LGA response to Call for Evidence – Community Infrastructure Levy (CIL) Review Group

January 2016

Submission

The Local Government Association (LGA) welcomes the opportunity to submit information to the Community Infrastructure Levy (CIL) Review Group.

The LGA is here to support, promote and improve local government. We will represent local government and support councils through challenging times by making the case for greater devolution, helping councils tackle their challenges and assisting them to deliver better value for money services. www.local.gov.uk

This response has been agreed by the LGA's Environment, Economy, Housing and Transport (EEHT) Board. The EEHT Board has responsibility for LGA activity in relation to the economy and environment, including: transport, employment and skills, economic development and business support, housing, planning, waste and climate change.

Key messages

Councils play a central role in driving regeneration, revitalising communities and creating the right mix of homes and jobs to enable them to thrive. It is vital that new homeowners and wider communities get the infrastructure they need, and councils are able to source sufficient funding for this infrastructure in line with local plans.

The Community Infrastructure Levy (CIL) is one tool available to councils but it is important to point out that it does not and cannot meet the whole infrastructure needs in an area. It does however, have potential, given the right flexibility, to be used to leverage other funding and be an important of the funding mix.

Our response covers a number of key areas where we feel there is scope to make changes to the current CIL process in order to make it a more effective tool for raising funds for infrastructure.

In summary:

- Regular changes and uncertainty about the government's strategic direction on the future of CIL result in delay and additional costs to councils developing a CIL and act as a disincentive to those considering putting a CIL in place
- The CIL regulations are extensive and complex – the government should consider how the regulations could be streamlined to reduce the resource extensive process of setting up, the ongoing administration and reviewing of CIL

Local Government House, Smith Square, London SW1P 3HZ
Email info@local.gov.uk
Tel 020 7664 3000 Fax 020 7664 3030
Information centre 020 7664 3131 www.local.gov.uk

- The government should remove the existing national exemptions from CIL. Any exemptions to CIL should be decided by councils based on development viability at a local level.
- Councils should have flexibility to pool section 106 contributions for both strategic and mitigating infrastructure on large and strategic sites. This will support the role of councils in land assembly and securing delivery contracts for new development. They should also have flexibility to decide the balance of section 106 and CIL taking into account the nature of and viability of development in their area to aid the effective delivery of infrastructure.
- Changes to the CIL regulation should be made to allow, in certain circumstances, capacity for local authority borrowing against future CIL receipts to enable them to open up delivery of development sites
- The government should work with relevant councils and the development industry to agree on a single methodology and guidance for viability assessment for setting CIL rates.

Detailed comments

Current ability of CIL to contribute to infrastructure to support development.

CIL does not and cannot meet the whole infrastructure needs in an area and generally constitutes a low proportion of infrastructure funding. In order to maximise its use it is crucial that it remains a flexible system to respond to local needs and priorities. For example:

- In Christchurch and East Dorset the projected CIL income over the period 2015-2028 is £13.67 million and the infrastructure funding gap from infrastructure identified in the Core Strategy Infrastructure Delivery Plan (where costs have been identified) is £319.47 million – income from CIL is therefore forecast to contribute just 4% of total investment in infrastructure necessary up to 2028.

- In Solihull the maximum likely CIL income of £26.4 million over the period of the local plan is still considerably less than the identified funding gap of almost £100 million – contributing a quarter of investment needed.

- In Wiltshire the projected CIL income of £62 million between 2011 and 2026 still falls considerably short of the total infrastructure funding gap of £717 million – 9% of total necessary investment.

When CIL was first introduced it was based on the principle that all development would contribute to infrastructure across an area. However, the government's execution of CIL, including the list of regulations and subsequent changes to those regulations (including a number of national CIL exemptions) have limited its effectiveness as a tool to raise funding for infrastructure to support new development.

For example, the CIL regulations are 72 pages long and there have been changes made to these every year since their introduction in 2010. Regular changes and uncertainty about the government's strategic direction on the future of CIL result in delay and additional costs to councils who are already in the process of developing a CIL, as well as acting as a disincentive to those considering putting a CIL in place.

The government should undertake an analysis of the impact of cumulative changes to the CIL regulations as well as considering how the regulations could be streamlined to reduce the resource extensive process of setting up and the ongoing administration of CIL. This could support further uptake of CIL by councils.

Furthermore, the introduction of a number of top-down national exemptions from CIL e.g. for self-build, charities and social housing has reduced the income from CIL and added complexity and cost to councils. The proposals in the Housing and Planning Bill currently working its way through parliament for 200,000 new Starter Homes, also exempt from CIL, will compound this further. In some cases it is the difference between a council deciding to establish a CIL or not. Mandatory exemptions to CIL reduce flexibility for charging authorities to cater for local needs and priorities and the cumulative impact could be to significantly reduce the amount of funding to invest in critical infrastructure needed to facilitate development. The government should remove the existing national exemptions and any exemptions to CIL should be decided by councils at a local level.

This has been to some degree reflected in the uptake of CIL by local authorities – to date 100 now have an adopted CIL in place, although many more are working their way through the process. There are a number of other reasons why CIL has not yet been introduced including:

- in areas where viability of development is marginal and/or there are low levels of development – strategic decisions have been made not to invest significant time and resources to introducing CIL for an expected minimal level of return
- councils who run a tariff system for contributions to infrastructure, for example Milton Keynes, are concerned that introducing CIL will yield significantly less funding on a borough wide basis than their existing system which has worked successfully over a number of years and has buy-in from developers.

Restrictions on pooling section 106 contributions

Although CIL is voluntary, the government introduced measures from April 2015 to incentivise councils to put a CIL in place. This means that councils can now only use the section 106 planning obligations system for site-specific infrastructure and are unable to pool contributions from more than five sites. This means that the ability to pool contributions for strategic and/or mitigating infrastructure is significantly restricted without a CIL scheme in place.

There should be flexibility according to local circumstances for development contributions towards specific infrastructure schemes to be secured through a negotiated agreement rather than a fixed CIL amount – for example on large and strategic sites. Whilst the CIL guidance does enable councils to set zero rates for strategic sites, the pooling restrictions means councils are unable to pool more than 5 section 106 contributions on these sites. This raises particular issues for delivery of sites that will be subdivided to be taken forward by a number of different developers.

Councils should have flexibility to pool section 106 contributions for both strategic and mitigating infrastructure on large and strategic sites. This will support the role of councils in land assembly and securing delivery contracts for new development.

Due to the pooling limitations, councils, where there is not the strategic viability to introduce CIL or where they are not advanced enough in their plan making, are left in a position where there is no mechanism in place to secure the contributions necessary to mitigate the harm created by a development making it unacceptable in planning terms which may give rise to refusal e.g. flood mitigation measures.

This pooling limitation gives rise to a great deal of time and expense being spent by the local authority and the developer to circumvent this restriction using legal or other legislative powers and in some cases taking significant risks in order to grant development that accords with the development plan.

Improvements to the arrangements for collecting and spending CIL

Where the scale of essential infrastructure investment needed for key sites or growth locations is disproportionate to the ability of a scheme to pay, or the development is unable to fund the investment needed at the time it is needed early in the development, then a forward funder is needed.

This is an approach that a number of councils have used. For example in **Ashford** a motorway junction and an associated local roundabout were given up front public funding (through a Regional Infrastructure Fund set up by the Regional Development Agency) repaid over time by future developments in relation to the trips each generates. The contributions were secured by section 106 agreement. This arrangement has enabled delivery of a substantial quantum of employment, housing and retail development without the delay that would have arisen had the funding needed to be accumulated before the improvement scheme could be delivered. It has also helped to enable the future delivery of a planned urban extension of some 6,000 homes.

Whilst a forward funding model for infrastructure is critical for some key sites or growth locations, the CIL regulations do not clearly permit CIL receipts by the council to be passed to another body (e.g. a forward funder) to reimburse expenditure already incurred by that body. This could be resolved by amending the CIL regulations to clarify that the permission to pass CIL receipt to another body (effectively for work that is due to take place) includes the case where this is to reimburse expenditure already incurred by that other body.

Furthermore, the CIL regulation should allow, in certain circumstances, capacity for local authority borrowing against future CIL receipts to enable them to open up delivery of development sites. One example would allow local authorities to borrow to forward fund the developers' contributions element of major infrastructure schemes being promoted by the public sector e.g. in Ashford, a key motorway junction is being promoted by Highways England at a cost of £75 million. Whilst the majority of funding has been secured, £14 million is due from developer contributions. To secure this important private sector element of the funding a forward funder is needed. If the local authorities were able to borrow against CIL receipts then the delivery of the junction is secured – facilitating economic and housing growth in the region.

There should also be flexibility in the use of CIL beyond capital investment, for commuted sums and revenue support, where funding is otherwise unavailable but activity is deemed necessary at a local level – for example in the management and maintenance of open space/mitigation of flood risk.

Viability and CIL

The impact on development viability is a key consideration that needs to be taken into account when introducing CIL. However, there is currently no agreed methodology for viability assessment – this can lead to differing interpretations of how much is available to support required infrastructure, with developers and landowners likely to argue for reductions in proposed CIL rates.

The government should work with councils and the development industry to agree on a single methodology and guidance, including on inputs, for viability assessment. This would reduce the scope for differing interpretations of how much is available to support required infrastructure when setting CIL schedules. It would need to follow the principle that the cost of local plan policies and CIL be driven into the land value, a so-called 'residual value' and not based on a surveyors view of market value. For example, guidance produced by the Local Housing Delivery Group, endorsed by the Local Government Association (and the Home Builders Federation), encourages plan-level viability testing to be based upon evaluating the existing use value or alternative use of sites plus a premium at a level that will still make it worth the land owner's while to sell. This is equally well applied to CIL viability assessment work.

Planning Advisory Service (PAS) support for local planning authorities

The Planning Advisory Service has a significant programme of support in place for local authorities, and more should be made of this valuable resource including a government commitment to continued funding. Sector led support, where councils can learn from the experience of others is a much more effective way of driving improvements to planning services than further national reforms.

PAS provide a combination of on line tools, advice and checklists free for all local authorities to download and use, run round table events for dissemination and discussion of issues and best practice, and provide direct on-site support for authorities. This includes support to councils on the Community Infrastructure Levy. An impact assessment of a sample of PAS support for authorities showed of 107 recommendations made by PAS, 105 were taken forward.