

COMMUNITY INFRASTRUCTURE LEVY UPDATE

20 APRIL 2023

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Proposed Infrastructure Levy



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Infrastructure Levy

- **2020 White Paper and Planning Bill**
- **LURB** - Part 4, cl 124, 125, 126 and 122, and new Part 10A of the Planning Act 2008 (inserted by Schedule 11, Part 1 of the Bill):
 - 204A: The Levy
 - 204B: The Charge
 - 204D: Liability
 - 204E: Liability: interpretation of key terms
 - 204F: Charities
 - 204G: Amount
 - 204Z: Regulations: generally is a reform to the existing system of developer contributions VIA Section 106 planning obligations and the Community Infrastructure Levy - in England.

Technical Consultation

- Technical consultation on the Infrastructure Levy - 17 March to 9 June 2023

Key Features Of II

- Replace CIL with:
 - Mandatory for all LPAs
 - Calculated as proportion of GDV per m2
 - Locally set thresholds via Infrastructure Delivery Strategies spending plan
 - Affordable Housing to be delivered – RIGHT TO REQUIRE
 - Infrastructure – integral onsite via conditions; ‘Delivery Agreements’; and all other infra via IL
 - All types of development incl PD & COU(unless exempted)
 - *NB - MCIL remains*

Section 106?

Depends on Site 'Routeway' :

- Core Routeway – majority – cash based rates and thresholds– s106 limited to securing matters not covered by condition
- Infrastructure In-Kind Routeway - large and complex sites – s.106 for in-kind payment of Levy (no less)
- S.106 Only Routeway - where GDV per m2 cannot be calculated, or where buildings main focus of development – no IL and s106 applies
- ? *DELIVERY AGREEMENTS?*

WHAT IS IT?

- Levy based on GDV at point of site sale or completion
- Indicative Liabilities calculated using IL Charging Schedules - set out expectations of IL liabilities reflecting assumed values of a site
- Provisional Payment of IL close to completion and potential Final Adjustment payment on completion incorporating final values to ensure correct liabilities are discharged

AFFORDABLE HOUSING & INFRASTRUCTURE DELIVERY

- Infrastructure Delivery Strategy – typical infrastructure and wider includes how CAs t expect to spend IL “ *to accommodate the needs of the community*” *Chp 4 Tech Con*
- AH as ‘in kind payment’ of IL onsite through ‘Right to Require’ as proportion of total IL

EXEMPTIONS & REDUCTIONS?

- Certain types and size of development may be exempted when CAs set IL - NB onsite AH provision is a payment not an exemption;
- Charitable Relief
- Self Build
- Extensions and annexes
- Sustainable technologies ‘offset’?
- Smaller sites (i.e. less than 10 housing units) – AH or reduced IL?
- Govt funded infra development but s.106?

WHY & WHEN?

- **Land Value Capture and AH** – *‘to balance the aim of capturing land value with ensuring that land continues to come forward, meaning that rates set will be a local judgement based on local evidence’* – *‘aim of capturing more land value uplift and deliver at least as much affordable housing’* Tech Con
- **Test & Learn Rollout** – **before IL becomes mandatory** – *‘to achieve stated objectives – principally to capture a greater amount of land value uplift than the existing system and ultimately increase certainty for developers and local authorities’*
- Depends on LURB and Regulations and Transitionals – prospective timeline Test & Learn 2025 to Final Rollout 2029

CIL CASELAW

Oval Estates

- R. (on the application of Oval Estates (St Peter's) Ltd) v Bath and North-East Somerset Council[2020] EWHC 457
Swift J
- Whether based upon s 106 development was 'phased' or not must be stated.
- s106 'not part of the planning permission'

Lambeth

- Lambeth LBC v SSHCLG [2021] EWHC 1459 (Admin) – Thornton J
- Purpose of DN following LN ‘record and inform when payment pursuant to CIL was due; what sum including any surcharge or interest.
- Each notice played a part in the administration of CIL **but not to determine when liability arose or when payment was due (see Oval Estate)**
- Revised LN or DN - change to quantum and/or payment dates but it did not **change the genesis or origin of the liability.**
- Revised LN or DN not capable of extinguishing liability to pay the levy, surcharges or interest which had already accrued.

Trent & Braithwaite

- R (oao Trent) v Hertsmere) v East Suffolk BC [2021] EWHC 907
- R. (oao Braithwaite - [2022] EWHC 691 (Admin) - 28
March 2022 and [2022] EWCA Civ 1716
- Reg 65 (1) duty on CA to issue LN *‘as soon as practicable after the day on which a planning permission first permits development’*;
- Absence of A of L from developer not a bar to LN issue
- Reg 117 surcharge review – based upon LN and DN but successful challenge limited to surcharge DN as no power to quash invalid LN –
- LN in breach of R65(1) liable to be quashed but not nullity
- Successive revised LNs and DNs – Reg 65(8) “ceases to have effect” means earlier LN or DN is “suspended”

Heronislea

- R. (oao Heronslea (Bushey 4) Ltd) v SSHCLG [2022] EWHC 96 (Admin)- Lang J
- Challenge to R117 decision - Loss of social housing relief granted in absence of subsequent CN and later surcharges arose (plus interest)
- Reg.51(7)(a) should be read as meaning chargeable development would cease to be eligible for SHR if no CN was submitted
- Reg 71 (2) deemed commencement - payment in full on date – DN did not set date
- The statutory framework supporting CIL “aimed to create certainty as to when and how liability for the levy would arise” (see , R. (on the application of Orbital Shopping Park v Swindon BC [2016] EWHC 448 (Admin))

Thank you for listening!

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