liability to CIL then only the original consent will be liable. Where the Section 73 changes CIL liability, then the most recently commenced scheme is the liable scheme. The amended regulations also provide for payments made in relation to a previous planning permission to be offset against the liability on the Section 73 permission.

These new 2012 CIL regulations also make similar transitional provision for applications made under Article 18 of the Development Management Procedure Order 2010, which can be used to extend planning permissions granted before October 2010. This brings the position in England on **time extensions** in line with the position in Wales, which is already covered in the CIL regulations. Without this change, extensions to consents would trigger a full CIL liability, which could act as a significant disincentive to take advantage of this 'pro-growth' provision.

Moreover, the operation of the main **CIL liability formula** has been changed for sites where some existing buildings will be demolished and others will be used for a different purpose, to ensure the liability is not greater than it should be.

Further information can be found at paragraphs 93-104 of the **guidance document** published by DCLG on 14th December 2012. This guidance replaces the CIL guidance published in March 2010 (except in circumstances whereby a draft charging schedule has already been submitted to the examiner).

The guidance states that the government expects charging authorities to **work proactively with developers** to ensure that they are clear about charging authorities' infrastructure need and what developers will be expected to pay for through which route – CIL or Section 106 obligation. This is to ensure there is no actual or perceived 'double dipping' with developers paying twice for the same item of infrastructure.

The new guidance states that when a CIL charge is introduced, **Section 106 requirements should be scaled back** to those matters that are directly related to a specific site, and are not set out in a regulation 123 list (i.e. those projects or types of infrastructure that charging authorities intend to fund through the levy). When the regulation 123 list includes a generic item such as transport or education, Section 106 contributions should not normally be sought on any specific projects in that category.

The guidance also advises that charging authorities should show (using appropriate evidence including existing published data) that their **proposed charging rates** will contribute positively towards and not threaten delivery of the relevant plan as a whole at the time of charge setting and throughout the economic cycle. Authorities should avoid setting rates right up to the margin of economic viability across the vast majority of sites in their area.

Moreover, authorities should take into account other development costs arising from existing regulatory requirements, such as planning obligations' policies in the relevant plan especially those for affordable housing and major strategic sites.

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