



## Planning Bill [HL Bill 69]: Briefing for the Second Reading debate, Tuesday 15 July 2008

### Community Infrastructure Levy (CIL): Impact of Community Infrastructure Levy on Charities

CIL (in Part 11 of the Bill: Clauses 198 to 209) is intended to be a levy by local planning authorities on the uplift in value resulting from the granting of planning permission which will be payable when development commences [Clause 200(1)(a)]. The level of CIL is to be left to individual local authorities to determine. Unlike the original proposal for Planning-Gain Supplement, however, the Bill also provides that CIL may be levied on land even when its value has *not* increased as a result of the grant of planning permission [Clause 200(5)].

We understand that the current system of linking planning gain to local authority infrastructure needs – section 106 agreements under the Town and Country Planning Act 1990 – is not mandatory and is rarely applied to small scale schemes unless there is an agreed specific trade-off.<sup>1</sup> DCLG has said that it is not intended to repeal section 106 of TCPA 1990, since the Department takes the view that section 106 agreements will still be appropriate in respect of social housing schemes.

***The result of the proposal for CIL, if implemented without any exceptions, will be to impose a new financial burden on charities.***

#### The position of charities

Charities are in a different situation from commercial developers:

- they never buy to develop for purely commercial purposes (and even where they undertake commercial development of an existing holding, they do it to fund their charitable activities rather than to make profits for shareholders).
- where they develop their own property for their own purposes, unlike a commercial developer they will have no end-point sale from which to pay the tax

During discussions on the earlier proposal for Planning Gain Supplement (which was not implemented), the ball-park figure under discussion was 20 per cent of the uplift in value. **The impact of CIL imposed at that rate would be disastrous for charities.** For example,

- one of our members deals with complex schemes such as rebuilding church halls and parsonages – many of these schemes (which provide community facilities and affordable housing) are already on the edge of financial viability, and even at 5 per cent, CIL will simply kill them off.
- another member is a major medical research charity currently engaged in the development of a large laboratory complex – a levy would either add to the already considerable cost or result in a scaling-down of the project.

DCLG's own document on CIL document (January 2008) states that

Government agrees if development is not delivered because the CIL is set at unaffordable levels, then the CIL will not be meeting its objective of helping to unlock development [paragraph 58].

***For some charities and for some projects, there are no 'affordable levels'.***

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<sup>1</sup> Research by the University of Sheffield and the Halcrow Group, (May 2006: *Valuing Planning Obligations in England*) showed that the majority of planning applications did not have a planning obligation attached.

## Proceedings in the Commons

The Government's current position was set out by John Healey during the Commons committee stage on 31 January 2008. He explained that the principle of the CIL is that there will be no general exemptions, in line with the current s 106 system. He said the current system is 'blind to what developers do with their profits or to whether a developer is also a registered charity'. **It should be remembered that charities do not make profits *per se*.**

He did, however, say that

*... at some stage this year, when we have been able to discuss the matter in more detail – it will be the basis for a public consultation – we will set out our approach to exemptions. In doing so, we will ensure that any potential qualification for exemption must be fair and justified and refer to an objective set of criteria or there may, at least, be a risk of falling foul of state aid legislation.*

***We have not yet seen any proposal for exemptions.***

## Issues for the voluntary sector

- With the exception of VAT, **charities do not pay tax** – and CIL looks remarkably like a tax.
- **Charities, by definition, operate 'for the public benefit'**. They are in a very different position from commercial organisations that operate for private profit. Moreover, they are precluded from developing property purely for sale as a commercial transaction.
- **Charities provide facilities that are part of the local infrastructure** – so why should they pay twice over?
- **Charity trustees are under a legal obligation to protect the assets of their trust.** If they take their legal duties seriously (which they ought to), then they should think carefully before getting involved in any discretionary project which will lead to a CIL payment.
- The DCLG document suggests [paragraph 31] that **CIL will not be mandatory** and that charging authorities will be free to adopt it or not as they see fit. But which of them is going to pass up a new opportunity for raising revenue – and if a local authority chooses *not* to charge, will that have any effect on their Revenue Support Grant? And how many charities will have the resources or expertise to argue for specific relief unless the principle of relief is enshrined in legislation?
- The Document also says that **CIL should be related to the size and cost of new infrastructure projects required as a result of development.** But what will this mean in practice? *Any* further costs are likely to create problems for some projects.
- **As a result of CIL, facilities that would have been for the benefit of the public will not be built.** Is that what HMG wants to happen? How does this fit with HMG's avowed desire to involve the voluntary sector more fully in service provision?
- **Even if local authorities have to pay CIL on developments it will merely be a transfer payment from one department to another.** There is already discrimination in the provision of services between charities (which are liable for VAT) and local authorities (which are not). How does this square with HMG's policy of commissioning services from the most cost-effective and efficient provider?
- **The detail of CIL will be set out in Regulations – which are unamendable. We would prefer to see an exemption for charities on the face of the Bill.** At the very least, we would want firm ministerial assurances that something will be done about what is a very unsatisfactory situation.

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[www.charity-property.org](http://www.charity-property.org)

[www.charitytax.info](http://www.charitytax.info)

[www.clas.org.uk](http://www.clas.org.uk)