

Planning Advisory Service Advice Note

Community Infrastructure Levy – can you introduce one without a ‘relevant plan’?

One of the questions that often gets raised at our events on the Community Infrastructure Levy (CIL) is whether a CIL can be progressed in advance of an adopted, up to date local plan. Our impression is that some authorities, based on comments made to PAS, haven't progressed their CIL because they don't have a relevant plan as referred to in the [Planning Practice Guidance](#).

Our opinion – and it is just our opinion – is that based on the legislation and Planning Practice Guidance (PPG), on comments made by senior officials at Department of Communities and Local Government (DCLG) and the Planning Inspectorate (PINs), the answer is that no, you don't have to have an up to date plan. But you do need up to date, relevant evidence.

In 2014 at an RTPi CIL event in Newcastle, a senior PINs Inspector gave the view that it wasn't necessary to have an up to date adopted plan, but that you would need up to date evidence. [Planning](#) has received the same view from PINs. A similar view was expressed by the DCLG CIL team at the PAS CIL events in summer 2014. And finally, the Minister for Housing and Planning, Brandon Lewis, wrote to a local authority in the South East stating that it is possible for a charging authority to adopt a levy in advance of its local plan provided they have robust evidence.

In the last few months, due to concern about S106 pooling restrictions coming in on April 2015, some local authorities have decided to go for a CIL without having an up to date local plan, and in some cases with no relevant plan. And in other cases, they are relying on the London Plan and/or Area Action Plans.

Local authorities are concerned about the legality of not basing CIL upon an adopted relevant plan, whether they would be challenged, or, more immediately, would get through at examination.

Here is PAS's understanding of what the legislation and guidance means. The starting point is S205 of the 2008 Act (as amended by the Localism Act 2011):

(All emphasis is added)

*..(2) In making the regulations the Secretary of State shall aim to ensure that the overall purpose of CIL is to ensure that costs incurred in **supporting the development of an area** can be funded wholly or partly by owners or developers of land in a way that does not make development of the area economically unviable.*

Localism Act 2011

114 Community Infrastructure Levy: approval of charging schedules.

(1) The Planning Act 2008 is amended as follows. .

(2) In section 211 (amount of levy) after subsection (7) insert—.

“(7A) A charging authority must use appropriate available evidence to inform the charging authority's preparation of a charging schedule.

(7B) CIL regulations may make provision about the application of subsection (7A) including, in particular—.

(a) provision as to evidence that is to be taken to be appropriate,



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- (b) provision as to evidence that is to be taken to be not appropriate,
- (c) provision as to evidence that is to be taken to be available,
- (d) provision as to evidence that is to be taken to be not available,
- (e) provision as to how evidence is, and as to how evidence is not, to be used,
- (f) provision as to evidence that is, and as to evidence that is not, to be used,
- (g) provision as to evidence that may, and as to evidence that need not, be used, and
- (h) provision as to how the use of evidence is to inform the preparation of a charging schedule.”

There is nothing in the act insisting on having a local or relevant plan, in terms of the evidence in the Act(s).

Below are the **CIL Regulations 2010 (as amended)**, that are particularly relevant.

Setting rates

14.— (1) *In setting rates (including differential rates) in a charging schedule, a charging authority must aim to strike what appears to the charging authority to be an appropriate balance between—*

- (a) *the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and*
- (b) *the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.*

16.— (1) *Before submitting a draft charging schedule for examination in accordance with section 212 of PA 2008, the charging authority must—*

- (a) *make a copy of the draft charging schedule, the relevant evidence and a statement of the representations procedure available for inspection—*
 - (i) *at its principal office, and*
 - (ii) *at such other places within its area as it considers appropriate;*
- (b) *publish on its website—*
 - (i) *the draft charging schedule,*
 - (ii) *the relevant evidence (to the extent that it is practicable to do so),*
 - (iii) *statement of the representations procedure, and*
 - (iv) *statement of the fact that the draft charging schedule and relevant evidence are available for inspection and of the places at which they can be inspected;*

“relevant evidence” means evidence which is readily available and which, in the opinion of the charging authority, has informed its preparation of the draft charging schedule;

Based on the above, there doesn't appear to be anything in the legislation that requires a local or relevant plan.

The final consideration is to review the guidance and identify the statutory elements within it.

Planning Practice Guidance

Paragraph: 010 Reference ID: 25-010-20140612

*Charging schedules **should** be consistent with, and support the implementation of, up-to-date relevant Plans.*

Paragraph: 011 Reference ID: 25-011-20140612

What is a ‘relevant Plan’?

In relation to the levy, the relevant Plan is the Local Plan in England, Local Development Plan in Wales, and the London Plan in London.

Charging schedules are not formally part of the relevant Plan, but charging schedules and relevant Plans **should** inform and be generally consistent with each other. The National Planning Policy Framework in England (paragraph 175) provides that, **where practical, charging schedules should be worked up and tested alongside the Local Plan.** The same principles apply in Wales (see paragraph 2.1.1 of Planning Policy Wales). A charging authority may use a draft plan if they are proposing a joint examination of their relevant Plan and their levy charging schedule.

Paragraph: 016 Reference ID: 25-016-20140612

How does the levy charge relate to infrastructure planning?

Charging authorities **must** identify the total cost of infrastructure they wish to fund wholly or partly through the levy. In doing so, they **must** consider what additional infrastructure is needed in their area to support development, and what other sources of funding are available, based on appropriate evidence.

Information on the charging authority area's infrastructure needs **should** be drawn from the infrastructure assessment that was undertaken as part of preparing the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London). This is because the plan identifies the scale and type of infrastructure needed to deliver the area's local development and growth needs (see paragraphs 162 and 177 of the National Planning Policy Framework in England)....

...Charging authorities **should** focus on providing evidence of an aggregate funding gap that demonstrates the need to put in place the levy.

The Community Infrastructure Levy examination **should** not re-open infrastructure planning issues that have already been considered in putting in place a sound relevant Plan.

Paragraph: 018 Reference ID: 25-018-20140612

How do local authorities prepare their evidence to support a levy charge?

A charging authority **should** be able to explain how their proposed levy rate or rates will contribute towards the implementation of the relevant Plan (the Local Plan in England, Local Development Plan in Wales, and the London Plan in London), and support development across their area...

The Act and Regulations refer in general terms to the development of the area and don't say the development of the area *as defined or set out in the local plan/relevant plan*. The Planning Practice Guidance (PPG) doesn't make it very clear that you do not require a relevant plan.

The wording in CIL Paragraph 16 of the PPG, set out above, clearly states that information on infrastructure need should be drawn from the infrastructure assessment that was undertaken as part of the relevant plan. This is guidance; it is not regulation or law. It does make the point that your CIL evidence will need to be based on credible evidence on the need for infrastructure to support the development of your area.

The Minister, PINs and DCLG have informally said that you can adopt a levy in advance of adopting a local plan BUT this not really clear from the PPG. It is also not clear from the actions elsewhere in the Planning Inspectorate. In some cases, where local plan and CIL charging schedules have been submitted together, the CIL examination is being held back until the local plan examination has happened. At



least this is how delays to their CIL examination is being perceived by the local authorities. The authorities that have had their CIL held up include: Mid Sussex, Runnymede, Solihull, and Maldon.

What are the risks of progressing CIL without a relevant plan?

Unless PINs change this approach then there is a risk around submitting a CIL charging schedule before it is clear that a local plan is progressing through examination successfully, even though, in PAS's opinion, there is no legislative reason not to progress your CIL. But this should be something you discuss with PINs in your pre-examination discussions.

Conclusion

Many authorities do not have a plan in place and will not be able to pool S106 obligations after April 2015; but many do have a robust evidence base for the purpose of CIL. In our opinion, if this is your situation, there is no legislative reason not to progress your CIL and this is now supported by the Housing and Planning Minister, DCLG, and PINs. So it does not appear to be risky to follow this route. However, the risk lies with determining what evidence will be required as, at present, the PPG does not provide any specific guidance on what evidence is required when you don't have a relevant plan. Therefore, you need to be sure that you can describe your quantum of development; and the infrastructure required to support it, with an identified infrastructure funding gap that demonstrates your need to have a CIL; and up to date evidence to prove your rates would not threaten delivery of your growth strategy.