Developer Contributions Consultation response form

If you are responding by email or in writing, please reply using this questionnaire pro-forma, which should be read alongside the consultation document. You are able to expand the comments box should you need more space. Required fields are indicated with an asterisk (*)

This form should be returned to
developercontributionsconsultation@communities.gsi.gov.uk

Or posted to:

Planning and Infrastructure Division
Ministry of Housing, Communities and Local Government
2nd floor, South East
Fry Building
2 Marsham Street
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By 10 May 2018

Your details

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Are the views expressed on this consultation your own personal views or an official response from an organisation you represent?*

Organisational response

If you are responding on behalf of an organisation, please select the option which best describes your organisation.*

Trade association, interest group, voluntary or charitable organisation

If you selected other, please state the type of organisation

The CLA represents over 30,000 landowners who own or manage around half of rural land in England and run over 250 different types of businesses in the countryside. xt.

Please provide the name of the organisation (if applicable)

Click here to enter text.

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?

Yes

The consultation proposes to simplify the preparation of and requirements for CIL charging schedules. The consultation proposes that this can all be achieved through the Plan making process by aligning the requirements for evidence on infrastructure need and viability into one stage. This is perhaps unrealistic as often the costs of development are not known until the detail of a scheme proposal is tabled. Furthermore, Inspectors are not always able to grapple with site specific viability issues on certain sites. Plans are extremely slow in their process of production in any case, so it is unclear that setting charges this way would create greater flexibility.

Secondly, the consultation appears to propose less stringent testing of viability. There will be more debate about existing use values, expectations on return and development costs per site at the Plan examination if the government's proposals are confirmed.

Thirdly, the consultation proposes that there will be a requirement for promoters to supply viability evidence to support allocation at the Plan-making stage, with failure to do so justifying exclusion of a site. It is unclear if this requirement applies to all allocations, even small ones. Clearly the government is shifting costly and time consuming evidence preparation onto promoters and developers with yet further consequential impacts on the price of the land paid to the landowner. (see our comments in relation to question 16).

It is the CLA's opinion that the proposed changes in the consultation, its draft guidance, and in the draft revised NPPF may well undermine investment and the supply of land by benchmarking and restricting land values. It is not clear the front-loaded approach to viability will actually work, rather it could complicate matters and lead to further delay and complications for plan-making. Ultimately the proposals could lead to an interruption in the supply of land brought forward for development. See our more detailed comments in our response to question 16.

ii. Evidence of a funding gap significantly greater than anticipated CIL income is likely to be sufficient as evidence of infrastructure need?

No **No. The funding gap is a continuing outstanding issue with CIL.**

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?

No

Please see our response to question 16 which sets out our concerns about EUV vs market value.

Question 2

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?

Yes. See our more detailed concerns about the proposed changes to CIL in our answer to question 16.

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 **But the statement must be the subject of examination by the Inspector**

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?

Yes. Supported by an up to date evidence base

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?

Please select an answer from this drop down menu

ii. Where significant development is planned on several large strategic sites?

Please select an answer from this drop down menu

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 average new build house prices?

Please select an answer from this drop down menu

ii. What comments, if any, do you have on how the restriction is lifted in areas where CIL is not feasible, or in national parks?

Click here to enter text.

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?

Click here to enter text.

Question 8

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

Click here to enter text.

Question 9

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

We have amalgamated our response to question 5-9 here. The consultation appears to be tinkering around the edges of the pooling restrictions. This is likely to make the process more complicated. The CLA suggests that all pooling restrictions should be removed, but in doing so, attention does need to be given to avoiding any new risks of double charging.

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?

Yes

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?

The reason why the layman is not aware of the requirement to seek permission for an exemption from CIL is because they are completely unaware of the online Planning Practice Guidance. The online PPG must be much better signposted for the layman. Professionals are aware of the online PPG but the public are not. However, the online PPG is extremely difficult to use – finding specific advice can take a long time of searching. The search facility must be improved if it is to be used. Until the onlinePPG is properly signposted and the search improved no penalty should be charged.

Question 12

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

A proportionate approach to administering exemptions would be to provide for a national exemption for new agricultural buildings required for the purposes of agriculture on the holding. At our meeting with officials (11 September 2017) we produced evidence to support our case that there is no uplift in the value of agricultural land following the erection of a new farm building. The CLA renews its long standing request for a national exemption from CIL for new farm buildings.

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?

Yes

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?

Question 15

Click here to enter text.

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?

Please select an answer from this drop down menu

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?

No **No for two reasons:**

<u>(1) Existing Use Value (EUV) and securing a 'competitive return' to a willing landowner</u>

The CLA does not agree with the government's proposal that would allow planning authorities to set CIL charging schedules based upon the existing use value of land (EUV).

The draft revised NPPF consultation and the Developer contribution consultations read together propose the following:

(1) removal of NPPF para 173 which secures a 'competitive return' to a willing landowner and developer;

(2) the ability to set CIL rates based on EUV of land, alongside proposals to streamline consultation and examination requirement for CIL

(3) An 'EUV plus' methodology and a front-loaded approach to viability of plan-making.

The CLA's initial observations are that the net result of the changes to the NPPF (paras 34 and 58, and the removal of the ability to secure a competitive return to a willing seller) and the content of the developer contributions consultation, appear to be about removing virtually all incentives for landowners to bring agricultural land forward for development.

The existing NPPF para 173 refers to viability and deliverability. It provides for "….competitive returns to a willing landowner and developer to enable the development to be deliverable."

The concept of a "willing seller" commonly features in legal principles applied to a wide range of open market valuations. The "willing seller" is a hypothetical character with no special characteristics or attributes, but who is assumed to be willing to sell at the best price he can *reasonably* obtain in the open market (*Trocette Property Co Ltd v Greater London Council (1974) 28 P & CR 408, 416*). Likewise, in *Inland Revenue Commissioners v Gray [1994] STC 360* Hoffmann LJ (as he then was) explained that the hypothetical seller is an anonymous but reasonable vendor, who goes about the sale as a prudent man of business. The hypothetical purchaser is also assumed to behave reasonably and to make proper enquiries about the property. He reflects reality in that he embodies whatever actually was the demand for the property at the relevant time. The concept of the open market involves the assumption that the whole world was free to bid for the property, and then forming a view about what in real life would have been the best price reasonably obtainable. The term "willing" indicates that it must be assumed that the vendor and purchaser behaved as would reasonably be expected of prudent parties.

A competitive return for the land owner is the price at which a reasonable land owner would be willing to sell their land for the development. The price will need to provide an incentive for the land owner to sell in comparison with the other options available. Those options may include the current use value of the land or its value for a realistic alternative use that complies with planning policy.

Land value uplift is the primary incentive for development to take place. Without it, land will not be brought forward for development. Furthermore, landowners (agricultural land) will have no incentive to carry the substantial costs of bringing land through the planning system. This will result in less land available for development and lead to an increase in the price of land that is available for development.

The Developer Contributions consultation proposes the existing use value (EUV) methodology, whilst the PPG refers to EUV+. The use of EUV is aimed at allowing to set CIL charging schedules based upon the existing use of land. This will allow planning authorities to capture any value generated through planning permissions to fund infrastructure. The approach is aimed at a front-loaded approach to viability in plan making. The associated guidance suggests a 20% return on GDV to the developer – it is not clear where this percentage return has come from. The premium over EUV should be determined locally but it is important that there is evidence that it represents a

sufficient premium to persuade landowners to sell their land. But in fact this means looking at Market Value.

An approach based on EUV with some uplift may well be inappropriate where the EUV is negligible (as in the case of agricultural land). Accordingly, an alternative approach is required to establish the benchmark using market value.

Paragraph 023 of the NPPG is very important. It states:
"Land value
Central to the consideration of viability is the assessment of land or site value. Land or site value will be an important input into the assessment. The most appropriate way to assess land or site value will vary from case to case but there are common principles which should be reflected.
In all cases, land or site value should:
 reflect policy requirements and planning obligations and, where applicable, any Community Infrastructure Levy charge;
 provide a competitive return to willing developers and land owners (including equity resulting from those wanting to build their own homes); and
 be informed by comparable, market-based evidence wherever possible. Where transacted bids are significantly above the market norm, they should not be used as part of this exercise**."**

Paragraph 024 of the NPPG states:
"*Competitive return to developers and land owners*
The National Planning Policy Framework states that viability should consider "competitive returns to a willing landowner and willing developer to enable the development to be deliverable." This return will vary significantly between projects to reflect the size and risk profile of the development and the risks to the project. A rigid approach to assumed profit levels should be avoided and comparable schemes or data sources reflected wherever possible.
A competitive return for the land owner is the price at which a reasonable land owner would be willing to sell their land for the development. The price will need to provide an incentive for the land owner to sell in comparison with the other options available. Those options may include the current use value of the land or its value for a realistic alternative use that complies with planning policy."

Paragraphs 023 and 024 of the NPPG contain the essential ingredients which define the Benchmark Land Value to be used in a viability appraisal. Paragraph 023 of the NPPG requires that site value to respect *all three* of the stated requirements.

The CLA was advised that the phrase about securing a "….competitive returns to a willing landowner…" could be found in the draft PPG for viability. However the actual phrase is not to be found in the draft PPG. In fact we have found nothing at all in the draft PPG that relates to the current PPG guidance on viability. This is very worrying indeed.

Furthermore, the combination of the draft revised NPPF paras 34 – Developer contributions, supported by para 58 - regarding applications to be policy compliant (except in exceptional circumstances), and paragraphs 64-70 of the Developer Contributions consultation about existing use value (i.e. restricting land values), could actually lead to unintended consequences especially if planning authorities see the premium (EUV+) as being very small. The concern is that planning authorities are likely to disregard the evidence of previous transactions since these are generally not "policy compliant" as issues such as affordable housing provision will have been negotiated separately. Hence planning authorities will seek to minimise the size of the premium. This is likely to be especially severe on greenfield sites where is it easy to see planning authorities seeking to set the premium as low as possible in order that their policy take can be as high as possible. It is also easy to see local arguments being made that the EUV+ premium is too high (whatever it might be) and for this substantially to squeeze the price of land received by the landowner.

The rather short-termist, London/South East centric, approach taken in the consultation does not reflect the longer term investment horizons of CLA members where the premium will be higher than in those areas where key landowners are more minded to sell. For example, in relation to a large urban extension where a prospective seller is potentially making a once-in-a-lifetime decision over whether to sell an asset (i.e. his farmland). In this scenario the uplift on current use value will invariably be significantly higher than those in an urban context.

The landowner is losing, for good, part of his productive farmland, for development. He is seeking therefore a price for his land that reflects the long term capitalisation of the income foregone for losing this productive farmland from his farming business.

The impact of developer contributions (CIL, affordable housing, s106 obligations which may also include net environmental gain) is that developers will pay less for the land, so these contributions are ultimately 'paid' for by the landowners in a lower price received for their land. In these circumstances, the landowner may not be adequately compensated for the loss of productive farmland . There has to be a suitable financial incentive for him to be willing to

sell the land to compensate for the reduction in the productivity of the remaining agricultural holding. The price the landowner receives for the land is taxable. These taxable receipts become liable for payment by the landowner if he is unable to reinvest the proceeds in an asset, such as replacement agricultural land. There can be difficulties in reinvesting the proceeds in replacement land because of the lack of availability of agricultural land coming forward for sale.

The government must reinstate the ability for landowners to secure a competitive return for their land in national planning policy. It must revisit its proposals concerning the use of EUV such that its proposals do not result in less land coming forward for development.

(2) Differential rates

The CLA opposes the introduction of differential rates. These will merely add yet more complication to CIL. Differential rates are more appropriate to zoning.

It is possible that differential rates were introduced to try to avoid introducing a national exemption for new build agricultural buildings (required for the purposes of agriculture on the holding) and in line with the joint agricultural industry discussions with MHCLG officials on 11 September 2017.

The consultations suggests that planning authorities will merely be 'allowed' to set differential rates, not 'required' to do so. If planning authorities decide that differential rate setting is too complicated they will not introduce the concept in their charging schedules.

If CIL is to be based on EUV (see our response above) then every application is likely to be the subject of a CIL charge and that includes those for new build agricultural buildings (required for the purposes of agriculture on the holding) because planning authorities will automatically assume that there is an uplift in value of the farm land brought about by the new farm building. This will mean land managers left having to produce expensive valuation reports to try prove no uplift in value. Our experiences of CIL appeals (about CIL charges on agricultural buildings) to the Valuation Office have, to date, not provided us with any encouragement that they will take a pragmatic approach to a CIL charge appeal for new build agricultural buildings.

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?

Yes **As long as a single rate is the correct approach for a particular site.**

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

Please select an answer from this drop down menu

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?

Please select an answer from this dropdown menu

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?

Question 18

Click here to enter text.

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

Click here to enter text.

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

Please select an answer from this drop down menu

b) The change in local authority-level house price indexation on an annual basis

Please select an answer from this drop down menu

Question 20

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

Please select an answer from this drop down menu

Question 21

If yes, do you believe that indexation for non-residential development should be based on:

i. the Consumer Price Index? OR

Please select an answer from this drop down menu

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

Please select an answer from this drop down menu

Question 22

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

Click here to enter text.

Question 23

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

Questions 19-23 come back to the fundamental purpose of CIL. CIL is about providing some element of funding for infrastructure delivery. CIL should remain linked to the cost of delivering infrastructure.

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 **Yes. The Regulation 123 lists do not provide clarity or certainty in respect of how CIL monies are spent.**

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

Yes

Yes. In theory. The consultation suggests that planning authorities will have to report annually on where the income from CIL has been spent. But there is no suggestion, in the consultation, that the specified spending priorities would be binding or enforceable.

Section 106 agreements (whilst slow and frustrating) do contain standard repayment clauses that come into force if funds are not allocated to the specified purposes. There are no corresponding safeguards in the present CIL regime, or in this consultation.

Question 25

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

There is insufficient detail to say if Infrastructure Funding Statements will provide any more certainty for developers, at the point of payment, in respect of where the monies will be spent.

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.

CLA agrees that some payment may be required for monitoring purposes. But it must be proportionate and supported by an evidence base.

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?

Please select an answer from this drop down menu

Question 28

Do you agree with the proposed definition of strategic infrastructure?

Please select an answer from this drop down menu

Question 29

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

Click here to enter text.

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?

Please select an answer from this drop down menu

Question 31

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

15 to 25%

Question 32

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

Please select an answer from this drop down menu

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?

No **No. We disagree. There must be an evidence base to support the percentage of retained receipts.**

Technical clarifications

Question 34

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

Yes, our response to question 16 sets out our concerns about the longer term impact of the proposed changes to CIL.