Country Land & Business Association

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GUIDANCE NOTE: CLA KEY MESSAGES FOR COMMUNITY INFRASTRUCTURE LEVY (CIL) CHARGING SCHEDULE

Introduction

This Guidance Note sets out the CLA's key messages in respect of the Community Infrastructure Levy (CIL). The guidance note may be used by CLA members in respect of any lobbying they may wish to undertake where a charging authority proposes to introduce a CIL charging schedule in a local authority area.

CLA Key Messages

The CLA represents more than 35,000 members who collectively manage and/or own about half of all rural land in England and Wales. CLA members can be individuals, businesses, charities, farmers and estate managers who represent around 250 different types of rural businesses. They generate jobs, provide land and buildings for investment, housing for local people as well as producing food and a whole range of land-based environmental goods and services. They also manage and/or own as much as one third of all heritage in England and Wales, making the CLA by far the largest heritage-owner group.

CLA members include every size and type of holding, from estate owners to the smallest land holding of less than a hectare. The membership encompasses all traditional agricultural and forestry from the most sophisticated dairy and arable enterprises, pigs and poultry, through to highly productive intensive horticulture and vegetable production and more extensive livestock systems. The majority of our landowning membership is made up of family farm owner-occupiers many of whom have diversified into other business activities in response to the pressure on farm incomes.

The CLA also represents the interests of owners of other types of rural businesses including, for example: forestry enterprises, mineral and aggregate operators and owners, hotels, golf courses, tourist enterprises, equestrian establishments, a myriad of small rural enterprises and also institutional land owners such as water companies, pension funds, and development companies. Our members have businesses in the countryside and live in its rural communities and villages. All of this frequently brings CLA members into contact with local authorities and in particular your Planning team.

The CLA is unique in that it lobbies for the development of the rural economy and is concerned that no unnecessary restriction is placed on that process. Many of our rural businessmen and farmers experience growing regulation as more red tape emerges from all levels of government. Furthermore, rural businesses and communities suffer from remoteness, and exclusion; indeed many feel that their needs for jobs, housing and services are not catered for by an urban-biased planning system. But they are also at risk of being left behind economically because of flawed

CIL viability assessments that will affect potentially beneficial rural economic development.

The CLA represents the wide diversity of the rural community and is the only single organisation able to do so in quite so comprehensive a manner. We are glad of the opportunity to be an active partner in any consultation exercises or decision making processes in which rural business and the communities form part.

Viability Assessments for CIL Charging Schedules

The Government's policy guidance on CIL makes it very clear that charging authorities wishing to introduce a CIL charging schedule must ensure that they propose a rate(s) that does not put at serious risk the overall development of their area and they must provide evidence on economic viability and infrastructure planning. CIL is expected to have a positive economic effect on development across an area.

A key consideration for charging authorities is the balance between securing additional investment for infrastructure to support development and the potential negative economic effect of imposing CIL upon development in their area. In their background evidence on economic viability to the CIL examination, charging authorities are required to explain why they consider that their proposed CIL rate(s) will not put the overall development across their area at serious risk. The CLA is picking up a number of concerns that the particular circumstances of a site may mean the CIL charge renders development unviable even though the planning authority's viability evidence may suggest otherwise.

The viability of a development is crucial to the delivery of economic growth and jobs whether in rural or urban areas. CIL is intended to be a pro-growth tool. But we are seeing charging schedules that are imposing urban-focussed CIL charges on new development in rural areas. It would be ironic if CIL charges had the effect of making the already dire development climate even more difficult with the obvious knock-on effects for the Government's growth and housing agendas.

The CLA has analysed a number of CIL front-runners' viability assessments and preliminary charging schedules and we are very concerned that agricultural, horticultural and forestry developments, and small scale rural developments, are being swept up with urban-focussed development charges. Clearly this would be to the detriment of the rural economy as a whole as urban-focussed charges would stop critically needed development in the countryside. The CIL regulations do allow for differential rates subject to being underpinned by clear evidence.

It is hard to square the Government's calls for local authorities to moderate their s106 demands to get development going, with the emergence of CIL charging schedules that appear to be going in a totally different direction. If the viability assessment for a proposed CIL is not robust then a flawed CIL regime will be put in place which could hold back development within an authority for years.

The setting of inappropriate rates for rural economic development, and some forms of rural housing, will have the long-term effect of constraining all forms of land-based development and farm-based diversification development opportunities with consequential impacts on the long term sustainability of the rural economy and jobs, rural communities and ultimately on the goods and services, both environmental and food-related, that are delivered by CLA members.

Viability assessments must be underpinned by robust evidence that takes account of the differences in economic viability between urban and rural developments.

Clearly for those charging authorities, who have urban areas and rural hinterlands, they can take advantage of setting differential rates and we strongly urge the authority to consider the use of different rates for rural areas if the charging schedule is not to prevent

critically needed rural development from coming forward.

Agriculture, horticulture and forestry enterprises

Regulation 6[1] (which sets out the meaning of "development") says that CIL will not be levied on all new *"…buildings into which people do not normally go"* and it will not be levied on "*…buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery"* nor on works undertaken to these buildings.

The Government advised in 2010 that there are a number of changes that the Department for Communities and Local Government have made that will benefit the agricultural industry – the following is directly quoted from a letter to Julian Sayers FRICS from Tony Collins DEFRA Sponsorship, Employment and Tenancies team dated 23 February 2010:

- *"the fact that CIL will now be charged on the net increase in development rather than gross which means that – subject to the conditions set out in the regulations – if you build a barn that is the same size as the old one there should be no charge.*
- *We have retained our definition of buildings so agricultural structures into which people do not normally go are likely to be exempt (see draft regulation 6(2)), and there is the new facility, if local authorities decide to take it up, of enabling exceptional circumstances to be treated sympathetically. This is on top of the existing requirement for local authorities to provide evidence to the independent examiner that the CIL rates they propose to charge are actually viable."*

Therefore, buildings erected for agricultural and horticultural purposes or for forestry purposes are not buildings into which people normally go and therefore must be, specifically, exempted, or at the very least zero-rated, in your forthcoming draft and adopted charging schedule.

Farm-based diversification

We are very concerned about the potential impact of CIL charges on farm-based diversification. All land managers are encouraged by the Government (since 2007) to find alternative sources of income other than from agriculture (or forestry) to remain profitable and to be able to underpin uneconomic agricultural (and forestry) enterprises. This largely means that land managers must find new uses for traditional, including listed, farm (or forestry) buildings, which are redundant for modern agricultural (or forestry) needs, or to find new uses for land many of which will require planning permission for change of use. Indeed a succession of national planning policies for rural areas, including PPS4 and the new National Planning Policy Framework positively promote new business activity in rural areas, and try to establish a culture of rewarding entrepreneurship. As a result many land managers continue to seek to diversify and attempt to bring back into use traditional rural buildings for commercial (including equestrian), or community, use and/or to provide new build small scale commercial development on redundant farmsteads to support, for example, incubator units for new micro/small-business start-ups.

It is accepted by the CLA that this re-use of farm (or forestry) buildings may, but not always, have an increased impact on local infrastructure through such consequences as additional traffic movements. But Government guidance is clear that CIL is not chargeable on changes of use which do not involve an increase in floorspace. Therefore, your CIL charging schedule should not include any rate(s) for change of use of redundant farm buildings to new uses.

However, we request that a nil rate is set for a change of use of a redundant farm building, which involves an extension

[1] The Community Infrastructure Levy Regulations 2010 no 948

and/or a new build that, for example provides for incubator units for new small business start-ups (whether for office or light industrial work space).

Farm Shops

Again most front-runner charging schedules are sweeping all retail up into one urban-biased charge rate. Little attention appears to have been given to rural retail units, such as farm shops or even new village shops and post offices. Urban-biased CIL charges will have an adverse impact on the provision of much needed rural retail outlets of all types.

We request that you consider the matter of farm shops as part of the viability assessment and set a nil rate in order to encourage small-scale retail activity in and around rural communities.

Agricultural, Forestry and Other Occupational dwellings

We have noted that most CIL charging schedules are making no allowance for new housing where is it required to enable agricultural, forestry and certain other full-time workers to live at or in the immediate vicinity of their place of work. Our view is that the **CIL should not apply** to these dwellings, which will have been justified as a requirement for the specific business. Such properties are not sold for development gain and are usually restricted by some form of occupancy condition which has already had a negative impact on the value of the development.

In such cases, a charge of, for example £80/m^2 (Shropshire) or £135/ m^2 to £160 per m^2 (Greater Norwich et al) would simply be an additional cost of construction and is likely to render many such projects unviable, and could lead to new farming entrants being priced off the land they wish to farm and the curtailment of new business start ups in rural areas.

As these properties are crucial to the operation of, in general, land-based businesses and sustainable rural communities, we ask that they be considered separately, based on a suitable viability assessment, or classified with affordable housing for CIL purposes and thus zero-rated for CIL purposes.

Other rural dwellings

Some CLA members decide to build houses to keep within their long term ownership to diversify their income through a residential portfolio of properties. There are no capital receipts from which to fund a CIL charge, rather the CIL charge would have to be met from existing revenues, which the land manager is trying to improve by diversifying to obtain an alternative rental income system. Such development is already likely to have to include an element of affordable housing not charging CIL or exempting it if affordable housing payment has been included. Or development might include affordable houses in the development

In this instance, we suggest the planning authority should be more flexible in their approach for the payment of CIL. Such development may already include an affordable housing element. Flexible arrangements may include not charging the CIL until a rental income is received, payments by instalments or exempting the development from CIL charging if affordable housing has been included as part of the development.

Neighbourhood Funds

The recent government consultation on further changes to the CIL regulations will allow a "meaningful proportion" of the CIL funds raised in a parished area to be returned to that area for the parish council to spend on existing or new infrastructure on which new development may impact. The CLA would object to any aspirational or generic implementation plans prepared by the charging authorities which are not underpinned by robus evidence and associated viability assessments. **We strongly urge the charging authority to put in place implementation plans that provide a very clear list of infrastructure needs, by parish or neighbourhood**

forum, that will be delivered during the period of the CIL implementation plan.

Local Infrastructure List and Planning Agreements (s106 agreements)

Section 106 agreements or planning obligations will in all likelihood be reshaped once local authorities have clear policy justification, in their local plans and/or supplementary planning documents, for site specific mitigation and types of non-CIL contributions.

Once CIL is adopted, planning obligations must not be a "reason for approval" where they concern matters that are already published on the charging authority's infrastructure list. Nor, after 6 April l2014, are planning obligations a "reason for approval if the local authority seeks to pool more than five CIL-defined obligations.

The CLA will monitor local planning agreements/obligations policy carefully to ensure that CLA members are not required to make two payments – one CIL-related and a second one under a planning obligation agreement.

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