

# Local Government Association response to the MHCLG consultation on 'Supporting housing delivery through developer contributions'

10 May 2018



## About the Local Government Association (LGA)

The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government.

We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

The LGA welcomes the opportunity to respond to this [consultation](#).

## Response to specific questions in the consultation

### Reducing complexity and increasing certainty

#### Question 1

Do you agree with the Governments' proposals to set out that:

- i. Evidence of local infrastructure need for CIL-setting purposes can be the same infrastructure planning and viability evidence produced for plan making?
- ii. Evidence of a funding gap significantly greater than anticipated CIL income is likely to be sufficient as evidence of infrastructure need?
- iii. Where charging authorities consider there may have been significant changes in market conditions since evidence was produced, it may be appropriate for charging authorities to take a pragmatic approach to supplementing this information as part of setting CIL – for instance, assessing recent economic and development trends and working with developers (e.g. through local development forums), rather than procuring new and costly evidence?

The proposals are generally welcome.

Many local authorities are already sharing evidence for the purposes of CIL-setting and plan-making.

Enabling evidence of a funding gap significantly greater than anticipated CIL to be sufficient as evidence of infrastructure need and the proposal in iii. should support a more proportionate evidence gathering process, making it quicker and easier to set or review CIL.

#### Question 2

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**Are there any factors that the Government should take into account when implementing proposals to align the evidence for CIL charging schedules and plan making?**

As the consultation document points out there are benefits to undertaking infrastructure planning for plan-making and setting CIL at the same time, but mandating this risks creating delays. The planning guidance should make clear that it is not mandatory to align the evidence.



### **Ensuring that consultation is proportionate**

#### **Question 3**

**Do you agree with the Government's proposal to replace the current statutory consultation requirements with a requirement on the charging authority to publish a statement on how it has sought an appropriate level of engagement?**

Yes. Allowing charging authorities to determine the level of engagement on setting and reviewing CIL should allow for a more proportionate approach to engagement. However, it will be important that the Planning Inspectorate has clear guidelines on undertaking CIL examinations to take into account these changes. Consideration should be given to introducing a streamlined consultation mechanism for partial review of CIL, which would also limit the opportunity for objections to be made to everything within a CIL charging schedule every time partial revisions are undertaken.

#### **Question 4**

**Do you have views on how guidance can ensure that consultation is proportionate to the scale of any charge being introduced or amended?**

No. We consider that it would be beneficial to get a cross-sector group together to explore this in further detail before any changes to guidance are made.

### **Removing unnecessary barriers: the pooling restriction**

#### **Question 5**

**Do you agree with the Government's proposal to allow local authorities to pool section 106 planning obligations:**

- i. **Where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106?**
- ii. **Where significant development is planned on several large strategic sites?**

We welcome the proposal to remove the section 106 pooling restrictions, which is something the LGA has repeatedly called for. However, we are concerned that there are still caveats attached to this. The pooling restriction should be removed completely for all local authorities to significantly aid the funding of the infrastructure needed to support development and growth in local areas.

#### **Question 6**

- i. **Do you agree that, if the pooling restriction is to be lifted where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106, this should be measures based on the tenth percentile of**

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- ii. **average new build house prices?**  
**What comments, if any, do you have on how the restriction is lifted in areas where CIL is not feasible, or in national parks?**

See answer to question 5 – the section 106 pooling restriction should be universally lifted with no caveats attached.

#### **Question 7**

**Do you believe that, if lifting the pooling restriction where significant development is planned on several large strategic sites, this should be based on either:**

- i. **a set percentage of homes, set out in a plan, are being delivered through a limited number of strategic sites; or**  
ii. **all planning obligations from a strategic site count as one planning obligation?**

See answer to question 5- the section 106 pooling restriction should be universally lifted with no caveats attached.

#### **Question 8**

**What factors should the Government take into account when defining ‘strategic sites’ for the purposes of lifting the pooling restriction?**

See answer to question 5.

#### **Question 9**

**What further comments, if any, do you have on how pooling restrictions should be lifted?**

See answer to question 5.

#### **Improvements to the operation of CIL**

#### **Question 10**

**Do you agree with the Government’s proposal to introduce a 2 month grace period for developers to submit a Commencement Notice in relation to exempted development?**

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.

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 can significantly reduce the amount of funding to invest in critical infrastructure needed to facilitate development.

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.

Notwithstanding this view, if the exemptions are to remain and a 2 month grace period is introduced, it should be at the discretion of the charging authority whether to remove the exemption or not.

#### **Question 11**

**If introducing a grace period, what other factors, such as a small penalty for submitting a Commencement Notice during the grace period, should the Government take into account?**

Whether the developer has previously failed to submit a Commencement Notice to the charging authority prior to the start of works on site.

#### **Question 12**

**How else can the Government seek to take a more proportionate approach to administering exemptions?**

No comment.

#### **Question 13**

**Do you agree that Government should amend regulations so that they allow a development originally permitted before CIL came into force, to balance CIL liabilities between different phases of the same development?**

This should be at the discretion of the charging authority.

#### **Question 14**

**Are there any particular factors the Government should take into account in allowing abatement for phased planning permissions secured before introduction of CIL?**

Charging authorities should have discretion relating to allowing abatement for phased planning permissions secured before introduction of CIL.

#### **Question 15**

**Do you agree that Government should amend regulations on how indexation applies to development that is both originally permitted and then amended while CIL is in force to align with the approach taken in the recently amended CIL regulations?**

Yes, we understand that this corrects an error in the way the original regulations were drafted, which has led to unintended consequences.

### **Increasing market responsiveness**

#### **Question 16**

**Do you agree with the Government's proposal to allow local authorities to set differential CIL rates based on the existing use of land?**

Yes. This add useful flexibility for local authorities in setting their CIL rates. However, it is important to note that CIL is already very complex, so if introduced, the proposal should be clear and simple for local authorities to implement where they choose to do so, and in doing so minimising the risk of challenge at CIL examination.

## Question 17

If implementing this proposal do you agree that the Government should:

- i. encourage authorities to set a single CIL rate for strategic sites?
- ii. for sites with multiple existing uses, set out that CIL liabilities should be calculated on the basis of the majority existing use for small sites? Yes/No
- iii. set out that, for other sites, CIL liabilities should be calculated on the basis of the majority existing use where 80% or more of the site is in a single existing use?
- iv. What comments, if any, do you have on using a threshold of 80% or more of a site being in a single existing use, to determine where CIL liabilities should be calculated on the basis of the majority existing use?

Whilst, we welcome additional flexibility for local authorities to set differential CIL rates, and we recognise this will be an optional tool that local authorities can use, there is a risk that it will lead to additional complexity and challenge at examination, for example, disputes over what the existing use of the land is, particularly on sites which have multiple existing uses. There is a risk that could lead to gaming from developers (for example, as the consultation describes, demolishing existing buildings to avoid changing uses). So if introduced, the proposals should be clear and simple for local authorities to implement where they choose to do so, and in doing so minimise the risk of challenge at CIL examination. Alongside this, robust national guidance on this would be helpful to support local authorities who wish to go down the route of setting differential CIL rates based on the existing use of land.

## Question 18

What further comments, if any, do you have on how CIL should operate on sites with multiple existing uses, including the avoidance of gaming?

None.

## Indexing CIL rates to house prices

## Question 19

Do you have a preference that CIL rates for residential development being indexed to either:

- a) The change in seasonally adjusted regional house price indexation on a monthly or quarterly basis; OR
- b) The change in local authority-level house price indexation on an annual basis

Please see answer to question 23.

## Question 20

Do you agree with the Government's proposal to index CIL to a different metric for non-residential development?

Please see answer to question 23.

## Question 21

If yes, do you believe that indexation for non-residential development should

be based on:

- i. the Consumer Price Index? OR
- ii. a combined proportion of the House Price Index and Consumer Prices Index?

Please see answer to question 23.

#### Question 22

- iii. What alternative regularly updated, robust, nationally applied and publicly available data could be used to index CIL for non-residential development?

Please see answer to question 23.

#### Question 23

**Do you have any further comments on how the way in which CIL is indexed can be made more market responsive?**

It is not clear from the proposals whether the government is seeking to make changes in order to capture inflation or land value increase. This needs to be clarified by the government and then the appropriate index applied accordingly.

We consider that it would be beneficial to get a cross-sector group together to explore this in further detail, before making regulatory changes.

#### Improving transparency and increasing accountability

#### Question 24

**Do you agree with the Government's proposal to?**

- i. remove the restrictions in regulation 123, and regulation 123 lists?

Yes

- ii. introduce a requirement for local authorities to provide an annual Infrastructure Funding Statement?

We support the principle of Infrastructure Funding Statements, in seeking to improve transparency of how councils propose to use developer contributions, both through CIL and s106 planning obligations, and bringing the information into one place. The government should consider what new burdens this might add to local authorities and provide additional funding accordingly.

#### Question 25

**What details should the Government require or encourage Infrastructure Funding Statements to include?**

We consider that it would be beneficial to get a cross-sector group together to explore this in further detail.

#### Question 26

**What views do you have on whether local planning authorities may need to seek a sum as part of Section 106 planning obligations for monitoring planning obligations? Any views on potential impacts would also be welcomed.**

It is important that any new burdens on local planning authorities to monitor planning obligations are fully funded.

### **A Strategic Infrastructure Tariff (SIT)**

#### **Question 27**

**Do you agree that Combined Authorities and Joint Committees with strategic planning powers should be given the ability to charge a SIT?**

Yes, however the government should extend the ability to charge a SIT to a wider range of areas than Combined Authorities and Joint Committees, where local authorities are working together to deliver strategic infrastructure projects to support growth and development.

#### **Question 28**

**Do you agree with the proposed definition of strategic infrastructure?**

It should be up to the local areas across which the SIT is charged and the SIT charging authority to determine the definition of 'strategic infrastructure' for the purposes of charging SIT. Once this definition has been determined it would be best practice to ensure transparency on what will be funded through the SIT.

#### **Question 29**

**Do you have any further comments on the definition of strategic infrastructure?**

No

#### **Question 30**

**Do you agree that a proportion of funding raised through SIT could be used to fund local infrastructure priorities that mitigate the impacts of strategic infrastructure?**

Yes, in principle, but the proportion should be agreed by the local areas across which the SIT is charged and the SIT charging authority.

#### **Question 31**

**If so, what proportion of the funding raised through SIT do you think should be spent on local infrastructure priorities?**

See answer to question 30.

#### **Question 32**

**Do you agree that the SIT should be collected by local authorities on behalf of the SIT charging authority?**

It would make practical sense that the local authorities who are processing the relevant planning applications to collect the SIT, as they will have all the information available to them to calculate the SIT charge liable. However, there should be flexibility for other arrangements to be made, where that is agreed locally.

#### **Question 33**

**Do you agree that the local authority should be able to keep up to 4% of the SIT**

### **receipts to cover the administrative costs of collecting the SIT?**

Yes, in principle, providing this meets the administration costs of collecting the SIT, but there needs to be flexibility for this to be altered to reflect local circumstances. For example, in some areas where SIT receipts are low, the administration costs of collect could well exceed 4%, meaning that the local authority would be operating the service at a deficit.



### **Technical clarifications**

#### **Question 34**

**Do you have any comments on the other technical clarifications to CIL?**

No.

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