Call for clarity

With the Community Infrastructure Levy (CIL) coming into force, GL Hearn and Forsters are calling on the CLG to resolve serious issues with implementation and to produce guidance on its application of the Regulations.

So, CIL has finally arrived. The statutory framework for this new tax has been in place for some time, but it is only now, as authorities start to roll out their charges, that the full practical implications of the levy are being appreciated.

Whatever your thoughts on the new tax, the immediate question puzzling many practitioners is not necessarily whether it will deliver the infrastructure it is supposed to fund, but how the new system actually works?

There are over 40 councils now progressing their charging schedules, with five already adopted and charging – many more councils are in the early stages of the process. Yet many landowners and developers remain largely ignorant of the new tax regime, despite the liability to pay the tax being absolute where an adopted charging schedule is in place.

Early advice to clients on how they may influence the charges is critical.

One problem is the impact of embryonic CIL charging schedules on emerging development schemes. How should a developer assess a scheme's viability in an area where a charging schedule is at the early draft stage? Does the client assume a specific CIL rate, differential rates or no schedule being adopted when planning permission is granted? Some major regeneration schemes take years to plan. How can they be properly costed and planned when a major cost cannot be known?

This assessment is not helped by the wide interpretation of 'viable development' being adopted by councils. In particular the existing value of land against which viability is benchmarked is subject to widely different approaches. For example, when looking at retail development we have seen councils using base land values ranging from £300,000 to £1.5m in areas with not dissimilar value characteristics. Reaching an early view as to where charging rates are likely to be set is well-nigh impossible for landowners.

In a similar vein, many clients are becoming concerned that they will be contributing towards infrastructure but will be unable to have any say in when, how or even if it will be spent? How will a developer of a major retail scheme be confident that improvements to the town's bus station will be made if that bus station is included within the charging authority's CIL schedule? Presumably, in those circumstances a Grampian condition linked to the bus station would be unlawful? Or would it?

Another emerging problem is the manner in which CIL is calculated once the rates have been set. This is supposed to be simple: an adopted rate chargeable on net additional floorspace created by the new development. Unfortunately, early signs are that things are not quite that straightforward.

If you have the stomach and haven't eaten within the last hour, a quick glance at Regulation 40 (calculation of chargeable amount) will tell you why, as will the London Borough of Redbridge's valiant attempt to explain Regulation 40 in its joint report entitled *Applying the Community Infrastructure Levy* (March 2012).

It is not just landowners that CIL presents potential difficulties for. Many councils' existing planning policy is based on s106 agreements providing direct delivery of infrastructure by developers.

While s106 agreements will not disappear through the introduction of CIL, it will restrict its operation, particularly through councils not being able to pool contributions from more than five applications.

The shift from private to public sector delivery of infrastructure can be problematic. Some councils will not have the resource or the expertise to deliver major infrastructure projects, which will also be caught by complex public procurement regulations. They will also acknowledge that the private sector is often able to deliver such projects considerably cheaper, and may not welcome taking on the burden of risk of cost overrun.

CLG says that it intends to consult on revised Regulations, although no date has yet been set. However, we've only just had a set of revised Regulations, which themselves revised Regulations that were less than a year old. In London, where the Mayoral CIL is now chargeable, the authors are aware of different boroughs seeking to apply the Regulations in different ways.

We are calling for CLG to urgently seek the view of practitioners to resolve these very serious 'glitches' and to produce straightforward guidance on the application of the Regulations – it has got to be an absolute priority. ■

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