

## **Highbury Group on Housing and the Credit Crunch**

### **Response to Consultation Paper on Community Infrastructure Levy: Detailed Proposals and draft regulations**

The Highbury Group is an independent group of housing planning and development experts from public, private and academic organisations who have drawn up a proposal to ensure housing and affordable housing output is maintained in the current market context. Many members have experience of the last downturn in the 1989-1992. Our membership is given on our website:

<http://www.londonmet.ac.uk/depts/dass/subjectareas/housing/highbury-group-on-housing-and-the-credit-crunch.cfm>

We have focused our comments on Chapters 2, 3, 4 and 5 and present these below.

#### **Chapter 2. Spending CIL**

We have major concerns about the statement in para 5 of the summary that 'CIL is expected initially to raise hundreds of millions of pounds of extra funding per year towards the infrastructure that local communities need' We consider that this statement is not supported by the Partial Impact Assessment nor by research previously published by CLG or by other agencies. There is no evidence that development value can carry a higher burden of planning obligations, whether raised through s106 agreements, CIL or a combination of the two, without a reduction in either the quality of provision or lessening of delivery of other planning policy objectives. We suggest that there is evidence in the current development market that some developers are unable to deliver on the planning obligations previously agreed, with the result that either schemes are delayed or that planning obligations are renegotiated.

#### **Chapter 3 Setting the CIL charge**

It remains unclear the extent to which the Government has tested the proposals on a range of real development schemes especially to gauge the impact of different rates of CIL at varying levels of cost and value. It is recognised that the Government proposed a criterion for setting CIL is at a rate, which should not have a negative impact on the viability of more than 5% of schemes. The difficulty with such an approach is that the development economics of an individual project is sensitive to changes in external factors such as land and construction costs, and interest rates as well as sales value.

We strongly support the guidance set out in PPS12 on Local Spatial Planning that local planning authorities should undertake infrastructure planning and that this should cover the full plan period of the core strategy. The same approach should be undertaken for Regional Spatial Strategies. In setting a CIL rate, a planning authority should have regard both to likely costs of infrastructure and the extent to which funding could be available from public sources. This is problematic where Government funding commitments are set on a 3-year basis, whereas core strategies are required to have a minimum 15 year timescale. It is noted that in paragraph 5 of the summary it is stated that 'core public funding will continue to bear the main burden' of infrastructure costs, but Government has not provided any data of infrastructure costs and public funding streams to support this assumption. Moreover the recent reductions in growth area funds and indications of significant reductions in overall central government capital investment, would lead to a conclusion, that at least in the medium term, infrastructure will in fact be more dependent on receipts from CIL and on planning obligations than in recent years.

Para 3.31 requires a local planning authority to identify the infrastructure-funding gap. This paragraph states that this could be based upon past needs and expenditure and other funds 'that would ordinarily come through to finance such projects.' This seems an inadequate substitute for estimating future requirements and identifying the extent and source of public resources, which are secured and the resources required which are not secured. It therefore seems impractical for a local authority to set a rate of CIL for any period longer than the 3 year period for which government budgets and government agency budgets are set.

Para 14 in the summary states that there should be a feedback loop between the process of developing the charging schedule and the process of infrastructure planning and that the two can occur together and be tested at the same time. This is essential and should be a requirement.

Clarification is required as to the Mayor of London's powers to levy CIL, given the ability of a London borough to raise CIL will be affected by the rate set by the Mayor and the schemes to which it applies. It is also important that there is no duplication between Mayoral and borough levy. It is critical therefore that there is a definition of strategic infrastructure to which the Mayor's levy and expenditure relates. This could be limited to strategic transport infrastructure.

#### **Chapter 4 Paying CIL**

Where there is a phased commencement of a scheme, it is logical that payment of CIL should also be phased.

There needs to be clarification as to the circumstances in which a charge can be waived or reduced. The LPA, which already has the power to modify a planning obligation, should also have the power to waive, reduce or defer a CIL charge if a full financial viability assessment demonstrates that a scheme which has consent is no longer viable. This may reflect different external factors, for example changes in cost, market value or availability of public sector resources. This should be a matter for the LPA to determine.

#### **Chapter 5 Planning Obligations**

It is critical that there is no duplication between CIL and planning obligations. It is therefore essential that the Government clarifies at the earliest opportunity the detailed changes to planning obligation requirements they propose to make. In fact any changes in s106 regulations need to be brought forward in tandem with the CIL regulations. It is difficult for a local planning authority to decide whether or not to operate CIL, given this is to be optional and not mandatory, if there remains uncertainty as to whether or how planning obligations will still be applicable. In this context, it should be noted the HBF is arguing for CIL introduction to be accompanied by the complete abolition of s106. Furthermore, LPAs who wish to continue to operate a s106 system, may consider it necessary to introduce CIL to protect their position in the context of possible constraints on or abolition of s106. It is noted that the Government intends to incorporate the s106 criteria in circ 5/05 in the legislation. While this would be supported, it is of concern that paragraph 25 in the summary states that a new test might limit planning obligations to those that 'mitigate the impact of the development in question'. This would exclude planning obligations, which are prescribed to meet planning policy requirement, such as affordable housing, or planning obligations which are required to compensate for loss caused by the development, for example loss of open space.

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