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**COMMUNITY INFRASTRUCTURE LEVY**  
**London First Response**  
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**1. INTRODUCTION**

1. London First is a business membership group whose aim is to make London the best city in the world in which to do business. We do this by mobilising the experience, expertise and enthusiasm of the private sector to develop practical solutions to the challenges London faces and to lobby government for the investment that London needs in its infrastructure. London First delivers its activities with the support of around 250 of the capital's major businesses in key sectors such as finance, professional services, property, creative industries, hospitality and retail. Our members represent around a quarter of London's GDP.
2. Timely infrastructure delivery is critical to ensure that communities are sustainable and to support development. Realistic, co-ordinated infrastructure planning with clear prioritisation and delivery mechanisms is vital to deliver this. Severe constraints on public funding for the foreseeable future will make infrastructure planning more difficult and the need for prioritisation and pragmatism crucial.
3. London First, with other business organisations and the LGA who have prepared the statement (appendix A) on the issues we consider need to be addressed with CIL to make it workable.
4. London First agrees that development should contribute to the funding of the infrastructure it makes necessary. This should be achieved in a way that is: clear and equitable, does not threaten development viability and therefore the delivery of development and does not seek to substitute public funding. Infrastructure delivery is critical to maintain and attract investment to to make good and necessary development happen.
5. London First remains concerned with the lack of detail on infrastructure delivery. This has always been half of the rationale for CIL and is critical to sustainable communities. As well as ensuring that mechanisms are in place to ensure timely delivery of infrastructure, including further detail on forward funding, allowance should be made for in kind provision of infrastructure by applicants, where the cost of is off-set against the CIL liability, needs addressing.

6. CIL is to be introduced in April 2010 at the same time that the Mayor will adopt the Alteration to the London Plan to enable development contributions to Crossrail. Urgent consideration is needed on the interaction of the two regimes.
7. In the decade before the recession, a period of unprecedented growth, development has been able to contribute substantially towards infrastructure in an era of strong demand and rising values. Planning policy in this period increased expectations of development and the costs imposed through obligations and requirements. Policy moved from an expectation of development being able to meet what was sought, to negotiation based on increasing demands and the requirement to demonstrate why requirements could not be met in full.
8. Proposals for CIL were born in this period and reflect what are now historic expectations of what development can bear. Development viability will be the primary concern for the short and medium term; the speed and extent of the fall in values has meant that many extant permissions are no longer viable. Unless handled sensitively, with substantial changes made to what is proposed, CIL risks stopping development, in particular, the brownfield regeneration schemes the Government seeks to encourage. Proposals for CIL must aid rather than hinder deliverability.
9. We are concerned that the Government's desire for simplicity has led to an inequitable and unworkable system. In particular, not allowing exceptional cases, variation of CIL rate over time and charging CIL on gross rather than net development.
10. London First welcomes the dialogue with Government as the proposals for CIL have been prepared. However, the serious concerns raised by the industry throughout have not been addressed in the draft regulations and consultation document.
11. London First cannot support CIL unless:
  - Consideration is made for exceptional cases to ensure that regeneration projects are not 'choked off' by CIL;
  - Costs are apportioned to land uses reflecting broad impact and not viability;
  - Arrangements are made for provision of infrastructure in kind;
  - CIL is only be charged on net additional development;
  - Grampian conditions are not attached to permissions where infrastructure is to be delivered through CIL; and
  - S106 is scaled back to ensure developers don't pay for the same infrastructure twice.

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## **CONSULTATION DOCUMENT**

### **Introduction**

12. We do not consider that the concerns outlined with the planning obligation system (paragraph 1.26) are addressed through the CIL proposals. In particular, the proposals for s106 and the need to negotiate affordable housing will mean that negotiations will still be lengthy and could delay development. In light of this, we do not agree (paragraph 1.34) that there will be greater certainty and predictability.

### **Spending CIL**

13. We welcome confirmation that CIL will contribute to infrastructure funding and is not to make good existing deficiencies.
14. We support the use of CIL for decentralised energy infrastructure as it is more efficient operationally, for carbon reduction and financially, to provide it at scale.
15. In light of severe constraints on public funding and reduced development viability, prioritisation of infrastructure requirements will be essential to ensure that CIL is set at a level which does not threaten development. Whilst local circumstances will vary considerably, and the Government's intention is to allow local discretion, some guidance would be beneficial to ensure that infrastructure is prioritised in a rigorous and pragmatic way.

### **Setting the CIL**

16. We remain of the view that the charging schedule should be part of the development plan, not just local development framework. This would ensure sufficient scrutiny and testing alongside the policies with which it is intricately linked. Setting CIL is an iterative process where the establishing a viable level of charge is likely to require re-prioritising and phasing of infrastructure. This would be more effective if part of a single process.
17. There is no rationale for development corporations being able to collect CIL as they will not be delivering infrastructure and delegate the planning function to local authorities. It would be an unnecessary additional bureaucratic process for them to collect CIL.
18. It is not clear how authorities will provide total infrastructure costs based on indicative infrastructure projects. Whilst we understand that infrastructure planning is highly complex and can take some time, it is not appropriate that the CIL should just be based on indicative projects. It is crucial to understand what infrastructure will be required to support development and broadly where and when it will be delivered to inform both the total cost and the process of prioritisation.
19. Calculating the effects of the imposition of CIL on development will be crucial to the success of CIL. Government guidance should advise on how this is best carried out.
20. We do not support the proposition that 'choked off' development sites will be replaced by other sites and alternative schemes. This would mean that the Government's CIL policy will result in development being driven by the highest value (and therefore ability to pay CIL) rather than an appropriate mix of uses. This is contrary to other Government policy objectives.

21. We note that the Mayoral CIL will be pre-emptive.
22. Further information is needed to explain how charging schedules should comply with state aids (paragraph 3.20).
23. We do not agree that authorities should self certify whether their development plans are up to date. This should be done through the Government Offices to ensure a consistent and realistic approach, with criteria against which currency can be judged. This should also be the case for infrastructure plans.
24. It is stated that authorities should target the total funding they seek to raise, which should normally be drawn from infrastructure planning (paragraph 3.29). It should always be drawn from infrastructure planning.
25. The infrastructure list should be more than indicative and based on a reasonable assessment of what infrastructure is required and will be delivered. This will be critical to give confidence to the community and those paying CIL; and to inform the inevitable process of prioritisation.
26. It will be extremely difficult to separate examination of the CIL charging schedule and infrastructure plan. In order to understand deliverability and prioritisation, the examination of the charging schedule will have to address the infrastructure plan.
27. Deliverability of proposals will be a critical consideration, especially in the next few years where funding is highly constrained. Some boroughs already have aspirations for significant new infrastructure such as trams and tube extensions. These need to be thoroughly tested with guidance on when it is appropriate to include aspirational projects in a CIL charging schedule. For this reason it will be critical to test the charging schedule alongside the plan documents and why it is not sufficient for boroughs to self certify whether their infrastructure planning is sufficient.
28. We do not think a test of 'good enough' is sufficient with respect to likely sources of funding. A test of 'good' would require sufficient rigour while allowing for uncertainty.
29. Whilst it would be inappropriate for the Government to specify what would be appropriate to render unviable through CIL, the process of assessing CIL and ensuring viability must have regard to the Government's broader planning objectives. It would be highly undesirable for CIL to prevent the sort of development and regeneration that Government policy promotes, or unduly influences the composition of developments.
30. In London, where development is overwhelmingly on previously used sites, which have an existing use and value, market value is more appropriate than land value.
31. Local authorities should not set the CIL rate at the margin of viability: not just avoid doing so.
32. SHLAA data would not be appropriate or sufficient in London and does not address mixed use or commercial development.

33. Given the potential impact of CIL in rendering vital development unviable, we do not consider that it is appropriate to base rates on 'broadly acceptable approximations.' Whilst it will not be an exact science, authorities should be required to adopt more than a broad brush approach.
34. We support differing CIL rates according to geographic area.
35. The desire for simplicity should not result in an inequitable system. We strongly oppose apportioning infrastructure cost according to viability which would simply make CIL a betterment tax.
36. The cost of infrastructure should be broadly apportioned according to the impact of classes of development on the need for that infrastructure. This would not mean a separate rate for each use class but is a reasonable and equitable way to apportion infrastructure cost. This could be illustrated through a simple matrix which would indicate whether the type of development (commercial, retail, leisure, residential etc) would be required to contribute to types of infrastructure (community, health, education, water, transport etc).
37. We do not consider that varying the CIL rate over time would add undue complexity and strongly consider that it should be encouraged. Differential CIL rates over time would be a useful mechanism to incentivise development.
38. We agree with a **single charging metric** the basis of which should be clear and consistent and used for the application as well as CIL.
39. CIL should only be charged on **net additional development** as this represents the additional need for infrastructure. Charging CIL on the gross development would make many redevelopment schemes unviable which would undermine the ability to improve the building stock (in design and efficiency); hinder regeneration and lose the wider benefits of development. Such a proposal would have the effect of incentivising greenfield development over redevelopment.
40. We do not consider that it is reasonable or sufficient justification to seek to charge CIL on gross development on the grounds of simplicity or out of a concern about potential abuse. S106, which is charged on net additions, has not resulted in concerns about abuse. Charging CIL on net additions would precisely cover the intensification of use, more so than a gross charge. As the purpose of CIL is to contribute to the infrastructure made necessary by development, it must follow that it is the increase in floorspace that should be charged.
41. We agree with indexation to construction costs and that this should be a national index.
42. We support the proposal not to draw on the power in section 211(6)(b).
43. Six weeks consultation, on such an important and complex document, would be insufficient. Twelve weeks would be more appropriate.
44. The infrastructure plan should be published alongside the draft charging schedule. Whilst it is not being examined, the relationship is critical and the two need to be considered together.
45. We agree that the Planning Inspectorate should examine the charging schedules.

46. We agree that the examiner should not be able to modify the charging schedule to increase the CIL rate.
47. CIL charging schedules should be reviewed alongside the LDD unless circumstances necessitate a more frequent review. Government guidance should set out what these might be, possibly by virtue of key economic indicators.
48. Authorities should be prevented from (rather than encouraged not to) setting CIL at the limit of viability.

### **Paying CIL**

49. We strongly oppose the Government's proposal not to allow **exceptional developments** to pay a reduced rate of CIL. Allowing exceptions is crucial to make CIL acceptable and equitable and would not be unduly complex or unfair. Not allowing exceptions would undermine the Government's objectives for regeneration as these schemes are in their nature the most risky and unviable. It would be perverse for the impact of CIL to be to stop regeneration. If the Government is concerned about abuse it could review operation after say two years and amend in light of experience. State Aid concerns can be addressed through having a clear and transparent procedure to address exceptions.
50. Whilst it might be argued that **affordable housing** should not make a full CIL contribution, inhabitants of affordable housing do create demands on infrastructure the same as other residents. The effect of reducing the CIL contribution would be to require further cross subsidy from other development as it would inflate the overall CIL rate. We therefore do not consider that affordable housing should pay a reduced rate of CIL.
51. We support a national definition of affordable housing. We do not agree that this should be limited to where there is public funding. Some intermediate housing, which is critical in London for those who earn too much to access social housing but can't afford market housing, is provided without public funding, a benefit to the tax payer. If affordable housing is to pay a lower CIL rate it should not be excluded.
52. Whether a developer 'over paid for the land' is a highly complex issue and not one that authorities should seek to judge and fails to take account of the process, and actual costs, of site assembly.
53. Suggesting that as CIL is a known cost means that developers can make allowance for it is highly simplistic and does not reflect many development circumstances, especially in London. In London the overwhelming majority of development is redevelopment of previously used sites where there is an existing use and therefore value. Where a property company is redeveloping its stock when leases expire, to provide modern floorspace, viability will be considered against the passing rent, not a notional land value. It would be highly damaging to the national and London economy if a result of CIL would be to render such developments unviable.
54. Many of the regeneration schemes the Government wishes to encourage, especially but not exclusively in the Thames Gateway, require significant remediation and up-front site infrastructure investment.

55. The risk of preventing development and regeneration is far greater than that of complexity as a result of a procedure for exceptional circumstances. We do not consider that such a procedure would create an undue burden of authorities. Authorities have demonstrated their ability to deal with s106 negotiations and the use of open-book appraisals.
56. We strongly oppose any use of clawback if there were an exceptions policy, and agree that it would also be unduly complex, and inequitable. Clawback would introduce unreasonable uncertainty and risk into the development process and as a result may prevent some development. This is especially concerning at a time where viability is fragile at best and developers, and crucially their banks, need as much certainty as possible. Clawback (or overage) is a risk too far that will not be countenanced by banks. The concept of overage is based on putting equity/land into the development process. The CIL application would fail to recognise adequately the relationship between investor risk and return and the principles of financial analysis and property development funding especially by way of debt.
57. On major projects, especially where the developer is to undertake demolition or provide substantial up-front infrastructure, CIL should not be payable on commencement. Phased payments should also be allowed where this would aid development viability.
58. The reason that payments in kind are more likely to be offered by larger developers is that they are more likely to be undertaking large development where it may be appropriate to provide infrastructure in kind. This has no bearing on whether allowing payment in kind is 'fair and seen to be fair.'
59. Precluding payments in kind would frustrate good practice that is beneficial to authorities, communities and developments. By way of example, King's Cross Central, the largest central London development and a key priority in regional and local planning, will make extensive in kind community infrastructure provision, over time, as the phased scheme is built out. This infrastructure includes:
- a two form entry primary school and community meeting facilities, which will be constructed at the ground and first floor levels of a building which will also provide residential apartments above;
  - a children's centre which will be provided as part of a building that also includes an energy centre, bars café and restaurants, a multi storey car park and residential apartments;
  - a major sports and leisure facility, which will be constructed within the basement and lower ground floors of a major office building;
  - a bicycle interchange (providing bicycle storage, showers and a repair centre/shop), similarly provided at the basement and lower ground floors of a major office building;
  - a health walk-in centre which will form part of the refurbishment of a listed building. The walk-in centre will sit alongside serviced offices;
  - a primary health care centre, which will be provided within the lower ground, ground and first floors of a major office building; and
  - a skills and recruitment centre, which will occupy ground floor space within a residential building.
60. The provision of these facilities, on-site, as part of mixed use buildings, is very much consistent with the place-making agenda and indeed the objectives of mixed, and balanced communities. This 'layering' of uses contributes to active streets and reflects the way that successful places work.

61. Moreover, the direct provision of these facilities, as an integral part of the phased development, has been critical to gaining public support for the development and demonstrating that it will deliver local benefits, in terms of new/better facilities and services.
62. That the Government is “not minded” to allow such provision in kind misunderstands the complexities of provision in cities such as London in particular. The response at the recent BPF CIL seminar, that the developer would make “the land” available and then CIL would deliver/fund the facility or infrastructure, ignores the benefits of cases such as King’s Cross Central. Whilst it might work for low-density housing schemes on the edge of settlements, where a discrete “school plot” can be identified and built around, it does not work for complex urban environments and innovative mixed used developments that policy promotes and are critical to London’s continued growth and success.
63. The ability to value payments and the unnecessarily restrictive window for payment are not justifications not to allow in kind payments. Authorities may receive better value for money where the developer provides infrastructure.
64. Payment should be allowed in instalments and as is now the case with s106, this should reflect key trigger dates. This does not create an unfair position but reflects that some developments are more complex and lengthy than others.
65. We are deeply concerned that it is proposed that CIL is not tax deductible. This would penalise investor developers who maintain an interest in the development and therefore community.

## **Planning Obligations**

66. The relationship between planning obligations and CIL is critical to the acceptability and effective functioning of CIL.
67. The way the document explains the purpose of planning obligations and CIL suggests that CIL is an additional general infrastructure tax whereas planning obligations will be what they were intended for as per the Circular: impact mitigation. This would lead to a considerable and unacceptable increase in the burden on development and is not what was intended when business supported the concept of CIL.
68. Whether infrastructure is fully funded should not be the determinant of whether it is appropriate to seek a contribution through planning obligations.
69. We do not consider that making the Circular tests statutory represents sufficient scaling back of s106.
70. We agree that the changes to obligations should be universal and irrespective of whether an authority adopts CIL. Not to do this would create undue complexity.
71. We support a restriction of obligations ‘solely’ to the development to limit scope for double charging. Guidance should also state that, where an authority has a CIL, obligations cannot be sought for infrastructure covered by the CIL.

72. We agree that the change should be universal to prevent undue complexity and the operation of different regimes across the country.
73. It should not be possible to collect s106 and CIL for Crossrail. On implementation of the Mayor's CIL, Crossrail planning obligations should cease.

#### **GRAMPIAN CONDITIONS**

74. The regulations should state that Grampian conditions cannot be attached to a planning permission where the delivery of infrastructure is through CIL and beyond the control of the developer. It would be unreasonable for the developer to be penalised for failure to deliver where it is beyond their control.

#### **PENALTY PAYMENTS/OVER PAYMENT**

75. Penalty interest rates for underpayment and overpayment should be consistent. We do not consider that developers will wish to over-pay as a mechanism to invest as they would be able to make better returns investing capital elsewhere than through over-paying CIL.

## QUESTIONS

*1. Do you agree with the proposal that the draft CIL regulations do not define 'infrastructure' further?*

NO

The indicative infrastructure list provides insufficient clarity on what constitutes infrastructure. Greater clarity is critical to ensure clear definition between infrastructure covered by CIL and what can reasonably be covered by residual s106. It should not be possible to use s106 to collect funding for infrastructure covered by CIL. Without this there is a real risk that developers will be double-charged.

*2: Is any further reporting required for CIL?*

Alongside receipt and expenditure of CIL funds, authorities should report progress on infrastructure delivery.

*3: (a) Is the 1 October deadline for reporting on the previous year's activity sufficient for local planning authorities?*

*(b) Will this timescale enable developers and local communities to understand how CIL revenue has been applied?*

No comment

## GENERAL

*4: Do you have any comments on any other matters raised in chapter 2 which are not covered by the questions above?*

We are concerned that the draft contains little information on infrastructure delivery, which is crucial to the acceptability of CIL. It is critical that developers are given sufficient comfort that the infrastructure they are paying for through CIL will be delivered in a timely manner. This will also be critical for local communities. Authorities should agree to 'best endeavours' to ensure infrastructure is delivered, as well as a clear process to engage utility companies.

Forward funding will be critical to ensuring that infrastructure can be delivered in a timely manner. Further information should be provided on this to assist authorities and applicants. The Government should consider allowing authorities to prudentially borrow against CIL receipts, recognising that they are unpredictable.

We welcome confirmation that CIL will contribute to infrastructure funding and is not to make good existing deficiencies.

We support the use of CIL for decentralised energy infrastructure as it is more efficient to provide this on a large scale.

In light of severe constraints on public funding and reduced development viability, prioritisation of infrastructure requirements will be essential to ensure that the CIL is set at a level which does not threaten development. Whilst local circumstances will vary considerably, and the Government's intention is to allow local discretion, some guidance would be beneficial to ensure that infrastructure is prioritised in a rigorous and pragmatic way.

We consider that a statutory infrastructure list is critical to show what infrastructure CIL will contribute to and when it is expected to be delivered. This is critical for developers and communities.

## **CHARGING AUTHORITIES**

5: *Are there any circumstances where a CIL charging authority would not be able to fulfill its charging authority functions effectively?*

6: (a) *In deciding whether to use the power at section 207 of the Act, should the Government apply different criteria?*

(b) *Which functions should a joint committee perform?*

No comment

## **DIFFERENTIAL RATES**

7: *Do you agree that differential rates should be based only upon the economic viability of development?*

No.

The desire for simplicity should not result in an inequitable system. We strongly oppose apportioning infrastructure cost according to viability which would simply make CIL a betterment tax.

The cost of infrastructure should be broadly apportioned according to the impact of classes of development on the need for that infrastructure. This would not mean a separate rate for each use class but is a reasonable and equitable way to apportion infrastructure cost. This could be addressed through a simple matrix which would indicate whether the type of development (commercial, retail, leisure, residential etc) would be required to contribute to types of infrastructure (community, health, education, water, transport etc). Along with other business groups, we consider this fundamental to the acceptability of CIL.

We support the BPF's approach to apportionment:

- i) look at what new development is allocated/ expected in the area (in terms of net additional increase) over the defined lifetime of the relevant plan;
- ii) analyse what infrastructure is required to support the new development;
- iii) assess what other sources of funding will be available to contribute towards the cost of infrastructure required to support the development;
- iv) apportion the residual cost of the infrastructure according to the generic impact each use class (or category of development) generates;
- v) test the different use class for levels for viability – i.e. can the majority of development in that use case afford to pay the CIL charge/ will the CIL level 'choke off' development.

## **METRICS**

8: *Do you agree that CIL charges should be based on a metric of pounds per square metre? Yes, per Gross External Area.*

9: *Would prefer to have a choice of charging metrics, and if so, can you suggest what and how the system could accommodate this choice without undue complexity and unfair distortions?*

There should be one charging metric.

10: Do you agree with the Government's proposal to apply the charging metric to the gross internal area of development or do you think there are advantages to levying CIL on the gross external area?

No. It should be Gross External Area as this is commonly used and understood.

11: Do you agree that CIL should be levied on the gross development, rather than the net additional increase in development?

No. See above.

## **INDEXATION**

12: Should authorities be required to index CIL charges?

Yes

13: (a) Should indexation be based on a national index to provide simplicity, consistency and a readily understood index.

Yes

(b) Alternatively, should charging authorities be allowed to choose different indices in different places?

No

14: Do you agree with the Government's proposed choice of an index of construction costs?

Yes

15: Are you content with indexation taking place to the point of the grant of planning permission or would you prefer charges to be indexed to the point when development commences?

16: Do you think it is right to apply the index on an annual basis or do you see advantages in applying it monthly?

Annual

17: Do you agree that charging authorities should be able to index their charges from 1 January each year (taking the November index)?

Yes

## **CHARGING SCHEDULE PROCEDURES**

18: Do you agree with the Government's proposal to allow joint charging schedule/development plan examinations?

Yes

19: Do regulations or guidance need to cover any additional matters relating to joint examinations?

No

20: Should the CIL examiner be able to modify a draft charging schedule to increase the proposed CIL rate?

No

## **GENERAL**

21: Do you have comments on any other matters raised in chapter 3 which are not covered by the questions above?

We remain of the view that the charging schedule should be part of the development plan, not just local development framework. This would ensure sufficient scrutiny and testing alongside the policies with which it is intricately linked.

There is no rationale for development corporations being able to collect CIL as they will not be delivering infrastructure and delegate the planning function to local authorities. It would be an unnecessary additional bureaucratic process for them to collect CIL.

It is not clear how authorities will provide total infrastructure costs based on indicative infrastructure projects. Whilst we understand that infrastructure planning is highly complex and can take some time, it is not appropriate that the CIL should just be based on indicative projects. It is crucial to understand what infrastructure will be required to support development and broadly where and when it will be delivered to inform both the total cost and the process of prioritisation.

Calculating the effects of the imposition of CIL on development will be crucial to the success of CIL. Government guidance should advise on how this is best carried out.

We do not support the proposition that 'choked off' development sites will be replaced by other sites and alternative schemes. This would mean that the Government's CIL policy will result in development being driven by the highest value (and therefore ability to pay CIL) rather than an appropriate mix of uses. This is contrary to other Government policy objectives.

Further information is needed to explain how charging schedules should comply with state aids (paragraph 3.20).

We do not agree that authorities should self certify whether their development plans are up to date. This should be done through the Government Offices to ensure a consistent and realistic approach, with criteria against which currency can be judged. This should also be the case for infrastructure plans.

It is stated that authorities should target the total funding they seek to raise, which should normally be drawn from infrastructure planning (paragraph 3.29). It should always be drawn from infrastructure planning.

The infrastructure list should be more than indicative and based on a reasonable assessment of what infrastructure is required and will be delivered. This will be critical to give confidence to the community and those paying CIL; and to inform the inevitable process of prioritisation.

It will be extremely difficult to separate examination of the CIL charging schedule and infrastructure plan. In order to understand deliverability and prioritisation, the examination of the charging schedule will have to address the infrastructure plan.

Deliverability of proposals will be a critical consideration, especially in the next few years where funding is highly constrained. A number of boroughs already have aspirations for significant new infrastructure such as trams and extensions to tube lines. These need to be thoroughly tested with guidance on when it is appropriate to include aspirational projects in a CIL charging schedule. For this reason it will be critical to test the charging schedule alongside the plan documents and why it is not sufficient for boroughs to self certify whether the infrastructure planning is sufficient.

We do not think a test of 'good enough' is sufficient with respect to likely sources of funding. A test of 'good' would require sufficient rigour while allowing for uncertainty.

Whilst it would be inappropriate for the Government to specify what would be appropriate to render unviable through CIL, the process of assessing CIL and ensuring viability must have regard to the Government's broader planning objectives. It would be highly undesirable for CIL to prevent the sort of development and regeneration that Government policy promotes, or unduly influences the composition of developments.

In London, where development is overwhelmingly on previously used sites, which have an existing use and value, market value is more appropriate than land value.

Local authorities should not set the CIL rate at the margin of viability: not just avoid doing so.

SHLAA data would not be appropriate or sufficient in London and does not address mixed use or commercial development.

Given the potential impact of CIL in rendering vital development unviable, we do not consider that it is appropriate to base rates on 'broadly acceptable approximations.' Whilst it will not be an exact science, authorities should be required to adopt more than a broad brush approach.

We do not consider that varying the CIL rate over time will add undue complexity and strongly consider that it should be encouraged. Differential CIL rates over time would be a useful mechanism to incentivise development.

CIL should only be charged on net additional development as this equates to the additional need for infrastructure. Charging CIL on the gross development would make many redevelopment schemes unviable which would undermine the ability to improve the building stock (in design and efficiency); hinder regeneration and lose the wider benefits of development.

We do not consider that it is reasonable or sufficient justification to seek to charge CIL on gross development on the grounds of simplicity or out of a concern about potential abuse. S106, which is charged on net additions, has not led to concerns about abuse. Charging CIL on net additions would precisely cover the intensification of use, more so than a gross charge. As the purpose of CIL is to contribute to the infrastructure made necessary by development, it must follow that it is the increase in floorspace that should be charged.

The infrastructure plan should be published alongside the draft charging schedule. Whilst it is not being examined, the relationship is critical and the two need to be considered together.

CIL charging schedules should be reviewed alongside the LDD unless circumstances necessitate a more frequent review. Government guidance should set out what these might be, possibly by virtue of key economic indicators.

Authorities should be prevented from (rather than encouraged not to) setting CIL at the limit of viability.

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

*22: (a) Do you agree with the chosen definitions of building, planning permission and 'first permits'?*

Yes

*(b) If not, what changes would you wish to see that strike the right balance between simplicity, fairness and minimising distortions?*

23: (a) Do you agree with our approach to when CIL is chargeable on outline and reserved planning permissions.

Yes

(b) If not, what changes would you wish to see that deal fairly with these types of permissions?

## **EXEMPTIONS AND DISCOUNTS**

24: (a) What are your views on the principle of providing a reduced rate of CIL for affordable housing development?

(b) What do you think the likely consequences of providing such a discount might be?  
See above

Whilst it might be argued that affordable housing should not make a full CIL contribution, inhabitants of affordable housing do create demands on infrastructure in the same way as other residents. The effect of reducing the CIL contribution would be to require further cross subsidy from other development as it would inflate the overall CIL rate. We therefore do not consider that affordable housing should pay a reduced rate of CIL.

25: If the Government were to provide a reduced rate of CIL for affordable housing development, do you think that the proposed definition of affordable housing is workable in practice?

No. It penalises innovative schemes that do not require grant. Whilst we support a national definition of affordable housing. We do not agree that this should be limited to where there is public funding. Some intermediate housing, which is critical in London, is provided without public funding, a benefit to the tax payer. If affordable housing is to pay a lower CIL rate it should not be penalised.

26: If the proposed definition provides a workable basis for any reduced rate of CIL for affordable housing, should CIL relief for charities building affordable housing be applied according to this definition or according to whether it fulfils the charity's charitable purposes?  
No comment

27: Should LCHO properties where receipts from staircasing are recycled for additional affordable housing, not be subject to any clawback?

(b) if LCHO properties where receipts are not recycled are subject to clawback of the CIL discount, should there be a time limit up till when staircasing to full ownership would invoke clawback?

(c) How should such a clawback operate?

28: Is 7 years an acceptable time period for clawback to operate over?

No comment

29: Is it reasonable to ask a claimant to submit an apportionment of liability in this way?  
No comment

30: Do you agree that it is best not to have a special procedure for developments that have difficulty in paying the advertised rate of CIL? If not, how could it be done in a way that is fair, non-distortionary and not open to abuse?

No. We strongly oppose the Government's proposal not to allow exceptional developments to pay a reduced rate of CIL. Allowing exceptions is crucial to make CIL acceptable and equitable and would not be unduly complex or unfair. Not allowing exceptions would undermine the Government's objectives for regeneration as regeneration schemes are in their nature the most risky and unviable. It would be perverse for the impact of CIL to be to stop regeneration.

Suggesting that as CIL is a known cost means that developers can make allowance for it is highly simplistic and does not reflect many development circumstances, especially in London. In London most development is redevelopment of previously used sites where there is an existing use and therefore value. Where a property company is redeveloping its stock when leases expire to provide modern floorspace, viability will be considered against the passing rent, not a notional land value. It would be highly damaging to the national and London economy if a result of CIL would be to render such developments unviable.

Many of the regeneration schemes the Government wishes to encourage, especially but not exclusively in the Thames Gateway, require significant remediation and up-front site infrastructure investment.

The risk of preventing development and regeneration is far greater than that of complexity as a result of a procedure for exceptional circumstances. We do not consider that such a procedure would create an undue burden of authorities.

We support the BPF's proposed mechanism for dealing with exceptions, namely:

- I. The applicant must have the right to ask to be treated as an exceptional case.
- II. In seeking to be an exception, an applicant must be prepared to submit an open book appraisal, involving comparable open market data, to the charging authority demonstrating that the payment of CIL and the need to meet other planning obligations will make the development unviable.
- III. The totality of tax / planning obligations (including affordable housing)/ land transfers etc. that an applicant is paying/ making must be taken into consideration when considering whether the application is an exceptional case.
- IV. If the application has been assessed as unviable because of the need to pay the full amount of CIL/meet other planning requirements, the charging authority may decide that the overall benefits of the application outweigh the partial or non- payment of CIL and thus the application can be treated as an exceptional case.
- V. If the charging authority considers that the payment of CIL would not make the development unviable or that the overall benefits of the development do not outweigh the consequences of non-payment, the applicant would be granted planning permission on the basis of making the full CIL payment.
- VI. The applicant must have a right of appeal to an independent inspector against a refusal based on the proposal not being accepted as an exception for CIL purposes.

#### **THE LIABLE PARTY**

*31: Do you agree with the Government's proposals for liable parties and assumption of liability?*

No comment

## **COLLECTING CIL**

*32: Are these timescales for the transfer of CIL revenue from the collecting authority to the charging authority the right ones?*

No comment

## **PAYMENT OF CIL IN KIND**

*33: Do you think that the final regulations should provide for the payment of CIL in-kind?*

Yes. See above.

*34: If you think they should, can you suggest how CIL could be paid in-kind without incurring the difficulties outlined above?*

The reason that payments in kind are more likely to be offered by larger developers is that they are more likely to be undertaking large development where it may be appropriate to provide infrastructure in kind. This has no bearing on whether allowing payment in kind is 'fair and seen to be fair.'

The ability to value payments and the unnecessarily restrictive window for payment are not justifications not to allow in kind payments. Authorities may receive better value for money where the developer provides infrastructure.

We support the BPF's suggestion of how to deal with payments in kind:

- i) The term "works in-kind" and the costs associated with using the mechanism must be clearly defined.
- ii) A developer must have the right to ask the charging authority to consider the use of the works in-kind mechanism. A developer can only ask to use the mechanism where such works are identified in the charging authority's infrastructure delivery plan – i.e. the work falls into a type / category of infrastructure that CIL is funding.
- iii) The acceptance of works in-kind is at the discretion of the charging authority. The charging authority could refuse to accept works in-kind where such works are not within the scope of the infrastructure delivery plan, would adversely affect the charging authority's infrastructure delivery programme, or affect other works that are intended to be carried out.
- iv) The developer would have to submit sufficient evidence to show compliance with the proscribed rules. Such evidence must be capable of being verified by an independent valuation expert, should this be deemed appropriate.
- v) An agreement to provide works in-kind must comply with procurement law.
- vi) Where disputes arise about the nature of the evidence submitted by the developer, this should be resolved by dispute resolution.

vii) Providing that both the developer and the charging authority are in agreement on the basis upon which the works in-kind are delivered - including the scope of the works, the cost of the works, the timescale for the delivery of the works etc – then the works in-kind can be delivered and off-set against the developer's CIL liability.

viii) Where the costs of the works in-kind exceed the original estimate, such cost will be paid by the developer, unless otherwise previously agreed.

### **PAYMENT BY INSTALMENTS**

*35: (a) Should payment by instalments be provided for in the final CIL regulations in addition to the ability to pay CIL by phases of development?*

Yes. On major projects, especially where the developer is to undertake demolition or provide substantial up-front infrastructure, CIL should not be payable on commencement. Phased payments should also be allowed where this would aid development viability.

*(b) How should the instalments be structured?*

See above.

*36: Do you agree that payment on account should not be provided for in the final CIL regulations?*

No comment

### **DUTY ON THE AUTHORITY TO REMOVE THE LOCAL LAND CHARGE UPON REQUEST**

*37: Should the collecting authority be under a duty to remove the charge automatically on payment of the full CIL liability?*

The collecting authority should be under a duty to remove the charge automatically on payment of full CIL liability.

### **ENFORCEMENT OF CIL LIABILITIES**

*38: Should the draft regulations be amended to require collecting authorities to have to issue a warning to liable parties (in writing and possibly by posting a warning on the site in question) before being able to impose a late payment surcharge?*

*39: Are the means of recovering CIL debts sufficient or would further methods, such as the ability to impose attachment of earnings orders, be helpful?*

*40: Should the Government provide for specific enforcement measures in regulations to allow collecting authorities to penalise and deter breaches of the conditions for relief?*

No comment

### **COMPENSATION**

*41: Is a bespoke compensation regime required for CIL where enforcement action is inappropriately taken or would the Ombudsman route suffice?*

No comment

## GENERAL

42: Do you have any comments on any other matters raised in chapter 4 which are not covered by the questions above?

We are deeply concerned that it is proposed that CIL is not tax deductible. This would penalise investor developers who maintain an interest in the development and therefore community.

### Chapter 5. Planning obligations and other powers

43: *What do you think about the Government's proposal as set out in draft regulation to scale back the use of planning obligations?*

The relationship between planning obligations and CIL is critical to the acceptability and functioning of CIL. There must be a clear differentiation between what is covered by CIL and s106. The most effective way to ensure scale back and avoid double charging is for the regulations to establish what infrastructure is covered by CIL and to prevent s106 being used for any infrastructure covered by CIL. This could mean that s106 could be dispensed with altogether, other than for affordable housing, with site specific requirements dealt with by conditions.

The way the document explains the purpose of planning obligations and CIL suggests that CIL is an additional general infrastructure tax whereas planning obligations are to return to what they were intended as impact mitigation. This would lead to a considerable increase in the burden on development and is not what was intended when business supported the concept of CIL.

Whether infrastructure is fully funded should not be the determinant of whether it is appropriate to seek a contribution through planning obligations.

We do not consider that making the Circular tests statutory represents sufficient scaling back of s106. Draft Regulation 94 simply makes the test statutory and does not amend them.

We agree that the changes to obligations should be universal and irrespective of whether an authority adopts a CIL. Not to do this would create undue complexity.

We support a restriction of obligations 'solely' to the development to limit scope for double charging. Guidance should also state that, where an authority has a CIL, obligations cannot be sought for infrastructure covered by the CIL.

44: *Do you think the wording of the five tests as set out in draft regulation 94 is appropriate? Is each of the five tests meaningful and workable in practice, or could any be expressed in a better way?*

See above

45: *Do you think that a transitional period, beyond the commencement of CIL regulations in April 2010, would be required to restrict use of planning obligations to the Circular 5/05 tests; And if so what should it be and why is such a period required?*

See above

*46: Do you agree that a scale back of planning obligations as set out in draft regulation 94 should apply universally across England and Wales regardless of whether a local authority has a CIL or not?*

Yes. We agree that the change should be universal to prevent undue complexity and the operation of different regimes across the country.

*47: Should a scale back of the use of planning obligations go further and prevent the future use of planning obligations for pooled contributions and tariffs?*

Yes

*48: Do you think the Government's proposal to provide an additional legal criterion to restrict the use of planning obligations to address planning impacts 'solely' caused by a CIL chargeable development is workable in practice?*

Yes – see above

*If not, please state why not. Can you think of an alternative which would have the same or similar effect?*

*49: What transitional period, beyond the commencement of CIL regulations in April 2010, would be required to restrict use of planning obligations to mitigate impacts 'solely' caused by CIL chargeable developments?*

No comment

*50: Do you agree that a restriction of planning obligations to prevent their use for pooled contributions or tariffs should apply universally across England and Wales regardless of whether a local authority has a CIL or not?*

Yes

*51: What transitional period in London do you think would be required before a scale back of the use of planning obligations which prevented the use of pooled contributions and tariffs could take effect, to ensure a smooth transition from the existing to the new planning obligations regime, taking account for the need to use planning obligations for Crossrail purposes?*

Transitional arrangements in London should be no different from other areas: two years from implementation of the regulations.

*52: In revising Circular 5/05 in light of the introduction of CIL what further policy or areas of clarification do you think might be required with regards to the use of planning obligations?*

It should not be possible to collect s106 and CIL for Crossrail. On implementation of the Mayor's CIL, Crossrail planning obligations should cease.

*53: Do you think any additional further guidance (additional to a revised Circular 5/05) is required to support the use of planning obligations or CIL, and if so who would be best to provide it?*

See above

## **GENERAL**

54: Do you have comments on any other matters raised in chapter 5 which are not covered by the questions above?

The regulations should state that **Grampian conditions** cannot be attached to a planning permission where the delivery of infrastructure is through CIL and beyond the control of the developer. It would be unreasonable for the developer to be penalised for failure to deliver.

