COMMUNITY INFRASTRUCTURE LEVY
FAQs

What is the Community Infrastructure Levy (CIL)?

The Community Infrastructure Levy is a new levy that local authorities can choose to charge on new developments in their area. The money can be used to fund a wide range of infrastructure that is needed as a result of development – for example, new or safer road schemes, park improvements or a new health centre. The levy applies to most new buildings and charges are based on the size and type of the new development.

What are the benefits of the Community Infrastructure Levy?

The Government has decided that a tariff-based approach provides the best framework to fund new infrastructure. CIL is considered to be fairer, faster and more certain and transparent than the current system of planning obligations which are generally negotiated on a 'case-by case' basis. Levy rates that will be set in consultation with local communities and developers will provide developers with much more certainty 'up front' about how much money they will be expected to contribute.

Statistics show that under the system of planning obligations only six per cent of all planning permissions nationally (usually the largest schemes) brought any contribution to the cost of supporting infrastructure. Through CIL, all but the smallest building projects will make a contribution towards additional infrastructure that is needed as a result of development.

Why should development pay for infrastructure?

Almost all development has some impact on the need for infrastructure, services and amenities so it is only fair that such development pays a share of the cost. It is also right that those who benefit financially when planning permission is given should share some of that gain with the community.

What is infrastructure?

Infrastructure which can be funded by the levy includes transport, flood defences, schools, hospitals, and other health and social care facilities. This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and cultural and sports facilities and gives communities flexibility to choose what infrastructure they need. It should be noted that some key elements of infrastructure (e.g. affordable housing) may not be covered by the levy and this is explained elsewhere in this paper. The Levy can be spent on 'the provision, improvement, replacement, operation or maintenance of infrastructure'.

How much will the levy raise?

The levy is expected to make a significant contribution to infrastructure provision as it is intended to fill the funding gaps that remain once existing sources have been taken into account. This flexibility to mix funding sources at a local level (e.g. New Homes Bonus) will enable local authorities to be more efficient in delivering the outcomes that local communities want.

Who can charge and collect the levy?

Most Councils can charge the levy - these bodies are known as the 'Community Infrastructure Levy collecting authority' or charging authority. The levy will normally be collected by the authority that grants planning permission. These bodies all prepare development plans for their areas, which are informed by assessments of the infrastructure needs for which the levy may be collected.

Do Councils have to implement CIL?

Local authorities in England and Wales will be empowered, but not required, to levy on most types of development in their areas. It should be noted that in 2014 limitations to Section 106 planning obligations will come into force and Councils will only be able to raise money for most infrastructure through the new levy (see page 6 below).

When will the levy be charged?

The levy is charged on most new developments that involve an increase in floor space (over 100m² of internal floorspace). New buildings – or extensions to existing buildings – are liable for the charge if a charging schedule was in place when planning permission was granted. Development that involves the creation of a new residential unit will pay the charge even if it is below 100m² in area.

When won't the levy be charged?

The levy will not be charged if there is no extension of floor space as a result of the development (e.g. change of use). Nor will it be charged on structures or buildings that people only enter for the purpose of inspecting or maintaining fixed plant or machinery.

Who is liable to pay the levy?

The responsibility to pay the levy runs with the ownership of land on which the liable development will be situated. Although liability rests with the landowner, the regulations recognise that others involved in a development may wish to pay. To allow this, anyone can come forward and assume liability for the development.

How is the levy paid?

The charge must be levied in £ / m² on the net additional increase in floorspace. It will be collected as a cash contribution although in some cases it may be more appropriate to transfer land ('in-kind') to the charging authority as payment. In such cases the land must be used to provide, or facilitate the provision of, infrastructure to support development in the area.

How is the levy collected?

The levy's charges will become due from the date that a chargeable development is commenced. When planning permission is granted, the Council will issue a liability notice setting out the amount of the levy, the payment procedure and the possible consequences of not following this. Unlike contributions collected through S106 agreements there is no time constraint for the spending of monies collected through CIL.

How will payment of the levy be enforced?

The levy's charges are intended to be easily understood and easy to comply with. Most of those liable to pay the levy are expected to pay their liabilities without problem or delay. However, where there are problems in collecting the levy charging authorities will have the means to penalise late payment. In cases of persistent non-compliance the regulations also enable collecting authorities to take more direct action such as the issuing of a CIL Stop Notice.

What exemptions are there from paying the levy?

There are three main types of relief from the levy:

- Charitable relief – a charity landowner will be exempt from paying CIL where the chargeable development will be used wholly, or mainly, for charitable purposes. Discretionary relief can be offered in other instances.
- Social housing relief – the regulations provide 100% relief from the levy on those parts of a chargeable development which are intended to be used as social housing.
- Exceptional circumstances – charging authorities have the option to offer relief in cases where the levy would have an unacceptable impact upon the economic viability of a desirable development.

How will the levy be spent?

Charging authorities are required to spend the levy's revenue on what they see as the infrastructure needed to support the development of their area. The assessment of 'need' will largely by informed by the Infrastructure Delivery Plans (IDPs) published by each authority alongside their Core Strategies.

The levy is intended to focus on the provision of new or improved infrastructure and should not be used to remedy pre-existing deficiencies unless those deficiencies will be made more severe by new development. Charging authorities must allocate a meaningful proportion of levy revenues raised in each neighbourhood back to that neighbourhood. This will ensure that where a neighbourhood bears the brunt of a new development, it receives sufficient money to help it manage those impacts. However, the mechanism by which funds will be passed down to neighbourhoods is as yet very unclear and more guidance in this regards is expected (but this may not be until the revised CIL regulations are released).

The regulations currently* rule out the application of the levy for providing affordable housing because the Government considers that planning obligations remain the best way of delivering this element of infrastructure. (* it should be noted that the Government have asked whether affordable housing could / should be considered as part of CIL within a consultation on the draft regulations at the end of 2011).

Charging authorities will be able to use revenue from the levy to recover the costs of administering the levy (up to 5% of total revenue). This cost is not insignificant. A Government impact assessment of CIL (January 2011) estimated that the average cost for a local authority to set up CIL in year 1 would be £107,700 with on-going annual costs to follow of £75,500.

Infrastructure spending outside a charging area

Charging authorities may pass money to bodies outside their area to deliver infrastructure which will benefit the development of their area, such as the Environment Agency for flood defence or, in two tier areas, the county council, for education infrastructure. Charging authorities will also be able to collaborate and pool their revenue from their respective levies to support the delivery of 'sub-regional infrastructure'.

How will a charging authority set a rate for their levy?

Charging authorities must produce a document called a charging schedule which sets out the rate for their levy. These will be a new type of document within the folder of documents making up the Council's Local Development Framework but will not be part of the statutory development plan.

The levy is intended to encourage development by creating a balance between collecting revenue to fund infrastructure and ensuring that the rates are not so high that they put development at serious risk. The Council will need to draw on the infrastructure planning that underpins the development strategy for the area to help identify the total infrastructure funding gap.

Rates set should be supported by evidence, such as the economic viability of new development and the area's infrastructure needs. One standard rate can be set or, if justified, specific rates for different areas and types of development can be established. The ability to set differential rates gives charging authorities more flexibility to deal with the varying circumstances.

In calculating individual charges for the levy, charging authorities will be required to apply an annually updated index of inflation to keep the levy responsive to market conditions.

Preparing the charging schedule

A charging schedule can be produced by a charging authority or a group of charging authorities. The process for preparing the schedule is similar to that which applies to a Development Plan Document. Consultation with the local community must be undertaken on the draft schedule and the proposed levy rates. A public examination by an independent person is then required before the charging authority can formally approve it.

Monitoring and reporting spending of the levy

To ensure that the levy is open and transparent, charging authorities must prepare short reports on the levy for the previous financial year which must be placed on their websites by 31st December each year. These reports will set out how much revenue from the levy has been received, what it has been spent on and how much is left.

The relationship between CIL and planning obligations

Planning obligations (private agreements between the local planning authority and the developer) will continue to play an important role in helping to make individual developments acceptable. However, reforms have been introduced to restrict the use of planning obligations which will largely be replaced by CIL. Some of these have already come into effect and others will take effect from April 2014 – or as soon

as a charging authority starts to charge the levy. Most importantly, after April 2014, planning obligations can no longer be used as the basis for a tariff to fund infrastructure. Instead, the levy (the Government's preferred option) will be used as the mechanism for pooling contributions from a variety of developments to fund infrastructure.

The levy is intended to provide infrastructure to support the development of an area rather than to make individual planning applications acceptable in planning terms. As a result, there may still be some site specific impact mitigation requirements without which a development should not be granted planning permission (e.g. affordable housing, local highway and junction improvements and landscaping). Therefore, there is still a legitimate role for development planning obligations to enable a local planning authority to be confident that the specific consequences of development can be mitigated. However, with specific regard to affordable housing it should be noted that in February 2011 the Government has acknowledged that they are considering reforming levy legislation. Changes proposed may mean that revenue raised through CIL could be used by Council's to fund affordable housing.

To ensure that planning obligations and the levy can operate in a complementary way the regulations scale back the way planning obligations operate. Limitations are placed on the use of obligations in three respects:

1) Making the Circular 5/05 tests statutory

The regulations place into law the policy tests on the use of obligations which seek to reinforce the aim that obligations should be essential contributions rather than more general contributions which are better suited to the levy.

From April 2010 it has been unlawful for a planning obligation to be taken into account when determining a planning application for a development, that is capable of being charged the levy, whether there is a local levy in operation or not, if the obligation does not meet all of the following tests:

(a) it is necessary to make the development acceptable in planning terms
(b) it is directly related to the development; and
(c) it is reasonably related in scale and kind to the development.

2. Ensuring the use of the levy and planning obligations does not overlap

On the local adoption of the levy, the regulations restrict the local use of planning obligations to ensure that individual developments are not charged for the same items through both planning obligations and the levy.

3. Limiting pooled S106 contributions towards infrastructure

The levy is the government's preferred vehicle for the collection of pooled contributions. Therefore, on the local adoption of the levy or nationally after a transitional period of four years (April 2014), the regulations restrict the local use of planning obligations for pooled contributions towards items that may be funded via the levy. For provision that is not capable of being funded by the levy, such as affordable housing or maintenance payments, local planning authorities are not restricted in terms of the numbers of obligations that may be pooled, but they must have regard to the wider policies set out in Circular 5/05.

How much is the tariff / levy likely to be?

The appropriate levy for any authority will be determined through the preparation of a detailed charging schedule and ultimately it will be tested at Examination. In addition, guidance is clear in that different 'zones' can be set to collect different levels of money depending on existing capacity and future infrastructure requirements. Although the level of the level will be determined by local circumstances, particularly viability, it considered useful to provide some examples so illustrate the type of rates being set elsewhere in the country:

Council	Status	Area(s)	New Dwelling	Commercial
Milton Keynes	Tariff adopted in 2006 (under previous legislation)	Schemes within defined Urban Development Area	£18,500 / dwelling	£67 / m² or £260,000 / ha
Newark and Sherwood District Council	Adopted CIL Dec 2011	District split up into zones with differing levels of levy	Different zones with varying rates up to £75 m²	Various rates across areas and uses
Shropshire County Council	Adopted Jan 2012	County split into 4 distinct zones	Different zones – between £40 / m² and £80 / m²	Nil.
LB Redbridge	Adopted Jan 2012	Flat rate across the Borough	£70 / m²	
Colchester BC	Preliminary draft schedule published		£120 / m²	£90 / m² comparison retail and £240 / m² convenience retail