

# A NEW APPROACH TO DEVELOPER CONTRIBUTIONS



A REPORT BY THE CIL REVIEW TEAM

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# 1 BACKGROUND

## 1.1 PURPOSE OF THE REVIEW

1.1.1 The Community Infrastructure Levy (CIL) review group was established by the former Communities Secretary, Greg Clark and the former Minister of Housing and Planning, Brandon Lewis MP, in November 2015. The purpose of the review was to;

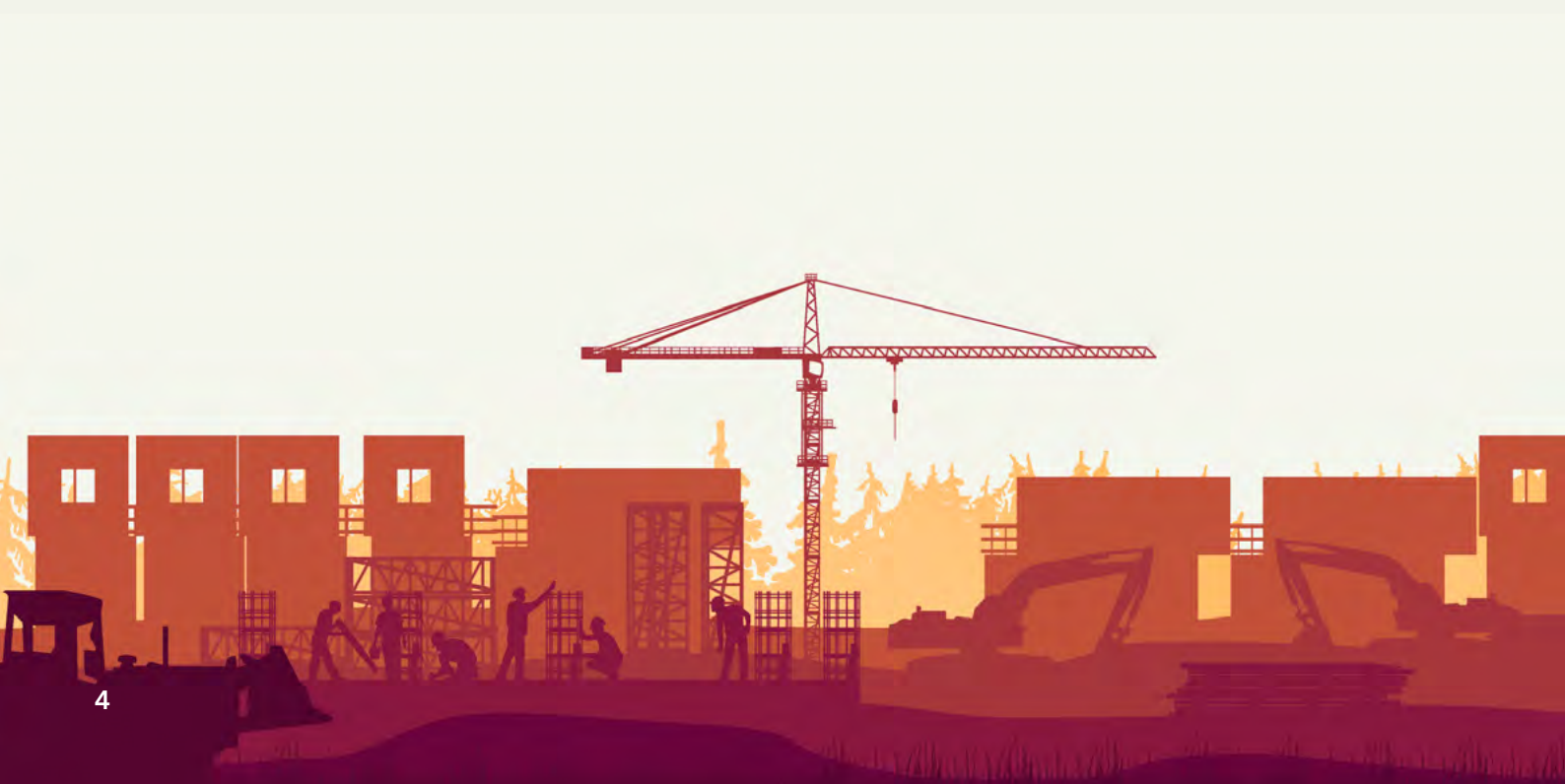
***“Assess the extent to which CIL does or can provide an effective mechanism for funding infrastructure, and to recommend changes that would improve its operation in support of the Government’s wider housing and growth objectives.”***

1.1.2 We were specifically requested to look at;

- » The relationship between CIL and Section 106 in the delivery of infrastructure, including the role of the regulation 123 list and the restriction on pooling planning obligations;
- » The impact of CIL on development viability, including any disproportionate impact on particular types or scales of development;
- » The exemptions and reliefs from CIL;
- » The administrative arrangements and governance associated with charging, collecting and spending CIL;
- » The ability of CIL to fund and deliver infrastructure in a timely and transparent way;
- » The impact of the neighbourhood portion on local communities’ receptiveness to development; and
- » The geographical scale at which CIL is collected and charged.

1.1.3 The terms of reference for our review are set out in appendix 1.

1.1.4 This report sets out our key findings from the call for submissions and our response and recommendations to Ministers.





## 2 COMMUNITY INFRASTRUCTURE LEVY (CIL)

### 2.1 HISTORY OF CIL

- 2.1.1 Governments have, over the years, introduced a range of measures to secure revenue from development and to ensure that infrastructure required to support development and other community benefits are provided. Three short-lived national development taxes were introduced in the 1940s, 60s and 70s.
- 2.1.2 More recently Section 106 of the Town and Country Planning Act (1990) provided for planning obligations to be secured from developments. This is colloquially known as 'Planning Gain'. The scope of such obligations gradually grew to include the provision of affordable housing and a number of authorities introduced 'tariff' type charges requiring 'per dwelling' (but negotiable) contributions to pay for different types of infrastructure. Elsewhere, some areas also introduced a more standardised approach to Section 106 agreements with a fixed amount per dwelling such as the Milton Keynes Tariff.
- 2.1.3 Such obligations were explicitly not intended as a 'betterment tax' or opportunity for the community to share in increases in land value created by development. However as the ability to pay them was, in the final instance, based on an assessment of development viability, they often had the same effect. Concerns were raised by the development industry about the growing scope and complexity of development contributions including the time and costs involved in negotiation, the fairness of only covering a few large applications, and the openness to public scrutiny.
- 2.1.4 In the mid 2000s, the Government considered a number of alternative options for raising money from development for infrastructure and community benefits including another national tax (the Planning Gain Supplement), the tariff-based approach mentioned above and the formalisation of tariffs. And then the 2008 Planning Act made provision for a 'Community Infrastructure Levy' (CIL) which was intended to provide funding to address the cumulative impact of development. Where CIL was adopted, Section 106 obligations were to be scaled back to address only the site specific issues required to make development acceptable in planning terms, as laid down in the new Regulation 122 tests.

### 2.2 POLICY BACKGROUND

- 2.2.1 The regulations implementing CIL were made in April 2010, along with associated guidance.
- 2.2.2 CIL was described as;
- "the Government's preferred means of collecting developer contributions to infrastructure investment that has been identified as necessary to support the development of an area."***
- 2.2.3 The principle on which CIL was established was that those responsible for new development should make a reasonable contribution to the costs of providing additional infrastructure to meet the needs arising from that development. By standardising the approach towards contributions in an area, in contrast to the highly bespoke Section 106 system, CIL was intended to be a fairer, faster, more certain



and transparent system of securing such contributions, operating alongside Section 106 which was then restricted to mitigating site-specific rather than cumulative impacts. The introduction of CIL was optional for local authorities but the regulations were designed to encourage its take up by restricting the future use of Section 106 obligations.

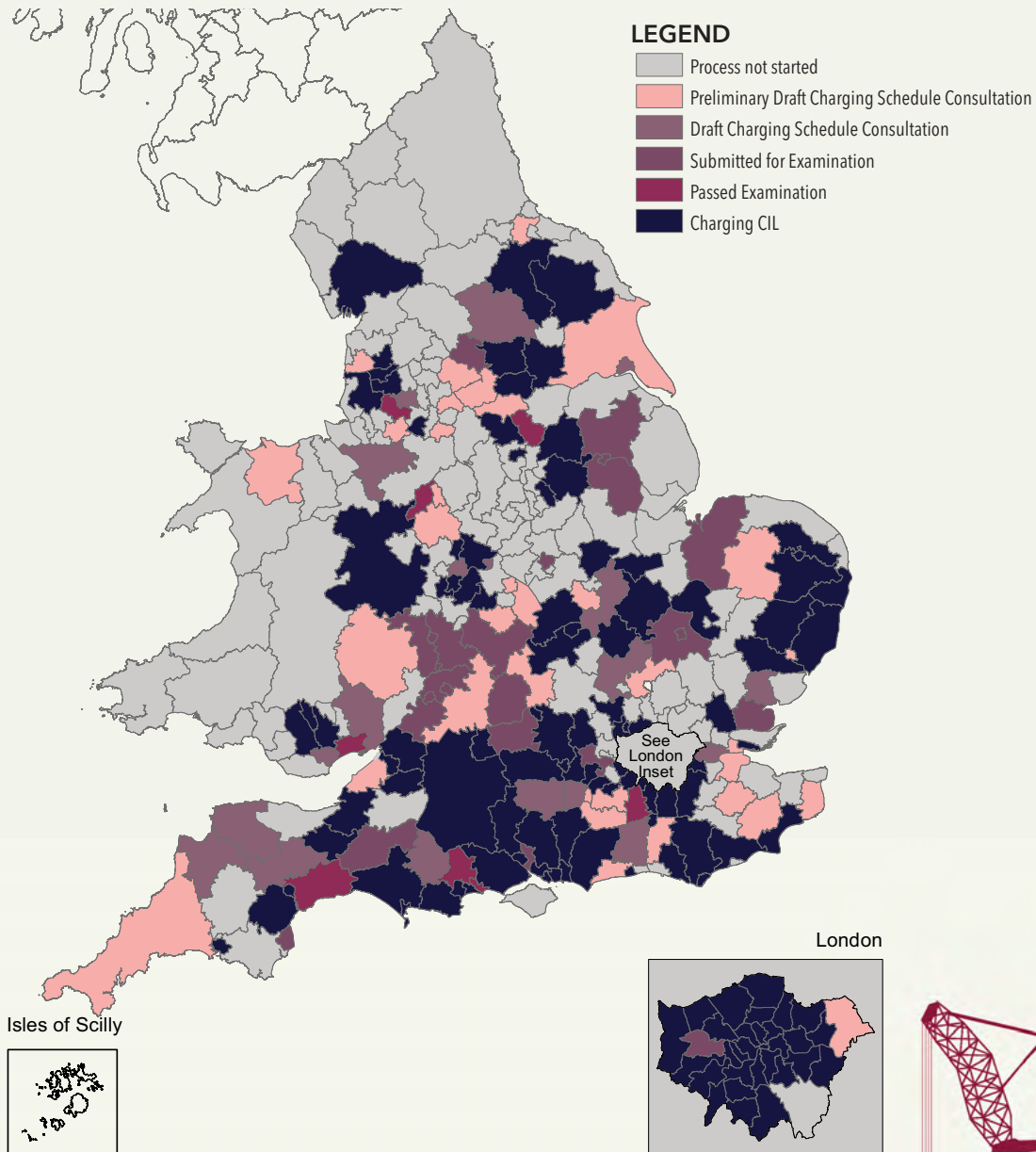
- 2.2.4 The CIL levy is a fixed charge (per square metre) on the development of new floorspace. Local authorities may vary charges by location, use, size and type of development. These charges are set out in a charging schedule, which can only be adopted by the charging authority once it has been through two rounds of statutory public consultation and after consideration by an Independent Examiner.
- 2.2.5 Money collected from CIL can be spent on a broad range of infrastructure identified as necessary to support the wider development and growth of the area such as roads, schools, flood defences and health facilities.
- 2.2.6 The previous Government made successive changes to the regulations and guidance partly so that it better reflected new policy directions and partly to address technical issues raised by councils and developers.
- 2.2.7 Further policy driven changes were introduced to address the Government's shift towards localism, giving authorities more control in setting charges, encouraging Neighbourhood Planning by ensuring a proportion of CIL receipts are spent close to where development takes place, exempting self builders and extensions and providing a wider range of reliefs for affordable housing.
- 2.2.8 Technical changes have sought to address concerns over the phasing of large developments, how existing buildings on sites should be taken into account, how changes to planning permissions and use classes should be treated and instalment policies.
- 2.2.9 There have been amendments to the regulations every year since CIL was introduced. At present, a consolidated version of the regulations is not widely available.
- 2.2.10 The Autumn Statement (2015) set out the Government's intention to further streamline and reform the planning system, including amending policy to simplify planning for small sites and promoting the delivery of Starter Homes.
- 2.2.11 The Local Plans Expert Group (LPEG) reported to the Minister for Housing and Planning in March 2016 on how the plan making process could be speeded up to ensure all authorities have plans in place by 2017. In the 2016 Budget, the Chancellor of the Exchequer announced measures to achieve this and also further reforms to reduce the time and stages required to get planning permission.
- 2.2.12 In the view of the CIL review group these more recent developments re-emphasise the importance of the original principles of CIL - to be faster, fairer, more certain and transparent. It is against these tests that we have considered its performance to date in making a reasonable contribution to help meet the cumulative costs of infrastructure required as a result of development in an area.
- 2.2.13 Reforms to planning are taking place including those which form part of the wider reform of local authorities and sub-national governance, such as City Deals, the move towards localisation of some finances such as Business Rates and the introduction of Mayoral Combined Authorities (CAs). These are still in the early stages but could have a profound impact on the way that local infrastructure will be planned and provided in the future. We have therefore had regard to these in developing our recommendations.



### 2.3 CURRENT CIL PROGRESS

2.3.1 After an initially slow start, CIL implementation is now well underway. There are 130 authorities charging CIL (not including the Mayor of London and the London Legacy Development Corporation) with a further 88 working towards adopting a CIL. The map at below illustrates that CIL implementation is further advanced in the south and east, including almost complete coverage in London. Implementation is much patchier in the north, midlands and Wales.

## CIL PROGRESS AT 1st OCTOBER 2016



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**Data Sources**  
DCLG, OS Boundary-Line





### 2.4 METHODOLOGY FOR THE REVIEW

#### *SUMMARY OF THREE DRAGONS / UNIVERSITY OF READING RESEARCH REPORT*

2.4.1 In March 2015 the Department for Communities and Local Government (DCLG) commissioned research into the value, impact and delivery of CIL from the Three Dragons consultancy in conjunction with the University of Reading (the “Three Dragons/UoR research”). Specifically, the research investigated five broad areas that were set out in the project specification. These were:

- » Implementing and operating CIL: the extent to which the levy is simpler and quicker to operate than individually-negotiated Section 106 agreements
- » The value of CIL: how much money is being raised and what it is being spent on (or intended to be spent on)
- » Who is paying CIL: the types of development that are paying the levy
- » The neighbourhood portion of CIL: how much money is being passed on to local communities and how the ‘neighbourhood portion’ of CIL is being administered
- » The impact of CIL on development viability: what, if any, impact it is having on development viability

2.4.2 The research has highlighted the importance of recognising that CIL is a relatively new policy and that this is reflected in the evidence available. Many planning permissions granted before CIL adoption are still to be implemented in local authorities that have recently introduced CIL and these are subject to previously negotiated Section 106 agreements. Similarly, many of the sites to which CIL now applies would have been acquired in a pre-CIL environment.

2.4.3 The research revealed a wide spectrum of views on CIL, to the extent that drawing emphatic conclusions as to its ‘success’ or ‘failure’ would be very difficult. For most of the local authorities that have adopted CIL, it is still very much in its early stages. Whether through interviews or questionnaire responses, the research identified many who have welcomed CIL, particularly the predictability it offers in comparison to negotiated Section 106 planning obligations. Some, while supportive of CIL, have been critical of the revisions that have been made since its introduction. Others argued that Section 106 agreements are preferable to CIL for a variety of reasons: the more direct local connection between money collected and infrastructure provided, concerns about development viability with CIL in place, a perceived complexity of operating CIL or simply, from developers’ perspective, that CIL is an unwelcome ‘tax’ on development.

2.4.4 The main findings from the research document are summarised in appendix 2; they have provided an evidence base to inform our review of CIL.

#### *CALL FOR SUBMISSIONS*

2.4.5 The CIL review group sought written submissions via a questionnaire on the efficacy of CIL from 19



November 2015 to 15 January 2016. We received 342 responses from a wide range of stakeholders, both in the public and private sector. These included;

- » **196** - Local Authorities (including National Parks, Broads Authority and the Greater London Authority)
- » **26** - Parish Councils, Neighbourhood Forums and local Councillors
- » **36** - Commercial Sector Organisations including landowners, businesses and developers
- » **15** - Public Sector Organisations
- » **13** - Professionals & Professional institutions/associations
- » **26** - Industry representative bodies & trade organisations
- » **30** - Individuals/Voluntary/charity/community organisations/research organisations

2.4.6 A full list of respondents is provided in appendix 3.

### *DIRECT EVIDENCE SESSIONS*

2.4.7 Following the request for written submissions, we held a number of face to face sessions where we met with a variety of different stakeholders. These sessions were set up to allow us to examine in further detail some of the key issues we identified from the written responses. A list of those organisations who were represented at these sessions is provided in appendix 4. We are very grateful to all those who have taken the time to engage with us in this review process; their input has been invaluable.

### *BRAINSTORMING SESSIONS*

2.4.8 We then held a series of brainstorming sessions and report writing sessions (12 in all) where the panel members analysed the issues raised in the written responses and at the face to face sessions and worked through various options on how a new approach to CIL could provide a more effective mechanism for funding infrastructure. We also wanted to ensure that whatever recommendations we made would result in a system that was fairer, faster, more certain and transparent than the existing arrangements.

### *OUR REPORT*

2.4.9 In Chapter 3 we summarise what we concluded from the written submissions and evidence sessions as to the current workings of CIL and Section 106. We then go on to discuss in Chapter 4 possible ways of dealing with the problems and issues which we identified. And then finally in Chapter 5 we propose our solution for reforming CIL and Section 106. Our recommendations are summarised in Chapter 6.



## 3 WHAT WE FOUND

### 3.1 OUR APPROACH

3.1.1 There were a diverse range of views expressed in both the submissions and the direct evidence sessions depending on people's individual perspectives and which organisations they were representing. We have summarised below some of the key messages that have helped to inform our review.

### 3.2 ADOPTION OF CIL

3.2.1 The Three Dragons/UoR research and the evidence we heard made it clear to us that it is still relatively early days in terms of CIL set-up and, even for those local authorities who have introduced a CIL (currently some 130 with an operational system as of 1st October 2016), they are not yet collecting the amount envisaged at inception. There are still 88 CILs in the process of being set up and, once completed, that would give a coverage of just under 60% of charging authorities. However, it would appear that some of the 88 authorities have abandoned the idea of charging CIL as several local authorities consulted on preliminary draft charging schedules in 2012/13 and have taken no action since.

3.2.2 The Three Dragons/UoR research found that authorities that have operational CILs are concentrated to a large extent in more affluent parts of the country where market and land values are higher. At the time of the research, over half of CIL adopters were from London and the south east of England, although there has been an expanding geographic spread in the number of authorities bringing forward and introducing the levy. The main reasons cited by authorities that are not progressing towards adoption of CIL were actual or perceived lack of viability and the prioritisation of affordable housing delivery (which cannot currently be funded through CIL) over and above infrastructure provision.

3.2.3 Our perception is that most of those local authorities who are going to adopt a CIL either have done it, or are in the process of doing it, and that there are a number of local authorities who will never implement a CIL, mostly for reasons of viability. The latter tend to be in the midlands and north, although there have been notable exceptions, for example Trafford in Greater Manchester. The upshot of this is that we do not have a standard system across the country; instead there is a patchwork of CIL and non-CIL authorities and, unless there is substantial change, this is likely to remain.

3.2.4 As a result of all of our evidence gathering, it is clear to us that there are some examples where local authorities have successfully implemented CIL: we received positive responses from some 20 local authorities. However, that represents less than 10% of those who have or are implementing CIL and the views we collected suggest there are a significant number of issues with CIL as it currently operates, especially with regards to its impact on large housing developments. It is worth considering that more positive comments might have been received on the original intentions behind CIL but the responses were dominated by several specific technical issues with the levy as it currently operates.





3.2.5 The way CIL works is not liked by many developers who seem to have discovered a nostalgic fondness for the Section 106 process, notwithstanding all their previous complaints about it. Moreover in the wider development community there is confusion over what precisely CIL is intended to be and what it achieves, often manifested in unrealistic expectations. There is also concern that CIL is divorced from both the local plan-making process, has little relationship with local infrastructure plans and has increased uncertainty over delivery of infrastructure by transferring funding and construction risk from developers to local authorities.

### 3.3 CIL'S FINANCIAL CONTRIBUTION TO INFRASTRUCTURE FUNDING

3.3.1 We do not believe that CIL is raising as much money as was envisaged by Government when it was first introduced. Nor is it raising as much as local authorities were anticipating. The original impact assessments suggested CIL might raise £4700 million to £6800 million over a ten-year period with the top end increasing to £1 billion in later assessments. If this were to be split evenly over a ten-year period, this would result in an average of £470 million to £680 million per annum. We estimate that CIL raised approximately £170 million by the end of March 2015; we do not have a complete set of figures for the last financial year but we know that the Mayoral CIL raised a further £140 million in 2015/2016. Clearly this will increase as CILs mature but it is materially less than was expected at the outset. The situation has, however, been mixed for charging authorities with some, after an initial delay, collecting around the level expected, but others receiving as little as 50% of what they had anticipated which they attribute largely to the number of subsequent exemptions.

3.3.2 It is clear that the potential role of CIL in meeting infrastructure costs has often been overstated resulting in unrealistic expectations amongst local communities as well as developers as to the amount of infrastructure that will be provided. Figures cited by respondents suggest that CIL is yielding between 5% and 20% of the funding required for new infrastructure in an area leaving the balance to be found by local authorities who are having to address their own financial challenges.

3.3.3 In some local authorities, CIL has been set at a relatively low level to accommodate the development of the least viable proposals but this had led to some developments paying less than under the previous system, resulting in lost infrastructure income for local authorities. In effect the strategic nature of CIL results in a lowest common denominator approach that does not necessarily produce as much as Section 106 would have done for some sites, even in situations where it raises more generally.

3.3.4 The setting of CIL for commercial or mixed use, as opposed to purely residential, development has also been problematic given the many different types of commercial uses. Generally, it is only residential and retail development that has attracted a significant CIL charge and in many cases local authorities have adopted zero or very low rates for other commercial uses as a means of encouraging economic growth.

3.3.5 Large mixed use sites have generally in the past been the subject of detailed Section 106 agreements which include both financial contributions and, importantly, on site and enabling infrastructure. It was the view of the developers who responded that this bespoke approach was preferable to a CIL system that lacked the necessary degree of flexibility. The only exception seems to be the single rate Mayoral



CIL imposed by the Mayor of London covering all development and set at a relatively low level to contribute to the funding for a specific piece of infrastructure, namely Crossrail. Despite some early complaints, this seemed to end up being broadly acceptable to all and indeed was frequently cited as a success story.

- 3.3.6 The Government has sought to support certain types of development by exempting them from CIL or allowing relief to be claimed and indeed we received many representations from those who benefit from these exemptions and reliefs stressing their value. It is however an effect of so many exemptions and reliefs that fewer and fewer types of development then carry the remaining burden of CIL, which raises an issue of fairness. There is also the potential for extensive exemptions and reliefs to encourage local authorities to impose higher rates for those remaining developments, potentially tipping them towards unviability. Ironically, it was suggested to us that some exempted development could actually afford to pay a CIL.
- 3.3.7 There is, however, a further and bigger problem with so many exemptions and reliefs in that they reduce substantially the amount of money that can be collected for infrastructure. In some areas, over forty per cent of development was exempted for one reason or another. A number of local authority respondents suggested that their expected CIL income had reduced by some 50% because of exemptions.

### 3.4 CIL AND THE DELIVERY OF INFRASTRUCTURE

- 3.4.1 Although it is still early days, there is evidence that CIL is not raising sufficient revenue to contribute effectively to the funding of the infrastructure needed to support development. A further consequence is that this infrastructure is not being delivered in a timely manner.
- 3.4.2 The timing and distribution of payments means that there is a risk that time lags will occur in off-site infrastructure delivery which may impact on scheme delivery, phasing and marketability. Although paying in instalments may in some cases help developers' cash flow and viability, the downside for others is that neither the developer nor the community has the certainty that the required school/surgery/road will be delivered on time which in turn affects the developer's ability to sell completed houses.
- 3.4.3 This effect has been exacerbated by the way in which CIL has effectively transferred financial and construction risk from developers used to delivering large projects to local authorities, often smaller districts, which lack the technical & professional skills or financial capacity to deliver. This has frustrated some developers, who have been prepared to build facilities alongside the construction of homes and offices, as they would have done under previous Section 106 arrangements, but who are prevented from doing so under the CIL regime other than through a complex mechanism that is difficult to implement.
- 3.4.4 We noted a particular issue over the timing of infrastructure delivery where there are Grampian conditions halting development at the specific point at which improvements to the infrastructure are critical. This then prevents further development being built which would make a further contribution to



the CIL pot. For large sites this can result in a 'Catch 22' situation where charging authorities have not accumulated sufficient CIL revenues to fund key elements of enabling infrastructure that will unlock house building, so the house building does not take place and the related CIL payments needed to deliver infrastructure are not made.

- 3.4.5 A further aggravating problem occurs because local authorities have no obvious means of forward funding pieces of infrastructure that will eventually be paid for by the accumulation over a period of future CIL payments. A majority of local authority respondents told us that this problem could be solved by being allowed to borrow against future CIL receipts, a power that was provided for in the original CIL Regulations (Regulation 60) but which has not been activated.
- 3.4.6 The payment of CIL to the local authority for them to decide how it is spent has caused tensions in some two tier areas. Many county councils feel that they should have more certainty of receiving CIL monies to provide county infrastructure such as transport and education. Districts, as the planning and charging authority, do not necessarily have the same spending priorities. There are, however, examples such as the Greater Norwich Partnership and Exeter, where local co-operation between counties and districts has overcome this problem.
- 3.4.7 We have already referred briefly to the London Mayoral CIL which provides an interesting example of how a relatively low level and simple levy applied across a wider economic area has been able to provide a contribution towards the funding for one large identified piece of infrastructure. It could well be argued that this is closer to how CIL was meant to operate in its simplicity, universal applicability and use than most of the CILs that have been introduced elsewhere.

### 3.5 RELATIONSHIP BETWEEN CIL AND SECTION 106

- 3.5.1 Once an authority chooses to adopt a CIL and publishes a Regulation 123 list of those items the CIL may fund, then limitations on the use of Section 106 apply, in particular that it should not be used for items on the Regulation 123 list. There had previously been much complaint within the development industry about what has been termed 'double-dipping' - where the distinction between items on the Regulation 123 list and those that could be funded by Section 106 appeared to have been blurred with the result that the development community felt they were paying twice for the same thing. Surprisingly we heard little about this specific issue but we did find a considerable amount of confusion and variation on the issue of the operation of the Regulation 123 list and its relationship to Regulation 122 which enshrined in statute the three tests (necessity, direct relationship and fair and reasonable) for the use of Section 106.
- 3.5.2 The original purpose of the Regulation 123 list was to establish the infrastructure projects on which CIL would or might be spent. Infrastructure not listed in Regulation 123 could then be funded by Section 106, as defined and delineated by Regulation 122, with the expectation that this would result in significant scaling back of Section 106 contributions. The Regulation 123 lists are, however, hugely variable. Early examples like Greater Norwich have several hundred elements. More recently adopted ones like Gedling have just four. The reason for this appears to be that, because of the relationship between Regulation 123 and Section 106, with the exclusion from the latter of items on the former,





local authorities are now encouraged to put as little as possible on their Regulation 123 lists, thus limiting their usefulness.

- 3.5.3 Notwithstanding this, there appears to be mixed evidence on whether fewer Section 106 agreements are now being required and whether they are now less complex and therefore taking less time to negotiate. It was pointed out to us that as affordable housing is often the part of the agreement which is most complex and controversial and which still frequently requires a viability assessment and as that is still needed even if there is an operating CIL in place, then for these housing developments there had been no reduction in time or cost of Section 106s. In addition, the “site specific” obligations can be extensive covering a wide range of initiatives and requirements and can still take a significant amount of time to negotiate.
- 3.5.4 CIL, when introduced, was intended to replace Section 106 as the means of collecting contributions towards the cumulative impacts of development across an area. Prior to the introduction of CIL many local authorities had collected tariff type contributions – usually a per dwelling contribution – to such infrastructure. This was only usually applied to large developments. Such approaches persisted following the introduction of CIL, until pooling restrictions (Regulation 123) came into place following either the introduction of a local charging schedule or the general restriction from April 2015. Following their adoption of CIL, some authorities have continued to seek standard charges towards some types of infrastructure (e.g. Suitable Alternative Natural Green Space (SANGS) or flood mitigation) although this is also limited by Regulation 122. Current planning policy discourages what it describes as ‘tariff type contributions’ for developments of 10 homes or less although there is limited clarity on this and indeed on the consistency with which the Regulation 122 tests are applied. Overall this creates further confusion and a lack of certainty for developers which undermine the ‘faster, fairer, more transparent’ objectives of CIL.
- 3.5.5 We did also find some very specific problems related to Section 106. The first concerned the restriction on pooling planning obligations set out in Regulation 123, which is a particular issue on large strategic sites which are often brought forward under separate planning applications and/or by different landowners. This means that the five-obligation threshold is often reached without it being possible to ensure all parts of the site contribute to the infrastructure required to mitigate the impacts of the development. This can perversely lead to the refusal of otherwise acceptable planning applications unless a way is found to address the pooling restriction. We found some highly creative examples of how this has been done, which hardly represent a good use of either developers’ or a local authorities’ time and resources. The pooling restriction can also prevent the apportionment of large sites into smaller development packages suitable for smaller scale house builders who are often able to deliver schemes more quickly but who generally find it difficult to access development sites which are contracted to the volume house builders. The pooling limitation was overwhelmingly viewed as unhelpful to the delivery of infrastructure to support development and a large number of the submissions we received sought its removal from the regulations.
- 3.5.6 Similarly for environmental mitigation needed to prevent impacts on sites protected under the EU Habitats Directive, we heard that the pooling restriction has meant that in some circumstances there is no mechanism for raising sufficient funds to provide the necessary compensatory habitats mitigation,



thus creating a barrier to granting planning permission. We also received some specific representations from local authorities who considered that their ability to levy a CIL was impacted directly by the need to conform to regulatory requirements under the EU Habitats Directive for example where they are seeking to provide mitigation in the form of Suitable Alternative Natural Green Space (SANGS). The amount of funding required to provide this mitigation has meant that there is simply not enough CIL resource left for developers to pay for other types of infrastructure.

3.5.7 Overall, we observed that the necessity test enshrined in Regulation 122 is both necessary and potentially helpful since it makes the distinction between providing for general cumulative infrastructure over a wide area, for which CIL is intended, and site specific mitigation through Section 106 with the result that the latter should only be required to fund those items of infrastructure that are specifically required to allow the development of a particular site to proceed.

### 3.6 IMPACT OF CIL ON AFFORDABLE HOUSING

3.6.1 Since CIL is a non negotiable charge and planning obligations are subject to the tests of necessity set out in Regulation 122, affordable housing contributions are generally the only planning benefits which are subject to negotiation on “quantum”, which means that the amount of affordable housing delivered varies significantly across different development projects. There was, therefore, a fear at the time of its introduction that CIL would have a detrimental effect on the delivery of affordable housing.

3.6.2 We received very mixed evidence from our respondents on the impact of CIL on affordable housing. There was an acknowledgment that where CIL is a first charge on developers then the contribution to affordable housing had inevitably reduced. But for many respondents in local authorities this seemed not to be a particular cause for concern. Some developers, however, expressed deep reservations as to the impact of this reduction. From the evidence we heard, we could only conclude that either:

- » there has been an acceptance that, on the basis of a viability approach to affordable housing, the increased burden of CIL would inevitably result in a reduction of affordable housing, or
- » charging authorities have taken sufficient account of their policy requirements for affordable housing in setting their charge which has limited the reduction in affordable housing – but has reduced the amount of money raised of infrastructure.

3.6.3 The definition of affordable housing has been evolving during the course of this review. The Government is proposing to amend the definition of affordable housing in the National Planning Policy Framework to include Starter Homes, which will enable Starter Homes to be delivered as part of the Section 106 agreement on sites, alongside intermediate housing (such as shared ownership) and social and affordable rented housing. The Housing and Planning Act 2016 places a statutory duty on local authorities to support Starter Home delivery and also includes the power through regulations to ensure a proportion of Starter Homes on all reasonably sized sites. The Act also sets out a definition of affordable housing in relation to Section 106 restrictions which includes Starter Homes. As these



wider policy changes to affordable housing have been ongoing throughout the period of our review we have not been able to fully consider what the impact of these changes may be on the way CIL and Section 106 might operate in future or indeed how our recommendations for reform may impact on any new affordable housing arrangements.

### 3.7 NEIGHBOURHOOD SHARE

- 3.7.1 It is widely accepted that one of the principal reasons that local people oppose development is because of the perceived adverse impact on local infrastructure, particularly local road networks and the availability of school places and doctors' surgeries. The original intention of the neighbourhood share was to address directly these concerns by earmarking a proportion of the CIL to parishes and neighbourhoods to address very local issues and thus encourage communities to accept development in their local area.
- 3.7.2 We received very few submissions from parishes and neighbourhoods, possibly because they are still in early stages of organisation and have not yet developed either a collective or individual view on matters of wider planning policy. The local authorities that we questioned, however, expressed doubts as to whether the community or neighbourhood share is having any impact on a community's likelihood of accepting or even welcoming development. Moreover, they were generally concerned that allocating a substantial portion of their CIL receipts to neighbourhoods reduced their ability to fund some of the larger infrastructure, such as roads and schools, the inadequacy of which was what caused communities to object to development in the first place.
- 3.7.3 Some Neighbourhood Plans covered areas with constituted parishes, local councils in their own right. Other 'neighbourhoods', particularly in urban areas, are un-constituted bodies, some crossing local authority boundaries as in the case of Highgate Neighbourhood Forum (which is located within the London Boroughs of Camden and Haringey). Even allowing for the difference in share allocated to those neighbourhoods with or without adopted Neighbourhood Plans (25% and 15 % respectively), there was a huge variation in the amounts received by parishes /neighbourhoods ranging from a few thousand to, in the case of Fenwood (within Newark and Sherwood), some £3.5 million arising from a major urban extension. We were told that some neighbourhoods were not equipped with the skills to take the financial and construction risks to invest in the infrastructure they felt would mitigate the impact of development.
- 3.7.4 Whilst the sums of money received by a neighbourhood might sometimes be substantial, where the money fell short of the entire requirement, for example for a new village hall, some parishes did not feel able to borrow the rest and so the infrastructure item remained undelivered. In other cases, the relatively small sums received didn't even come close to addressing needs so the money tended to be spent on a series of small projects with little impact on meeting the infrastructure needs of an area. We heard one case where the most appropriate mitigating infrastructure, a road junction, happened to be in a neighbouring parish, which was not eligible to receive a share of CIL.
- 3.7.5 We also heard a view that the CIL process itself has removed the ability for local communities to directly influence what infrastructure is provided by way of mitigation from developers that seek to build close





by. The fixed price tariff-nature of CIL means that community engagement on infrastructure is focussed at the plan making stage rather than the point at which a developer's own plans are crystallising when the community can derive maximum benefit from being involved in a useful and constructive dialogue that covers more than just a simple financial contribution.

### 3.8 COMPLEXITY

3.8.1 We received many responses regarding the bureaucracy and complexity associated with the interpretation of the regulations as well as the rate-setting and implementation of CIL. There was agreement from both local authorities and the development community that the overall complexity has led to a system which is difficult to understand, expensive to operate and uncertain in its implementation. For several elements of the system there have been unintended consequences.

#### REGULATIONS

3.8.2 There was almost universal agreement in the responses we received that the regulations should be made simpler, although the panel recognises the tension between this and being able to deal with the myriad circumstances with which developers and authorities are faced. Part of the complexity has been driven by the good intention of Government to respond to concerns raised over previous regulations. The CIL regulations are 155 pages long and consist of 129 separate regulations. They have been amended each year since they were first introduced in 2010 to deal with policy changes and technical issues.

3.8.3 Local implementation has seen divergent views on phasing of payments and there was an inconsistency in the treatment of non-domestic property and zero rated development which caused confusion between areas. The bureaucracy and costs of collection have led to a number of authorities abandoning CIL on larger domestic extensions resulting in lost income which might have made a meaningful contribution towards infrastructure.

3.8.4 The complexity has created a need for substantial advice and clarification, aggravating capacity issues in local authorities where planners are already in short supply. Areas on which the regulations are silent or unclear and the multiple changes to the regulations in the period since they were introduced have necessitated the employment of numerous specialists and lawyers in order to provide expert support both to charging authorities and to developers.

#### IMPLEMENTATION AND RATE SETTING

3.8.5 The charge setting process can be lengthy and expensive. The Three Dragons/UoR research identified a cost of £15,000 to £50,000 per authority to commission viability work and manage the process and examination - and this does not include officer cost. Where developers have engaged they have incurred similar costs.

3.8.6 The range of charges that are eventually decided varies widely, even in those areas where it might



be expected that local economic conditions are broadly similar. For example, Wokingham Borough Council has a high residential rate of £365 per square metre whereas neighbouring Reading Borough Council has a high residential rate of just £120 per square metre. The nature of the Examination in Public (EIP) process has also varied considerably and examiners have sometimes taken quite different approaches to similar issues.

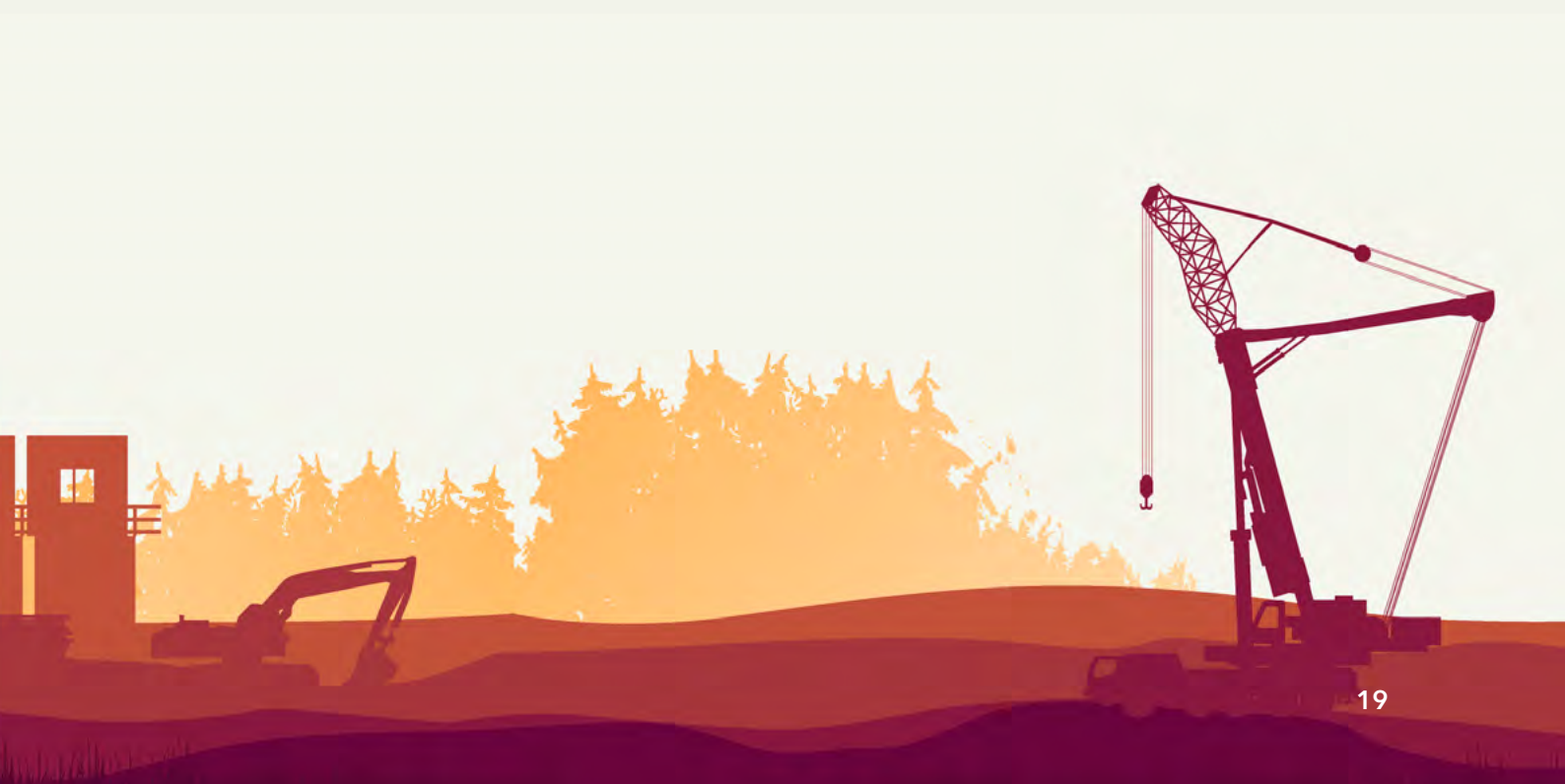
- 3.8.7 The justification used to underpin charge-setting also varies substantially from place to place. It was felt by some that the requirement for local infrastructure, which was originally intended to have formed the basis for deciding the level of CIL, has effectively been divorced from the process, which tends to focus mainly on viability. It was also suggested to us that regardless of the evidence presented at the EIP, ultimately the decision on rates sometimes came down to a “horse trade” over viability on big sites which renders pointless the extensive and expensive multiple studies and consultations.
- 3.8.8 We were told that competing viability methodologies used to establish charging rates are too generic and thus do not properly reflect site-specific issues which impact on the viability of individual development typologies. Broad-brush charging zones did not necessarily account for the profitability of neighbouring sites, one with contamination, for example, the other clean and thus potentially able to make a larger contribution.
- 3.8.9 In one panel session we were told that the EIP process was dominated by a small number of development typologies, generally large residential developments on greenfield strategic sites and noted that a small number of advisors were having the same arguments over similar issues on behalf of developers and councils at most EIPs with little public benefit. Few submissions to EIPs were made by any promoters of smaller sites or by smaller independent firms.
- 3.8.10 The bureaucracy surrounding rate setting made the system unresponsive to changes in market conditions and potentially out of date on the day of adoption. We heard that in London a review of Mayoral CIL would commence immediately after the Mayoral elections in 2016 and that the result was unlikely to be adopted before 2019 by which time the market conditions could have changed again.

### EXEMPTIONS AND RELIEFS

- 3.8.11 The administration of exemptions and reliefs has also caused particular problems. We observed that applying for exemptions can require a considerable amount of paperwork for both the applicant and the local authority. For the local authority this is particularly burdensome as they receive no CIL revenue in compensation. There is a particular issue about how proportionate the consequences of not following the correct procedures can be. For example, where an exemption has been approved by the collecting authority the applicant becomes liable for the full amount if they fail to serve a commencement notice before starting the development. If this situation arises, there is no legal way for the authority to waive the charge, even if it acknowledges there has been an honest mistake.

### 3.9 LOCAL GOVERNMENT FINANCIAL ENVIRONMENT

- 3.9.1 Local government finance has moved on considerably from the situation in place when CIL was introduced in 2008. Following the Comprehensive Spending Review in December 2015, a rebalancing of the entire local government finance system is underway with councils becoming self-funding from 2020 and assuming greater economic risks within their territories, either individually or jointly with their neighbours.
- 3.9.2 With the budgets for day-to-day expenditure under pressure, the consequence of the fiscal rebalancing is an emphasis on encouraging local authorities to invest in their areas to generate an economic return from additional New Homes Bonus and the retention of Business Rates.
- 3.9.3 We have previously referred to the situation in London where the Mayor has the power to levy a Mayoral CIL, which, set at low level, seems to have worked well and yielded money for Crossrail. On a larger geography, new Combined Authorities and Mayoral Development Corporations will be able to access new funding sources (including new 'gain share' grant funding) for infrastructure investment alongside new borrowing powers.
- 3.9.4 Local authorities told us that, collectively, developer contributions such as Section 106 and CIL sit alongside New Homes Bonus, the 'single investment pot' and retained Business Rates as powerful fiscal incentives for authorities to invest to grow their economies. However, we were also told that, unless authorities are empowered to borrow against future Section 106 and CIL revenues as a means of providing necessary infrastructure up front, before the Section 106 and CIL monies are received, then the more valuable second-order contribution of New Homes Bonus and retained Business Rates may not materialise.



## 4 CONCLUSIONS

### 4.1 GENERAL OBSERVATIONS

- 4.1.1 Everybody we consulted, both public and private sector, accepts that development needs infrastructure and that developers who benefit from the added value created through development should make some level of contribution towards that infrastructure.
- 4.1.2 CIL was meant to provide a fair, fast, simple and transparent means of achieving this, replacing elements of what had become a much maligned and in some instances discredited system of Section 106s with a universal levy. This would be set clearly in advance, based upon infrastructure needs identified through the local plan-making process, and would allow for financial contributions from all development towards the cumulative infrastructure necessitated by that development. CIL was never intended to fund all infrastructure requirements nor was it intended to replace entirely the Section 106 system. The latter was meant to have a continuing role but limited to the specific site mitigation, as defined by Regulation 122, needed to make a particular development proposal acceptable in planning terms, including the provision of affordable housing.
- 4.1.3 CIL has not provided the universal and therefore 'fair for all' approach to developer contributions that was originally envisaged. For various reasons, many of them sound and usually to do with development viability, a number of local authorities, many of them in the north of England, have decided not to introduce a CIL and this has resulted in a patchwork of CIL and non-CIL authorities across the country and a continuing, more extensive reliance on Section 106 than originally envisaged. That means many smaller developments which could afford to pay something towards infrastructure are getting away without making any contribution.
- 4.1.4 Whilst CIL was never intended to provide all the funds necessary for local infrastructure, the amount raised has been much less than anticipated and has undoubtedly been undermined by the ongoing introduction of exemptions. This has resulted in a situation where the remaining pool of chargeable development carries an unfair burden. Setting CIL at a 'lowest common denominator' level has also sometimes meant that larger developments that could make some larger contribution towards the infrastructure burden do not do so.
- 4.1.5 Where CIL has been introduced, it has not necessarily worked well for larger sites with complex site specific mitigation requirements. It has effectively transferred the burden and risk of providing infrastructure from developers to local authorities who are not well placed to deliver. The cumulative nature of the collection of CIL has meant that necessary infrastructure is not provided up front when it is needed to support the earlier stages of development. Local authorities are not always able to effect such provision themselves and are prevented from borrowing against future CIL receipts to do so. At the same time developers are prevented from stepping in and providing the infrastructure themselves. Where developers are continuing to make the traditional Section 106 payments, in both CIL and non-CIL authorities, difficulty is caused by the pooling restriction for those large items of infrastructure that need to be funded by more than five different planning obligations.





- 4.1.6 There is also absolutely no doubt that we now have a much more complex system than was intended, partly because of successive changes to the regulations and partly because of the patchwork application of CIL and the efforts put into avoiding the impact of the pooling restriction. The examination process is largely a viability exercise which takes much time and occupies too much resource for little purpose. Overall the bureaucracy created in both the private sector and in local authorities aggravates existing capacity issues in the planning system.
- 4.1.7 It is also perhaps worth highlighting that even though CIL was meant to apply to all development, its application to commercial development has proved particularly problematic. The different rates applied to commercial development are often based on arbitrary preference of the relevant charging authority or the enthusiasm of a specific landowner or 'sector' for engaging in the rate-setting process and campaigning for lower rates. This can result in a system which lacks logic and fairness between different land uses.
- 4.1.8 CIL has created undoubted tension between authorities in two tier areas. The structure of local government is to change with the advent of combined authorities. There is a growing pressure to plan for housing – and its associated infrastructure – across wider than single local authority areas. This does, however, offer the opportunity to deal with infrastructure planning and the way it is funded over considerably larger areas than simply the local authority. At the moment, with the exception of London and some arrangements in places like the Greater Norwich Partnership and the Central Lancashire authorities, there has been little cross boundary co-operation on CIL setting although joint Strategic Housing Market Assessments (SHMAs) and associated infrastructure planning can offer the basis to do so.
- 4.1.9 Planning for infrastructure is, of course, something that local authorities must do as part of the local plan-making process in consultation with their neighbours and with other agencies such as the Environment Agency and Highways England. Setting out how that infrastructure is expected to be funded is also an integral part of the planning process. The original intention that infrastructure need should be a key determinant in deciding the level of CIL has clearly been overtaken by the realities of a charge setting process that is largely based upon viability and what the developer can afford to pay. Nevertheless, there is a strong argument for ensuring that charge setting for developer contributions, whatever form they may take, and the assessment of likely proceeds should be properly integrated with the plan-making process and particularly the Local Infrastructure Plan
- 4.1.10 On the basis of what we heard from local authorities it would appear that so far CIL may not have had the desired effect on communities in terms of encouraging them to support development. However, we did not receive many comments from communities themselves. We do not believe that simply allocating them a layer of funding for locally identified infrastructure will solve the problems that provoke their opposition and that it is necessary to plan in a more joined up fashion at both community and local authority level in order to find ways of funding and providing the infrastructure that local communities need.
- 4.1.11 Our overall conclusion, therefore, is that CIL as currently configured is not fulfilling the original intention of providing a faster, fairer, simpler, more certain and more transparent way of ensuring that all development contributes something towards cumulative infrastructure need and that it has



also disrupted and complicated the Section 106 arrangements which, though much criticised, actually worked reasonably well for many sites.

4.1.12 In the light of this, we have looked at four possible options for change – do nothing, complete abolition, minor reform to get rid of the worst problems of the system and lastly more radical change to see whether we could achieve some or all of the purposes for which CIL was originally established.

4.1.13 We also set ourselves a number of conditions that any reformed system would need to meet in order to deal with the problems and challenges created by the existing CIL. Any developer contribution scheme should:

- » be capable of being consistently applied on a national basis in order to provide a stable regulatory and fiscal environment to which, as much as possible, all development contributes with sufficient local flexibility to account for variations in local markets, viabilities and development types.
- » provide greater certainty for developers, especially for those promoting smaller schemes, to give a better idea upfront of the quantum of developer contributions and timing. It should also be capable of accommodating the needs of those promoting larger schemes which require that the infrastructure is delivered in a timely manner.
- » be simple, with streamlined regulations to improve the understanding and speed of implementation and to reduce the burdens of administration.
- » encourage local authorities to grow their economies through development by offering a clear route through which necessary developer funded infrastructure can be delivered.
- » re-assure communities that the impacts of development will be mitigated with the risks of delivery attached to doing so assumed by those best able to bear it.
- » recognise and accommodate the significant changes that are underway in the landscape and architecture of local government with the creation of combined authorities and cross-boundary working over housing market areas.
- » be capable of implementation in a way that provides minimal disruption to those developers with existing permissions and for future planning applications during a transitional period and for those local authorities who have already adopted CIL.
- » allow planning applications, especially those from smaller builders/developers, to be determined simply and quickly.

4.1.14 It is worth noting at this point of the report that our findings major upon the implications of CIL for residential development schemes. That is inevitable in view of the very strong focus which exists on the need to deliver more homes. However, the implications of CIL for other forms of development, including commercial development in the widest sense, are recognised and have been considered carefully by the review group. Apart from the specific recommendations relating to non-residential development in Section 5, we believe our overall recommendations are largely capable of being applied across the board and will have a beneficial impact for all development.





### 4.2 THE OPTIONS BEFORE US

#### DO NOTHING

4.2.1 In the light of our findings and general observations as set out above we do not believe that it is sensible to leave matters as they are. The failure to achieve the original aims of CIL, the complexities of the current system, including the inconsistent patchwork approach to developer contributions on a national basis, the creation of a costly bureaucracy and the potential to achieve significant improvements with some measure of change all point to a need for reform. The only question is how far such reform should go.

#### ABOLITION

4.2.2 It is tempting to think that simply sweeping away CIL would be the easiest option. But we believe that the concept of collecting a relatively small amount from all development to contribute to the cumulative need for infrastructure is fundamentally a sound one and that it would be a pity to abandon it completely. Moreover, some local authorities have shown that a CIL type system can be made to work, e.g. Bristol, Croydon, Huntingdonshire, and are clearly benefitting from it. In addition, it has been seen by many as a highly effective tool for securing infrastructure funding because, despite complex regulations, when adopted it can be made to be relatively simple, fair, transparent and predictable. In the event of abolition, it would also be necessary to put something else in its place.

4.2.3 On the latter point, the history of policy making in this area shows that there is no easy solution and the obvious default would be to revert to Section 106. We heard the comments of many parts of the development industry that they would prefer to return to a system of Section 106s. However, it is also the case that elements of that industry have previously railed against the alleged unfairness, complexity and lack of transparency of the Section 106 process. It is by no means certain that those complaints would not surface again if Section 106 was re-instated as the mandated and sole method of dealing with developer contributions. It should be noted that most of the responses we received from the development industry were from larger developers or representative bodies.

4.2.4 We also heard from some local authorities that they see many advantages of a negotiated Section 106 process where they can tailor their negotiations to addressing the specific requirements of an individual site and can often negotiate considerable amounts of funding where development would have a significant impact on the local environment. However, previous studies have shown that there were many local authority areas that did not collect Section 106 across the board and consequently there were developments that made no contribution at all to infrastructure. There is no guarantee that this would not happen again if Section 106 was the only method of dealing with infrastructure contribution. Moreover, reverting to Section 106 would mean that some of the most profitable smaller developments would escape making any contribution which would be both unfair on larger developers and would result in charging authorities missing out on substantial revenue.



- 4.2.5 Even if CIL fails to fulfil its role at a very local level, the changes in the administrative geography would mean there would be opportunities to collect a form of 'Mayoral' CIL at a higher Combined Authority level.
- 4.2.6 If the alternative to CIL, and indeed to Section 106, was a simple tax as identified by Dame Kate Barker in her report of 2004, then it may not be realistic to expect that it could be designed and implemented in a quick simple and effective way. Dame Kate Barker examined alternatives to Section 106 and concluded that all other possibilities had substantial downsides (Barker, K., Review of Housing Supply - Delivering Stability: Securing our Future Housing Needs (Final Report) March 2004).
- 4.2.7 So we conclude that wholesale abolition is not a practical option. To do so would create a hiatus and uncertainty which could materially set back the Government's ambitious housing plans

### *MINOR REFORM OF CIL*

- 4.2.8 If the Government was minded to retain the current system then there are some areas of CIL that absolutely do need to be reformed, namely the need to allow for the exclusion from CIL of large strategic sites with their specific complex needs and the negotiation of bespoke Section 106 agreements, the abolition of the pooling restriction, the reform of the process for allowing provision in kind, reducing exemptions and reliefs, and re-writing or at least simplifying the regulations. There is also a good case for considering options that would enable local authorities to forward fund infrastructure provision in order to address the problem of currently not being able to provide much needed infrastructure up front at an early stage of the development.
- 4.2.9 It would undoubtedly minimise disruption if we left matters largely as they were and allowed those local authorities who had made CIL work to carry on. Provided the Government also dealt with the worst problems of the current CIL system, we would eliminate many of the complaints and so reduce at least some of the bureaucracy and uncertainty of the system.
- 4.2.10 Leaving matters as they are would, however, perpetuate a patchwork system and would leave many smaller developments making no contribution to infrastructure. This would not improve the way CIL contributes to enhancing the well-being of existing and future communities.
- 4.2.11 We received comments from respondents, both in our hearing sessions and in writing, on the need to further reform of the regulations. This covered virtually the whole scope including the definitions of buildings and developments liable for CIL, the approach to rate setting, the detail of Regulation 40 which calculates the CIL liability, including indexation, the approach to exemptions and reliefs, the timing of the assumption of liability, requirements to submit notices, surcharges and how applications which amend previous planning permissions are dealt with. If the Government were to decide to retain CIL it will wish to consider how these issues might be addressed. We would note however that the regulations have already been amended six times and that we are not convinced that further changes will provide the stable and certain system that local authorities and the industry are requesting.
- 4.2.12 A 'do very little' option also ignores the impact of the new emerging geographies and would leave adaptation to take account of Combined Authorities (CAs) as an entirely local decision.



### MORE EXTENSIVE REFORM

4.2.13 We have seen examples of where CIL works reasonably well but we have also seen places where CIL, as currently configured, cannot work. We have also heard plenty of evidence about the value and benefit of some elements of the Section 106 system, especially for larger sites. Our conclusion, therefore, is that we should have a system where we can use the best of both elements to optimize contributions from all development, including the smallest, towards the cumulative impacts of development over an area whilst acknowledging that the largest and most complex developments requires a bespoke approach to their specific infrastructure needs. Our alternative, and new, approach to developer contributions is set out below.

### 4.3 A NEW APPROACH TO DEVELOPER CONTRIBUTIONS

4.3.1 We propose a twin track system of a new low level tariff, combined with Section 106 for larger sites, that captures the best of both worlds, optimises the contributions from those smaller sites which may not otherwise be contributing in a Section 106 system and also ensures the more substantial infrastructure needs of larger developments are met in a timely manner by those best placed to do so.

4.3.2 The low level infrastructure tariff is meant to provide a means of ensuring that all development makes some contribution to the wider cumulative infrastructure need in an area that comes from development pressures generally. It is not for site specific impact mitigation, nor is it the equivalent of or indeed a replacement for the earlier tariff type schemes which provided effectively a collective Section 106 payment for infrastructure and affordable housing necessitated by that development.

4.3.3 Under this twin track system all developments would be subject to a streamlined low-level tariff which we have named the Local Infrastructure Tariff (LIT). We believe that this contribution should in the first instance be collected at the local authority level, as it is now. The LIT should be applied to all development, almost without exception. If it is set at a sufficiently low level we do not consider that this will lead to difficulties or indeed a widespread call for exemptions or reliefs.

4.3.4 Larger developments - which could be characterised as 'large' or 'strategic' (and which are defined in more detail later) - and which require direct mitigation to make them acceptable in planning terms or very specific major infrastructure on or close by the development including infrastructure delivered up-front - would be subject to an additional Section 106, strictly in accordance with the Regulation 122 tests. To the extent that the obligations cover financial contributions, these would continue to be collected by the relevant local authority and, where appropriate, passed to the body that provides the relevant infrastructure.

4.3.5 A broad and low level LIT allows for the simplification of the regulations and streamlining of the process for setting up and collecting the LIT. This will reduce the burden on local authority resources and reduce the length of time needed to put these measures in place meaning that communities will have more certainty, more quickly, that the necessary infrastructure to support new development will be provided.





4.3.6 Given that CIL has not, and never will, shoulder the entire infrastructure provision burden directly or secure its provision in a timely manner, we recommend that the LIT should be explicitly set at a level which does not attempt to achieve this. The LIT does not need to be set in a manner which involves establishing a precise relationship between the quantum of infrastructure need and the amount of LIT that is charged and thus substantially simplifies the charge-setting process.

***We recommend that the Government should replace the Community Infrastructure Levy with a hybrid system of a broad and low level Local Infrastructure Tariff (LIT) and Section 106 for larger developments.***

4.3.7 Given the changing nature of the local government geography and the emergence of Combined Authorities, we believe there is a good case for making the necessary legislative and regulatory provision to enable CAs to collect a 'Mayoral' type CIL as a contribution to major pieces of infrastructure. This would not be obligatory and indeed would only be relevant where there was a requirement for such large infrastructure. We refer to this subsequently as the Strategic Infrastructure Tariff (SIT).

***We recommend that Combined Authorities should be enabled to set up an additional Mayoral type Strategic Infrastructure Tariff (SIT)***

4.3.8 We believe these recommendations, which are expanded in the following chapter, will provide a fairer, faster and simpler system for ensuring that all development, both small and large, makes some contribution to cumulatively required infrastructure, whilst at the same time recognising the needs of larger more complex sites. Overall, we believe this approach is likely to raise more money for infrastructure in aggregate by optimising LIT and Section 106s. Moreover, by allowing for the timely delivery of infrastructure to support larger schemes it will unblock major development, thus supporting the Government's growth agenda and at the same time dealing more effectively with the very issues that make development unpopular.



## 5 OUR MORE DETAILED RECOMMENDATIONS

### 5.1 THE LOCAL INFRASTRUCTURE TARIFF (LIT)

#### HOW WOULD THE LIT BE SET?

5.1.1 Local authorities would set a low level LIT that would apply to all development (with virtually no exceptions). This low level LIT would ideally be taken into account in the Local Plan making process as a contribution to meeting infrastructure funding needs although we recognise that this may not prove possible in a number of local authorities because of the stage they have reached with regard to Local Plans and CIL. The LIT - and indeed other planning obligation mechanisms - should inform the infrastructure plan for the area and, where appropriate, the infrastructure needs stretching beyond individual local authorities to housing market areas and combined authorities. The LIT will be one contributory element, together with the projected proceeds from Section 106s, in the mix of funding necessary to support infrastructure needs; the infrastructure planning process will need to identify other potential sources of funds.

***We recommend that the setting of the LIT should be linked to the Local Plan process wherever possible and should feed into local and 'bigger than local' infrastructure plans***

***We recommend that the Local Infrastructure Tariff should be calculated using a national formula based on local market value set at a rate of £ per square metre***

5.1.2 DCLG will need to do further work on how the calculation could best be set. However one possible methodology for arriving at the square metre charge would be to take a sum of between 1.75 and 2.5% of the sale price for a standardised 100 square metre three bedroom family home, and divide that by 100 to reach a square metre rate, which would then be applied to all residential development. The market assessment of the typical sale price for a three bedroom 100 square metre house is now commonly available from property websites so it need not be an onerous undertaking. We do, however, accept that where there are wide house-price discrepancies over an area, the local authority might choose to subdivide its territory into charging areas if the market assessment made it expedient to do so.

5.1.3 We have worked through some examples in a high value area in the south, in a London borough and in lower value areas in the midlands and north and have produced charges per square metre which we believe would be reasonable for the development but collectively would enable a meaningful contribution to meeting infrastructure requirements. The calculations are set out at Appendix 5.

5.1.4 We accept that this methodology is fairly crude but what it lacks in sophistication it makes up for in simplicity and the avoidance of bureaucracy. It involves a standard methodology but it also relies on local data which ensures local economic conditions are recognised within the consistency of a national framework. In terms of monies raised, we have run some simple calculations to compare our possible methodology for setting a LIT with CIL revenues and on the whole and ignoring one or two outliers with particularly high CIL charges, the amounts are not dissimilar, largely because of the



application of the low level LIT to all development with no exceptions. It should be remembered also that the LIT is only one half of the planning obligations income stream; a reinstated system of Section 106s for larger sites (discussed below in section 5.2) will raise more than under the current CIL regime.

### HOW WOULD THE LIT BE APPLIED?

5.1.5 We have considered an appropriate definition of “development” to which the LIT will be applied. We consider that the general principle should be, as with CIL, that development which relies on infrastructure to support it should be liable to pay the LIT. Thus it would apply to new “buildings” as defined in the CIL regulations. There are clearly a significant number of further technical issues which would need to be addressed as part of the set up of a LIT system which go beyond the scope of this report. We would, however, urge that if such a system is adopted it should be as clear and simple as possible, avoiding the complexities which have developed under CIL.

#### ***We recommend that the LIT should continue to apply to ‘development’ as defined in the existing CIL regulations***

5.1.6 The group considers that there is great merit in the regulations governing the calculation of the LIT payable being kept as simple as possible. This will allow for simpler appraisals when purchasing land and will avoid some of the quirks of applying the Regulation 40 formula - and quicker and easier administration.

5.1.7 We accept, however, that this standard rate approach works best when applied to residential development and that once commercial development is brought into the picture it is very difficult to achieve the same degree of simplicity without unduly penalising or letting off certain types of use. On the other hand, we also believe that the principle that all development should pay something towards cumulatively necessitated infrastructure should be maintained.

5.1.8 The largest commercial developments will, under our twin-track LIT/Section 106 approach be subject to a site specific Section 106 agreement. For the lower level universally applicable LIT, our starting point for non-residential development was that it should pay the same as residential unless a local authority can provide evidence that it should be less. But we recognise that it would be unrealistic to charge the same for a retail development as for a distribution warehouse as for housing and we propose, therefore, that there should be a small number of differential rates for commercial development, set as a percentage of, but never more than, the residential rate.

5.1.9 We lacked sufficient detailed evidence to take a view as to what the appropriate proportions for each development typology should be but we felt strongly that there should be a centrally prescribed framework for the number of different commercial developments and the proportional relationship to the LIT residential charge - which would then ensure that local economic conditions were taken into account. We would suggest that the following might prove a reasonable starting framework for the range of different rates needed and that the Government does some further work on devising a simple formula for how these rates should be calculated:

- » Retail, including shops, supermarkets and shopping centres



- » Offices
- » Hotels, restaurant/leisure use
- » Warehousing, factories and distribution
- » A catch-all sui generis category
- » Exempted/zero rates

We accept that in recognition of the need to be sensitive to local development values it may be necessary to set a minimum size of commercial development below which the LIT would not be collected – for example the current 100 square metre de minimis amount that applies under the CIL regime.

***We recommend further work by Government to devise a LIT formula for commercial development that ties it to the residential rate but which does not exceed it***

5.1.10 It has been suggested to us that even at a low level, there may be places with particularly low values or little residential development where the cost of collection exceeds or does not justify the levying of LIT. We suggest, therefore, that once the nationally prescribed formula has been applied and a local LIT calculated there should be provision for local authorities for whom the cost of collection is not justified by the monies collected to charge no LIT at all. We would, however, expect this situation to occur in very few local authorities since whatever formula is eventually selected by the Government – it will need to be sensitive to local economic conditions and, in particular, house prices.

***We recommend that there should be a cost of collection cut-off below which local authorities do not have to collect a LIT***

5.1.11 One of the most complex issues arising from the implementation of CIL which we have debated at great length is the issue of net floor space and the calculation of the existing floor space credit. This exemption is one of the biggest contributors to complexity and cost in managing the CIL process. We can see some of the logic for introducing this but in light of the complexity and cost which has resulted, we recommend that the principle is substantially simplified. In future where there is a new development involving replacement of a building and not a refurbishment (which would not require planning permission), then we recommend that the LIT should be charged on gross floor space. Where extra storeys or extensions are added to buildings, then the LIT should be paid only on those additions because it is only this addition (and not the existing building) that is considered development. Where there is a change of use then the LIT should be paid on the whole development at the rate of the new use, even if this is a change of use that does not require planning permission on account of being a general consent (permitted development rights). We appreciate that developers fought hard for the principle of existing floor space credit but in the interests of achieving simplicity, and also making a contribution to the infrastructure necessitated by, for example, conversion of offices to residential, we believe a reversion to 'gross' floor space, except in the case of refurbishments or extensions, is a reasonable price to pay. Moreover, as the LIT will be set at a low charge, this should be less of an issue in most circumstances.



### ***We recommend that the LIT should be charged on gross development***

#### ***WHICH DEVELOPMENTS WOULD TRIGGER A LIT PAYMENT?***

5.1.12 In an ideal world there would be absolutely no exemptions to the LIT on the grounds that every development contributes in some way to the need for infrastructure and that every development should therefore make a contribution to providing that infrastructure. We recognise, however, that there are reasons why the Government may want to have certain exemptions, such as affordable housing and Starter Homes. It must be borne in mind, however, that the less funds that are raised from this tariff, then the more will have to be found from other sources to fund essential infrastructure. On the largest sites the local authority and the applicant may agree that the money raised by the LIT payable on that site, together with potentially the LIT raised from other sites, is best employed to fund infrastructure on the site in question. It would be open to the local authority and the applicant to agree as part of the Section 106 discussions that the relevant LIT could be applied in that way.

### ***We recommend that there should be no (or very few) exemptions to the LIT***

5.1.13 If some exemptions are retained in the new LIT system then the method for dealing with them needs to be simplified. The current regulations include both 'reliefs' for which one has to apply, and 'exemptions' which ought to be automatic. In the case of the latter however, in some cases the applicant has to undertake the same type of bureaucratic process as those claiming for relief, with individual householders facing severe penalties for not submitting notices. This is disproportionate and should be addressed.

### ***We recommend that, if needed in the new LIT regime, the process for exemptions and reliefs should be simplified***

5.1.14 CIL liability for agricultural buildings has been raised with us as an issue, particularly in areas where there is an 'other uses' catch all in the charging schedule. We are sympathetic to the argument that a residential or office use is very different in nature to that of an agricultural building of low value and that the latter would have little or no impact on land value and a similarly low contribution to local infrastructure needs. We are concerned, however, that allowing any exemptions would turn out to be the 'thin end of the wedge' and we do not therefore recommend any specific exclusion of items such as agricultural buildings. We would, however, point out that the LIT is likely to be substantially lower than the CIL and that non-residential uses will have the option of being low or zero-rated.

### ***We recommend that agricultural buildings should be covered by the LIT but that local authorities should be encouraged to include this type of structure in its low or zero rated bands***

#### ***HOW WOULD THE LIT BE CONSULTED ON AND EXAMINED?***

5.1.15 With a LIT set by reference to the methodology explained above and at a level pegged to local values, there should be no need for a complex examination process. We accept that there should be an opportunity for stakeholders to make representations but this could be achieved by local authorities publishing a LIT rate (or rates), inviting comments, taking the comments into account and then publishing a final rate. If there were concerns regarding either the application of the methodology or the outcome in terms of quantum, there should be a simple representation mechanism by which a



request can be made to an appointed person to review the LIT setting process. We envisage that in all but the very exceptional cases, this process will be adequately dealt with by written representations.

***We recommend that the examination process should be replaced by a simple mechanism to address any representations on coverage and quantum of the LIT rates***

### HOW WOULD THE LIT BE MONITORED AND REVIEWED?

5.1.16 We believe the local authority should be able to spend its LIT on any infrastructure provided that it has been identified in its infrastructure plan or in the infrastructure plan of a bigger-than-local group of local authorities. We do not consider that the Regulation 123 list has added any value to the process of funding allocation or led to the required clarity or openness. Indeed these lists are largely seen as a mechanism by which to facilitate ongoing Section 106 charges and in any case become quickly out of date and have only led to raised, and frequently unfulfilled, expectations of what will be funded. We do not believe, therefore, that they would be needed in the new LIT regime.

5.1.17 One of the significant concerns with CIL is around the lack of transparency over how much money is raised and where and how the money is spent. We consider that in order to ensure that local communities and developers know where the LIT is spent, there needs to be much better reporting from local authorities over how this money has been spent and how this accords with the Local Plan policies. We consider that the Authorities' Monitoring Report is the most appropriate mechanism for this. Local authorities are already required to publish information, at least annually, that shows;

- » progress with Local Plan preparation;
- » reports on any activity relating to the duty to cooperate; and
- » shows how the implementation of policies in the Local Plan is progressing.

It would seem logical, therefore, and impose very little extra administrative burden for the AMR to include information about LIT collection and spending.

5.1.18 Local authorities are encouraged to report as frequently as possible on planning matters to communities. We consider that reporting on infrastructure delivery and funding should be included as an important part of this process.

5.1.19 With a LIT set using a national formula and at a low level that has no direct correlation to viability but which is based on value, we consider that there will be no need for a formal review mechanism other than as part of the review of the local plan. There will need to be some consideration as to how changes in value are accounted for but we consider that the formula itself can be linked to an appropriate, publically available, indexed data set that will adequately take any variation in value into account.

***We recommend that the requirement for a Regulation 123 list should be removed and spending of the LIT should be reported through the Authorities' Monitoring report***





### HOW WOULD THE LIT SUPPORT INFRASTRUCTURE DELIVERY

- 5.1.20 We have already noted the problems caused by the lack of available upfront funding for important pieces of infrastructure and the request from many local authority respondents to our questionnaire for the ability to be able to borrow against future CIL income. This issue of upfront funding is, we believe, a real one, particularly for any LIT type income stream where substantial sums will only be accumulated over an extended period of time, making the allocation to large infrastructure projects problematic. We accept, however, that the issue of more borrowing freedoms for local authorities is a sensitive one, particularly if the stability of the future income stream is questionable. Indeed, the very fact that for many local authorities the CIL has been substantially less than was expected, albeit through exemptions that were imposed after CIL was first introduced, would in itself have caused problems if borrowing had been permitted. We observe, nevertheless, that one of the reasons the original Milton Keynes tariff was considered successful was because a Government agency, in this case English Partnerships, acted as the banker to forward fund the infrastructure needed to support the development.
- 5.1.21 We would strongly recommend, therefore, that the Government addresses as a matter of priority how best funds might be made available to local authorities to support the upfront infrastructure needs prompted by development and that if borrowing is not considered appropriate then other options, such as a growth or infrastructure fund could be considered. It goes without saying that the receipt of any sort of infrastructure funding facility would need to be linked to a sound growth plan for the area.

***We recommend that other options should be explored that would enable local authorities to forward fund infrastructure provision***

## 5.2 LIT AND SECTION 106

- 5.2.1 The LIT is only one half of our proposed twin track system. We recognise that there is still an important place for Section 106 but that further clarity and streamlining is required as to where and how it should be applied. This will come through changes to regulations and guidance which will need to address the range of matters which can properly be covered by planning obligations, the nature and amount of financial contributions which can properly be sought through obligations, and steps to reduce the time and bureaucracy involved in negotiating those obligations. We consider the approach to be adopted with regard to two categories of development determined by size - small developments of ten units or less and large developments, above that level. As noted earlier, we recognise that this approach addresses residential development. Our aspirations for a streamlined approach to Section 106 apply equally, however, to other forms of commercial or mixed use development.

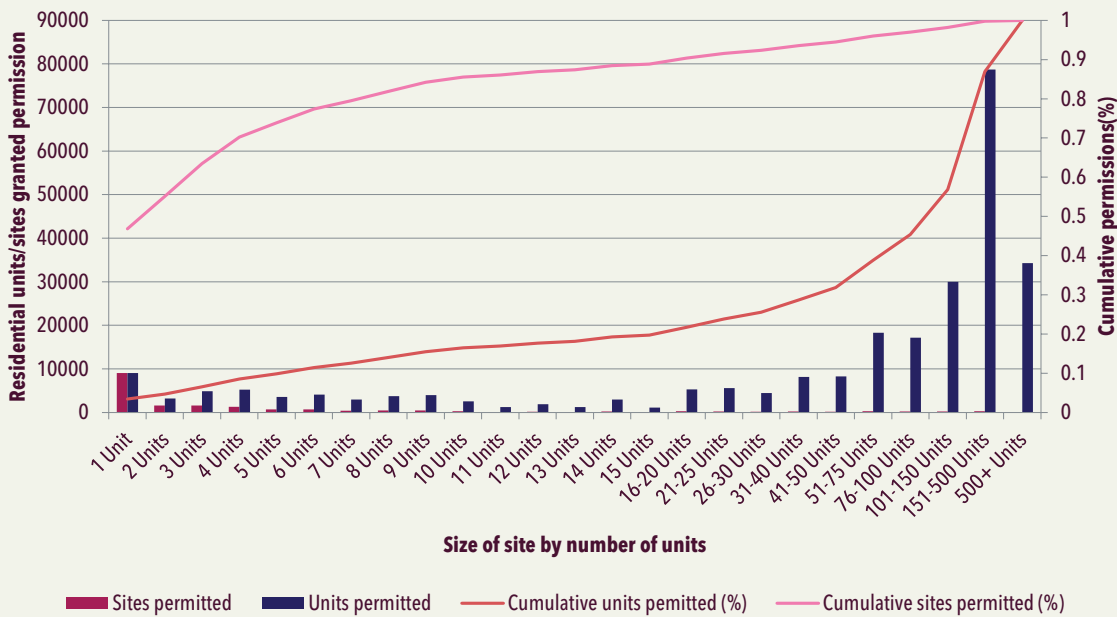




SMALL DEVELOPMENTS

5.2.2 For small developments it is clearly desirable to reduce planning and development risk in order to provide encouragement for development which typically is carried out by a sub-sector of companies that has reduced dramatically in recent years, a trend accelerated by the last recession. In assessing the threshold of what might be described as ‘small developments’ we considered a range of 10 to 25 homes. Using data from Glenigan (see chart below) we observed that 85% of all planning applications in England were for 10 dwellings or less and only 4% were for 50 dwellings or more. On this basis we formed the view that small developments should be designated as those including 10 or fewer dwellings. This is the same threshold identified by Government policy and current planning guidance.

Residential permissions, 2015 (Glenigan)



Source: DCLG analysis of Glenigan data



- 5.2.3 For these developments, there would be no Section 106 contributions of either a tariff type or site specific nature unless they are absolutely essential to secure site specific requirements for planning purposes that are needed to enable the development to proceed. We would expect such situations to be very rare for these small developments.
- 5.2.4 This safeguard, along with the introduction of a LIT, would provide a simplified system of contributions for 85% of planning applications for residential development, accounting for around 17% of new homes. It would mean that smaller developers would be able to proceed as soon as they had received planning permission without the need for onerous negotiations to achieve Section 106 contributions and other obligations, including for affordable housing.

***We recommend that small developments (10 units or less) should pay only the LIT and no other obligation, unless exceptional circumstances apply***

### LARGE DEVELOPMENTS

- 5.2.5 For large developments over 10 units, including developments regarded as 'strategic', which often require on site provision of infrastructure and other facilities, or groups of sites with significant localised cumulative impacts, local authorities should be able to use Section 106 obligations. These will need to be negotiated but there are a number of measures that can be introduced to ensure that the burden of both the process of negotiation and the quantum of the obligations are appropriate.
- 5.2.6 The most important is strict adherence to the Regulation 122 tests which only allow Section 106 contributions that are necessitated by the development, that are directly related and that are fair and reasonable in scale and size. In the light of the wide variation in the application of these tests it is recommended that the regulation is strengthened and its application firmly mandated.
- 5.2.7 We also believe that it is necessary to deal with the restrictions limiting pooling of more than five Section 106 payments put in place by Regulation 123. This was introduced originally to persuade all local authorities to adopt CIL but since that is patently never going to happen under the current arrangements, and will in any case not be appropriate under our recommendations for a combined LIT/Section 106 system, it ceases to be necessary. The pooling restriction has also clearly been effective in scaling back planning obligations but causes problems in the process for granting planning permission for some developments for which a planning obligation is the only way to mitigate impact, and also in areas of high growth or for strategic growth locations where there are or will be numerous planning permissions or where there are more than five sites. We recommend that the simplest and most obvious way forward is to remove the pooling restriction completely.
- 5.2.8 For some large developments that fall below the level of 'strategic' it is possible that local authorities will need to seek standardised developer contributions for infrastructure that is necessitated by a group of developments, such as a school or flood defences. We would be concerned if, in the absence of the pooling restriction, local authorities used this route as a means of imposing additional layers of obligations upon developers but we believe the rigorous application of the newly strengthened Regulation 122 tests should be able to take care of this. In addition, though, there should be clear



guidance in the National Planning Practice Guidance (NPPG) on planning obligations and CIL/LIT. Both sets of guidance already emphasise the need for councils to provide evidence up front as part of the infrastructure planning process and include obligations in Local Plan policy (which has therefore been subject to Public Examination). Concise and light touch Supplementary Planning Documents (SPDs) may also be useful, provided they don't materially add to the financial burdens on development and that their viability and justification has been tested independently alongside proposed LIT charges and/or Local Plan policy.

***We recommend that for large/strategic developments local authorities should be able to negotiate additional and specific Section 106 arrangements and that these should be subject to strengthened regulation 122 tests***

***We recommend that the pooling restrictions set out in Regulation 123 should be removed***

***We recommend that standardised Section 106 obligations should be subjected to particular scrutiny to ensure that they meet the regulation 122 test and that the NPPG in this area should be strengthened***

5.2.9 Given that LIT is meant to obtain a small contribution towards infrastructure from all development, we would be reluctant to see any special pleading for exemptions from the LIT for large developments. We do however recognize the specific needs of larger/strategic developments and trade-offs between LIT, affordable housing and other obligations so would support the consideration of a framework approach, in which bespoke agreements for such sites set out the relationship between LIT, Section 106 and the details of phasing, payments and the delivery of infrastructure.

***We recommend that local authorities should be given the flexibility to offset the LIT against Section 106 and other requirements for their larger/strategic developments***

5.2.10 A further benefit of the combined LIT/Section 106 approach will be that large developments will be able to address, through the Section 106, not only the funding of the infrastructure but also the delivery of the infrastructure, which has been one of the failings of CIL. It follows that for the largest developments it must be made possible for the Section 106 infrastructure to be delivered "in kind" on site, which will allow that infrastructure (for example schools, community facilities and other public facilities) to be provided at the right time as the development gives rise to the need for it and by those best placed to take development and construction risk.

***We recommend that for these larger developments developers should be able to make infrastructure provision in kind; and if appropriate, the LIT contribution should be able to be delivered by way of in kind provision***

5.2.11 We have noted already that planning obligations can be used not only to 'mitigate' development but also to 'proscribe' uses and secure other, non-infrastructure, items. These are usually addressed in local policy e.g. affordable housing, compensation for facilities lost through a development e.g. open space, training and employment initiatives, local procurement of goods and services and the implementation of other plans and strategies. Indeed, it is those types of obligations which often take up the most time in pre and post application Section 106 negotiations. These type of obligations will need to be accommodated where they are Regulation 122 compliant and where they are justified by policy.

5.2.12 We strongly recommend, however, further attempts to clarify these requirements and to standardise





planning obligations more generally and we would encourage both local authorities and applicants to consider the use of standard “template” obligations more widely. We are aware that standardisation has been tried before but now may be the time, with declining local authority budgets, to rejuvenate this approach. We also support an approach whereby as many issues as possible are addressed by conditions attached to the relevant planning permission rather than by Section 106 obligations. Indeed, the Government should take this opportunity to strengthen and re-enforce an approach to Section 106 which limits wide variation and local abuse and ensures simplicity and standardisation wherever possible.

***We recommend that further measures are introduced to standardise and streamline the Section 106 process***

5.2.13 In addition to the criticism of Section 106 related to the delays involved in negotiating and completing them, a further criticism has been the lack of transparency. It has to be recognized that a Section 106 agreement is a contract, the detail of which is negotiated between the local authority and the applicant (and other parties who need to sign the agreement). The transparency issue can in part be addressed by ensuring that proposed heads of terms for the agreement, which are as detailed as possible, are submitted with planning applications and included in the relevant committee report. A further step which would assist transparency is for more clarity to be provided over how and when local authorities should publish details of Section 106 agreements that they are entering into.

***We recommend that proposed heads of terms for Section 106 agreements be submitted with planning applications and that local authorities be given clear guidance on the publication requirements for Section 106 agreements***

### AFFORDABLE HOUSING

5.2.14 We have noted elsewhere in this report that the need to negotiate an affordable housing contribution outside of CIL, using Section 106 arrangements, has in some places had a deleterious effect on affordable housing provision and that the negotiations themselves are often a key contributing factor in delaying the start of development. We have not recommended any change to the position of affordable housing being outside of the scope of the LIT - partly because we see the LIT as being available for infrastructure that is necessitated by the cumulative impacts of development over and over and area and partly also because the quantum raised is unlikely to be sufficient to pay for affordable housing as well as that other infrastructure. We see no alternative, therefore, to affordable housing continuing to be negotiated as part of the Section 106 arrangements. Progress towards standardisation of Section 106 agreements would, however, expedite the process, as would local agreements on a fixed rate for affordable housing. The low level nature of the LIT will also mean that it has less impact on development profitability and leave more headroom for an affordable housing contribution, although this will clearly have to take its place alongside other Section 106 requirements.

## 5.3 THE STRATEGIC INFRASTRUCTURE TARIFF

5.3.1 The Combined Authority (CA) geography is currently changing which leads us to conclude that





clusters of local authorities may well offer an additional level at which to collect contributions to infrastructure necessitated by development over a wider than local area. We are currently some way from having many CAs with sufficient maturity to achieve this but the situation is likely to change fairly rapidly. We recommend, therefore, that suitable legislative and regulatory provision should be made in CA agreements to allow for the imposition of a low level 'Mayoral' type of LIT, to be called the Strategic Infrastructure Tariff (SIT). Where a SIT is agreed, it would be imposed across the CA area for use on one or two agreed specific infrastructure projects. There may be scope to consider the issue of upfront funding for infrastructure as part of this higher tier approach. This could be considered as part of the wider devolution of powers from National Government to combined authorities and linked to the ability of these areas to borrow against business rate receipts.

- 5.3.2 It is envisaged that the SIT should be restricted to a small number of well identified infrastructure projects. It should be set at a sufficiently low level that would ensure that no developments were rendered unviable and would also have to take into account the LIT that had been set for the area in order to ensure that the overall level of charge did not pose an unacceptable burden for development. Like the London Mayoral CIL collected for Crossrail, it should be accepted that the CA SIT would only ever make a limited contribution towards a piece, or pieces, of infrastructure. It should be accepted that it may in some cases provide simply a cash flow to fund the interest on any borrowing or support other funding from alternative public or private sources.
- 5.3.3 The SIT would be billed and collected by the local LIT charging authority on behalf of the CA which would take the lead in raising additional finance for the strategic level infrastructure projects identified by the CA.

***We recommend that provision is made for Combined Authorities to agree the imposition of a low level 'Mayoral' type Strategic Infrastructure Tariff to be imposed across the Combined Authority area***

***We recommend that the Strategic Infrastructure Tariff should be restricted for use on a small number of major projects that will benefit the wider area***

***We recommend that further consideration is given to enabling Combined Authorities to use the Strategic Infrastructure Tariff funding as a mechanism for raising additional finance***

## 5.4 ADDITIONAL PROPOSALS

### THE PLACE OF INFRASTRUCTURE WITHIN THE LOCAL PLAN-MAKING PROCESS

- 5.4.1 Clearly planning for meeting infrastructure need is an integral part of the local plan-making process since without it the growth envisaged in the Local Plan is unlikely to be delivered. Local authorities need to know what infrastructure will be necessitated by their growth and development plans, how much contribution can realistically be expected from that development and, because developer contributions will only rarely, if ever, be able to foot the whole infrastructure bill, what other forms of funding need to be explored as part of the plan-making process and their more detailed financial planning. There needs to be greater realism as to precisely what the developer contributions and



infrastructure partners are able to fund. There is no point in trying to stretch the pot further and further.

- 5.4.2 The Local Plans Expert Group (LPEG) recommended that there should be a close integration between local plan-making and the way in which any form of infrastructure charging is both set and levied. We understand the rationale behind that and have no problem supporting it but we would make the point that our more formulaic approach to the setting of the LIT, together with the contribution from Section 106 agreements, will produce a certain sum that can be fed into the plan-making process rather than that process dictating the size of either the LIT or Section 106 contributions.
- 5.4.3 In two tier authorities, it is particularly important that there are early discussions to identify and plan for the infrastructure needed to support growth and to identify how that will be funded. It should be clearly identified which projects are going to receive LIT funding (in whole or in part) from the charging authority, which will require Section 106 and which will require funding from other sources or a combination of all these. The local authority infrastructure provider (county or unitary) should, as far as is practicable in a changing world, be able to rely on the agreed LIT or Section 106 funding and the timing of its delivery in order to be provide the relevant infrastructure.

***We recommend that there should be close integration between local plan-making and the planning for LIT/Section 106 contributions so that the latter can properly inform infrastructure funding provision***

***We recommend that local authorities engage with delivery and funding bodies as part of their plan-making and infrastructure planning to consider ways of closing the inevitable local infrastructure funding gap***

- 5.4.4 We agree with the LPEG recommendation on improving meaningful cooperation over Housing Market Areas/Functional Economic Areas. It would make sense for the LIT to be considered on a wider than local authority area that corresponds to the Housing Market Area (HMA) or other grouping covered by the local plan. We recommend that all tiers of Government come together over an area to assess their infrastructure needs and to apportion them between those that might be specifically addressed by Section 106 and otherwise more generally for cumulative pressures by LIT and to form some sort of priority order. This is in the interests of good governance of an area and also makes it clear to the developers, who will be paying the LIT, what their money is likely to pay for.

***We recommend that the Government should incentivise more meaningful cooperation between local authorities over Housing Market Areas/Functional Economic Areas.***

- 5.4.5 Once the Local Plan, including the Infrastructure Plan, has been adopted local authorities should provide regular, and preferably annual, Infrastructure Delivery Plan updates. These should be prepared in consultation with internal and external service and infrastructure providers. The update should report against the aspects of the plan outlined above, reflecting what has been delivered in the previous year and what has still to be done. The Infrastructure Delivery Plan should be published on the council's website, so communities, developers and stakeholders have an understanding of the infrastructure landscape, likely basis for negotiations and delivery programme.

***We recommend that local authorities provide annual Infrastructure Delivery Plan updates as part of their Authorities Monitoring Reports***



### NEIGHBOURHOOD CIL

- 5.4.6 We recognise the importance that the Government attaches to allowing parishes/ neighbourhoods to spend a portion of the current CIL receipts. But we have already highlighted the difficulties this causes and the lack of evidence to suggest that the neighbourhood portion of CIL makes development any more acceptable at the local level. We are also concerned that a continuation of the current arrangements will lead in many instances to already scarce and over subscribed resources being diverted into projects that do not ease the pressure on existing infrastructure and consequently do not actually improve the conditions for local communities. Our objective, therefore, is to find a way of ensuring that money paid by developers, either through our recommended LIT or through Section 106 obligations goes towards the actual delivery of infrastructure enhancements that are recognised as necessary by both the local community and local authority.
- 5.4.7 The problem seems to lie principally in the manner in which the decision making process on infrastructure planning and actual provision is managed between the local community and the local authority (be it unitary, district and/or county) and we have therefore focussed on how this can best be improved. In both parishes and neighbourhoods, local authorities are already required to work with the local community on the preparation of both the local plan and the neighbourhood plan and as part of this process it would not be unreasonable to expect that the impact of development and the infrastructure needed to address that impact would be considered. It would also make sense for the question of how the neighbourhood share of any CIL/LIT should best be used. Subsequently, the neighbourhood's share is handled 'in trust' by the local authority and administered in consultation with the neighbourhood forum. In parished areas the parish council will receive the funds from the local authority and spend them in accordance with regulations.
- 5.4.8 We believe the key to ensuring a sensible and productive spend of the neighbourhood share is for there to be a more rigorous integration at the plan-making stage, for both the local plan and the neighbourhood plan, over how the neighbourhood share should be spent. There should also be ongoing dialogue at the point at which the funds become available and are spent, such as currently happens in un-parished neighbourhoods, to ensure that best value is obtained. We have stopped short of recommending that the actual spending power of parishes with regard to the neighbourhood share should be withdrawn. We would hope, however, that improved dialogue at both the plan-making and allocation/spending stage would prevent funds being allocated to places that are less affected by development and also avoid funds being diverted into projects that do not actually solve the infrastructure problems created by development.
- 5.4.9 It is perhaps also worth noting that with an enhanced role for Section 106 under our proposed twin track LIT/Section 106 regime, there will be more instances where developers of larger sites will be directly involved in consultation and discussions with both local authorities and local communities over ameliorating the impact of development which will allow greater opportunity for the needs of local communities to be taken into account. This is a link which we noted has been weakened in CIL authorities, to the detriment of good relations between local communities and developers.

***We recommend that there is closer integration at both the local plan and neighbourhood plan-making stages***





***between the local authorities and the community to ensure agreement over how the neighbourhood share of LIT is allocated.***

***We recommend that local authorities work closely with both parishes and neighbourhoods over the actual spending of any neighbourhood allocation of LIT to ensure that the delivery of infrastructure is supported and best value is obtained.***

### ENVIRONMENTAL MITIGATION

5.4.10 The abolition of the pooling restriction on Section 106 obligations will remove one of the problems associated with the type of environmental mitigation deemed legally necessary in order for development to proceed, for example, the provision of Suitable Alternative Natural Green Space (SANGS) to prevent impacts on sites protected under the Habitats Directive. We accept, however, it is possible that in some areas these regulatory requirements, alongside the LIT, could threaten development viability. The relatively low level of the LIT will hopefully guard against this in most locations.

5.4.11 One of the objectives of our recommendations has been to ensure that small developments of ten or less units should make a contribution towards infrastructure but should pay no other charges than the LIT. If the Government accepts this principle then they may wish to consider further the way in which the burden of environmental mitigation might be addressed for small sites.

***We recommend that the Government should give further consideration to how environmental mitigation for small sites can be addressed as part of reforms to streamline Section 106***

### REGULATIONS

5.4.12 The new combined SIT/LIT/Section 106 regime outlined above will require a significantly different regulatory regime. We strongly recommend therefore, that the opportunity is taken to replace completely the existing regulations which virtually every respondent said were complex and difficult to interpret, with a new simplified version. It is our view that a simplified, capped, lower level LIT, with no exemptions, will enable simpler regulations, thus reducing the costs to developers and collecting authorities.

***We recommend that a new set of consolidated and simplified regulations be drafted.***

5.4.13 As the new LIT would not be introduced immediately the Government may wish to amend the existing regulations as an interim measure. We have noted above that this is unlikely to create stability in the regulations and therefore, in the interests of avoiding further complexity, would recommend that in these circumstances any changes should relate to issues which are having a demonstrable and immediate negative effect. This could include changes to regulations relating to 'in kind' contributions, the Regulation 123 pooling restrictions (although this would require parallel guidance to avoid an increase in the use of Section 106 obligations), phasing and transitional issues relating to amended applications.





5.4.14 Any new regulations should be 'road tested' with authorities and the industry (and particularly those that have dealt with the CIL regulations on a day to day basis) before implementation to avoid the complexity and unintended consequences of the current version. This needs to take into account the transitional issues identified below.

***We recommend that the Government considers amendments to the regulations as an interim measure to address the most immediate issues arising from CIL.***

### 5.5 TRANSITION

5.5.1 We would hope that the obvious benefits of our LIT recommendations would mean that local authorities would wish to convert as soon as possible to the new arrangements. But for those who perceive some transitional challenges, there should be sufficient time allowed to achieve the move from CIL to LIT. It is our intention that the LIT should eventually replace CIL completely and that consequently a final cut-off date should be fixed in order to prevent drift in implementation. The choice of this date will depend on how quickly any statutory and regulatory changes can be put in place; 2020 would seem to be a logical date to aim for since that is the end of the current Parliament.

5.5.2 We have considered at some length the extent to which the LIT should be a voluntary arrangement which local authorities can choose not to implement or the advantage of making it mandatory in order to achieve some degree of uniformity across the country and make the approach more consistent and easier to handle from both the developer and local authority perspective.

5.5.3 We concluded that the benefits to a local authority of a simpler alternative to CIL which cuts out all the burden of rate setting and collecting but which, in most cases, collects a similar amount of money should be apparent and should in itself encourage rapid adoption. The ability also to collect Section 106s from larger developments, to benefit from the removal of the pooling system and to be able to allow developers to provide more easily benefits in kind ought to be additional attractions. We can see no reason therefore why the LIT should not be mandated across all local authorities, except for those for whom the level of LIT that results from the values in the area would be so low that it is not worth administering the tariff (see paragraph 5.1.11).

5.5.4 We saw that when CIL was introduced, the existence of a new levy or charge on development and changes to the regulations governing planning obligations had an impact on the behaviour of developers and local authorities and on the implementation of existing planning permissions. It will therefore be important that the implementation of the new system takes account of transition issues as part of the detailed design of the system. With regard to the transition to our recommended new regime, these considerations will need to include:

- » how authorities currently charging CIL transition to LIT, determine their new charge (if necessary), and change their systems to be able to collect, CIL or LIT;
- » ii) how current planning permissions under the CIL system will be treated in the new LIT and how the system minimises incentives to delay development;



- » how proposals in the pre-application phase might be affected by the change;
- » how changes to existing planning applications would be treated under a new system; and,
- » the likely effect on Neighbourhoods of changes to the local proportion.

***We recommend that a LIT should be a mandatory charge except where it would bring in insufficient funds to justify the cost of collection.***

***We recommend that Government allows for sufficient transitional arrangements to be put in place. 2020 would appear to be a sensible date for transition to be completed.***



## 6 SUMMARY OF RECOMMENDATIONS

- 6.1.1 In the light of our findings that CIL was not achieving its original objectives of providing a faster, fairer and more transparent way of collecting contributions towards the infrastructure necessitated by the impacts of development, we have devised what we believe is a better way of achieving that original objective. We propose a twin-track approach that allows local authorities to take advantage of the best elements of the existing CIL and Section 106 regimes in order to maintain, if not improve, the total quantum of monies flowing to infrastructure in a timescale, to speed delivery by those best placed to take the financial and construction risks and to unlock both small and large developments to get the country building.
- 6.1.2 We believe this approach offers a contributions framework that is fair, in that it requires all development, even the smallest, to make a moderate payment towards the cumulative infrastructure need of an area, but it leaves the larger developments to negotiate a Section 106 agreement that is more appropriate in scale, nature and timing to the way in which those developments are carried out and their infrastructure needs arise. These Section 106s will be negotiated in the context of a strengthened Regulation 122 set of tests, policy and supporting guidance.
- 6.1.3 By specifying how the LIT will be calculated and constraining its quantum, our new approach will offer a consistent, simpler contribution system that will prove less controversial for developers, communities and local authorities. It will cut out the huge bureaucracy that has grown up around CIL by providing a national framework that reflects local market conditions. We believe this will enable planning permissions to be granted more speedily and allow local authority and private sector resources to be used to better effect elsewhere. The removal of the restriction on pooling Section 106 contributions will make it easier to subdivide large sites to make them more attractive to small builders, thus bringing additional choice to the market and speeding development on strategic allocations which are needed to meet the Government's challenging housing targets.
- 6.1.4 The simplicity of the LIT represents a deregulatory reform that will result in 85% of all residential applicants, of 10 units or less, operating in a clear, consistent and easy to navigate system that will help small builders and speed up the provision of new homes across the country. Developers of large developments will have to negotiate a Section 106 that reflects the infrastructure needs of those specific sites but we have made recommendations to simplify negotiations through standardisation of agreements. We believe that will be welcomed in most quarters in that it will allow the particular needs of large development to be met whilst also restoring the links between contributions and provision of infrastructure.
- 6.1.5 In terms of commercial development, we have recommended a similar simplified approach with a low level LIT that will need just a small number of sub-categories to reflect the difference in development typologies and will also allow the application of Section 106 for large mixed use schemes.
- 6.1.6 Our report recognises the problems of forward funding necessary infrastructure in advance of the accumulation of sufficient LIT and Section 106 monies and recommends a new look at ways of bridging that gap - which may include the greater use of prudential borrowing by local authorities against LIT receipts.



- 6.1.7 Our report also seeks to make the delivery of infrastructure at a neighbourhood level more certain and better directed to the items of infrastructure that really matter. By re-affirming the role of Section 106 contributions, we enhance the opportunity for local people to engage with developers over the community benefits that might be gained from development when the proposals are being devised.
- 6.1.8 Finally, our report seeks to encourage the planning of infrastructure on a larger than local basis through Housing Market Areas and Combined Authorities where appropriate and recommends new powers for Combined Authorities to enable them to raise a mayoral style tariff for truly strategic infrastructure that casts its influence over a wide area.
- 6.1.9 Our recommendations are summarised on the following pages.









## RECOMMENDATIONS

### KEY RECOMMENDATIONS

- » **We recommend that the Government should replace the Community Infrastructure Levy with a hybrid system of a broad and low level Local Infrastructure Tariff (LIT) and Section 106 for larger developments.**
- » **We recommend that Combined Authorities should be enabled to set up an additional Mayoral type Strategic Infrastructure Tariff (SIT)**

### THE LOCAL INFRASTRUCTURE TARIFF (LIT)

- » We recommend that the setting of the LIT should be linked to the Local Plan process wherever possible and should feed into local and 'bigger than local' infrastructure plans
- » We recommend that the LIT should be calculated using a national formula based on local market value set at a rate of £ per square metre
- » We recommend that the LIT should continue to apply to 'development' as defined in the existing CIL regulations
- » We recommend further work by Government to devise a LIT formula for commercial development that ties it to the residential rate but which does not exceed it
- » We recommend that there should be a cost of collection cut-off below which local authorities do not have to collect a LIT
- » We recommend that the LIT should be charged on gross development
- » We recommend that there should be no (or very few) exemptions to the LIT
- » We recommend that, if needed in the new LIT regime, the process for exemptions and reliefs should be simplified
- » We recommend that agricultural buildings should be covered by the LIT but that local authorities should be encouraged to include this type of structure in its low or zero rated bands

- » We recommend that the examination process should be replaced by a simple mechanism to address any representations on coverage or quantum of the LIT rates
- » We recommend that the requirement for a Regulation 123 list should be removed and spending of the LIT should be reported through the Authorities' Monitoring Report
- » We recommend that other options should be explored that would enable local authorities to forward fund infrastructure provision

### LIT AND SECTION 106

- » We recommend that small developments (10 units or less) should pay only the LIT and no other obligations, unless exceptional circumstances apply
- » We recommend that for large/strategic developments local authorities should be able to negotiate additional and specific Section 106 arrangements and that these should be subject to strengthened Regulation 122 tests
- » We recommend that the pooling restrictions set out in Regulation 123 should be removed
- » We recommend that standardised Section 106 obligations should be subjected to particular scrutiny to ensure they meet the Regulation 122 tests and that the NPPG in this area should be strengthened
- » We recommend that local authorities should be given



the flexibility to off set the LIT against Section 106 and other requirements for their larger/strategic developments

- » We recommend that for these larger developments developers should be able to make infrastructure provision in kind; and if appropriate, the LIT contribution should be able to be delivered by way of in kind provision
- » We recommend that further measures are introduced to standardise and streamline the Section 106 process
- » We recommend that proposed heads of terms for Section 106 agreements be submitted with planning applications and that local authorities be given clear guidance on the publication requirements for Section 106 agreements

### THE STRATEGIC INFRASTRUCTURE TARIFF (SIT)

- » We recommend that provision is made for Combined Authorities to agree the imposition of a low level 'Mayoral' type Strategic Infrastructure Tariff to be imposed across the Combined Authority area
- » We recommend that the Strategic Infrastructure Tariff should be restricted for use on a small number of major projects that will benefit the wider area
- » We recommend that further consideration is given to enabling Combined Authorities to use the Strategic Infrastructure Tariff funding as a mechanism for raising additional finance

### SPECIFIC SUPPORTING PROPOSALS

- » We recommend that there should be close integration between local plan-making and planning for LIT/Section 106 contributions so that the latter can properly inform infrastructure funding provision
- » We recommend that local authorities engage with delivery and funding bodies as part of their plan-making and

infrastructure planning to consider ways of closing the inevitable local infrastructure funding gap

- » We recommend that the Government should incentivise more meaningful cooperation between local authorities over Housing Market Areas/Functional Economic Areas
- » We recommend that local authorities provide annual Infrastructure Delivery Plan updates as part of their Authorities' Monitoring Reports
- » We recommend that there is closer integration at both the Local Plan and Neighbourhood Plan making stages between the local authorities and the community to ensure agreement over how the neighbourhood share of LIT is allocated
- » We recommend that local authorities work closely with both parishes and neighbourhoods over the actual spending of any neighbourhood allocation of LIT to ensure that the delivery of infrastructure is supported and best value obtained
- » We recommend that the Government should give further consideration to how environmental mitigation for small sites can be addressed as part of reforms to streamline Section 106
- » We recommend that a new set of consolidated and simplified regulations be drafted
- » We recommend that the Government considers amendments to the regulations as an interim measure to address the most immediate issues arising from CIL
- » We recommend that a LIT should be a mandatory charge except where it would bring in insufficient funds to justify the cost of collection
- » We recommend that Government allows for sufficient transitional arrangements to be put in place. 2020 would appear to be a sensible date for transition to be completed







## APPENDICES

- APPENDIX 1: TERMS OF REFERENCE
- APPENDIX 2: SUMMARY OF THREE DRAGONS / UNIVERSITY OF READING RESEARCH REPORT
- APPENDIX 3: LIST OF RESPONDENTS TO THE CALL FOR SUBMISSIONS
- APPENDIX 4: EVIDENCE SESSION ATTENDEES
- APPENDIX 5: LOCAL INFRASTRUCTURE TARIFF – EXAMPLE RATES



## APPENDIX 1: TERMS OF REFERENCE

### TERMS OF REFERENCE

#### BACKGROUND

The Community Infrastructure Levy (“CIL”) was introduced in April 2010. It sought to provide a faster, fairer, more certain and transparent means of collecting developer contributions to infrastructure than individually-negotiated Section 106 planning obligations.

The Government confirmed in November 2015 that Liz Peace would lead and chair an independent group conducting a review of the Community Infrastructure Levy.

#### PURPOSE OF THE GROUP

To assess the extent to which CIL does or can provide an effective mechanism for funding infrastructure, and to recommend changes that would improve its operation in support of the Government’s wider housing and growth objectives.

#### REMIT

Drawing on any appropriate expertise and evidence that they may wish to consult at their discretion, the Group should consider the overarching question of whether CIL is meeting its objectives of providing a faster, fairer, more certain and transparent means of funding infrastructure through developer contributions. In doing so, the group should consider the following more specific issues:

- » The relationship between CIL and Section 106 in the delivery of infrastructure, including the role of the regulation 123 list and the restriction on pooling planning obligations.
- » The impact of CIL on development viability, including any disproportionate impact on particular types or scales of development.
- » The exemptions and reliefs from CIL.
- » The administrative arrangements and governance associated with charging, collecting and spending CIL.
- » The ability of CIL to fund and deliver infrastructure in a timely and transparent way.
- » The impact of the neighbourhood portion on local communities’ receptiveness to development.
- » The geographical scale at which CIL is collected and charged.

Based on its assessment of the issues above, the Group should make specific, prioritised recommendations that provide a clear basis for improving the current system of collecting developer contributions to infrastructure delivery.

The recommendations should also take account of the Government’s pre-election manifesto commitment that “when new homes are granted planning permission, we will make sure local communities know up-front that necessary infrastructure such as schools and roads will be provided”.



### GOVERNANCE

The group is independent and chaired by Liz Peace pro bono. The other members of the CIL review group are Andrew Whitaker (Home Builders Federation), Gilian MacInnes (Planning Advisory Service), Tom Dobson (Quod Planning), Steve Dennington (LB Croydon), Michael Gallimore (Hogan Lovells) and Councillor John Fuller, Leader of South Norfolk District Council. Secretariat is being provided by DCLG.

### OUTPUT

By the end of March 2016, the group will prepare a report for the Minister for Housing and Planning to consider. The report will include:

- » an assessment of whether CIL is meeting its objectives and any recommendations for future change;
- » an assessment of the relationship between CIL and Section 106, and how this is working in practice;
- » an analysis of the operation of the CIL system and specific recommendations of how it could be improved;
- » an assessment of how CIL is deployed by local authorities both to deliver infrastructure and to support community engagement.





## APPENDIX 2: SUMMARY OF THREE DRAGONS / UNIVERSITY OF READING RESEARCH REPORT

### KEY FINDINGS:

#### CIL IMPLEMENTATION

- » Implementation of CIL by local authorities has been slow to start but has picked up over the past two years.
- » Authorities that have operational CILs are concentrated to a large extent in more affluent parts of the country where market and land values are higher.
- » The majority of surveyed local authorities said that CIL implementation took one to two years and cost approximately £15,000 to £50,000 to implement (excluding staff costs).
- » Local authorities have introduced a wide variety of charging policies, ranging from flat borough-wide rates to differentiated rates based on geographical zones, scale of development, land use or a mixture of these.
- » The majority of authorities have set a CIL rate for residential and retail land uses and around a third have set charges or other uses too.
- » The average CIL rate for residential development is £95 per square meter but there is substantial variation within and between local authorities.
- » There is little commonality in the approach local authorities are taking in the content of their Regulation 123 lists.

#### CIL OPERATION

- » Survey respondents regarded some of the regulations as complex, and successive amendments to the regulations have not alleviated that complexity.
- » Procedures required to review CIL may be dissuading authorities from undertaking updates which otherwise would be warranted by changes in market conditions.
- » Average revenue received per CIL charging authority for 2014-15 was £0.7m for residential developments, £0.2m from retail and £0.6m from other types of development. In cases where CIL has been in place for two years or more, year-on-year revenue has been increasing significantly from an average of £0.2m per charging authority in 2012-13, £0.5m in 2013-14 to £2m in 2014-15.
- » The operation of exemptions and reliefs has reduced the CIL income local authorities might have expected, prior to their introduction.
- » There is very little evidence of expenditure so far but this is not surprising given the short time period over which many CILs have been operating.
- » The principle items of expenditure are educational facilities, transport and travel infrastructure and environmental improvements.
- » The average amount of CIL revenue passed to neighbourhood groups in 2014 was just over £50,000 per charging



authority (based on a sample of 14 authorities).

- » The level of funds vary widely between parishes with some in receipt of significant monies.
- » Some parishes expressed concern that large amounts of money could become unmanageable and extra support from the local authority may be needed to help prioritise spending.
- » All the parish /town councils surveyed were sceptical that the CIL would make a qualitative difference to local residents attitudes.

### IMPACT OF CIL

- » Bearing in mind the relatively recent introduction of CIL for many local authorities that have chosen to implement, there does not appear to be any discernible impact on planning applications or permissions, after an initial 'dip' in applications immediately post adoption as reported through the interviews with local authorities.
- » The evidence on the impact of CIL on affordable housing is inconclusive. The available statistical evidence gives a very tentative indication that CIL may reduce the supply of affordable housing. The evidence direct from the local authorities though, does not support this finding.
- » CIL is a relatively minor development cost, around 2% of total market value on average compared with the impact of s106 costs prior to the introduction of CIL. Viability modelling shows that the introduction of CIL has limited impact on development viability and does not make, on its own, a viable scheme unviable.
- » In terms of setting CIL rates, viability buffers (typically set at around 30%) have been introduced to try and account for instances where developers have paid for land before CIL was introduced.
- » In a rising market, CIL appears to be a charge that can quite readily be absorbed by development, at least in higher value areas.



## APPENDIX 3: LIST OF RESPONDENTS TO THE CALL FOR SUBMISSIONS

### LISTED BY ORGANISATION:

ACES (Association of Chief Estates Surveyors and Property Managers in the Public Sector)	Camden, London Borough of
Action with Communities in Rural England (ACRE)	Canary Wharf Group
Adderley Parish Council	Cannock Chase District Council
Aldenham Parish Council	Central Bedfordshire Council
Andrew Cunningham Building Design Ltd (Southport)	Central Lincolnshire Authorities
Arts Council England	Ceredigion County Council
Arun District Council	Charities' Property Association
Asda	Charities' Tax Group
Ashford Borough Council	Charnwood Borough Council
Aspinall Verdi	Chartered Institution for Highways and Transportation
Association of Directors of Environment, Economy, Planning, and Transport	Chelmsford City Council
Babergh District Council	Cherwell District Council
Baptist Union of Great Britain	Chesterfield Borough Council
Barratt Development PLC	Chichester District Council
Bassetlaw District Council	Chorley Council
Bath & North East Somerset Council	Christchurch and East Dorset Council's
Bedford Borough Council	Churches' Legislation Advisory Service
Bedford Group of Drainage Boards	City of Lincoln Council
Bembridge Parish Council	City of London Corporation
Bexley, London Borough of	City of York Unitary authority area
Bidwells	Clemdell Ltd
Birmingham City Council	Colchester Borough Council
Blackburn with Darwen Borough Council	Conwy County Borough Council
Borough of Poole	Cornwall Council
Bovis Homes	Country Land and Business Association (CLA)
Bovis Homes PLC and Teignbridge, Exeter & East Devon	County Councils Network



Bracknell Forest Council	Cringleford Parish Council
Breckland Council	Cumbria County Council
Bristol City Council	Dacorum District Council
British Property Federation	Dartford Borough Council
Broads Authority, The	Daventry District Council
Browne Jacobson	Dentons
Broxbourne Council	Derby City Council
Buckinghamshire County Council	Derbyshire County Council
Cambridgeshire County Council	Havering, London Borough of
Devon County Council	HDH Planning and Development Ltd
Devon, Newton Abbot	Hertfordshire County Council
District Councils' Network	Hertfordshire Infrastructure and Planning Partnership (HIPP)
Dixon Searle Partnership Consulting	Hertsmere Borough Council
Doncaster Council	Highgate Neighbourhood Forum (HNF)
Dorset County Council	Home Builders Federation
Development Services 2 LLP	Home Builders Federation Retirement Home Builders Group
Dover District Council	Horsham District Council
Dudley Council	Hull City Council,
Ealing Council	Huntingdonshire District Council
East Cambridgeshire District Council	IM Properties Plc
East Devon District Council	Institute of Historic Building Conservation
East Hampshire District Council	Intu Properties (via NLP)
East Riding of Yorkshire Councils area	Islington, London Borough of
East Staffordshire Borough Council	Itchen Valley Parish Council
East Sussex County Council	Kensington and Chelsea, Royal Borough of
Eastbourne Borough Council	Kent County Council
Education Funding Agency	Kettering Borough Council
Educational Facilities Management Ltd	Key Cities Group
Elmbridge Borough Council	Kingston upon Thames, Royal Borough of
Enfield, London Borough of	Kirklees Council
Epping Forest District Council	Knowsley Metropolitan Borough Council
Essex County Council	Lambeth, London Borough of
Exeter City Council	Lancashire County Council





## A NEW APPROACH TO DEVELOPER CONTRIBUTIONS

Exeter Housing Market Area	Lancashire Enterprise Partnership
Fareham Borough Council	Lancaster City Council
Federation of Master Builders (FMB)	Law Society and the City of London Law Society Planning and Environmental Law Committees
Federation of Small Businesses	Leashold Knowledge Partnership Ltd
Fenland District Council	Leeds City Council
Fitzrovia West Neighbourhood Forum	Leeds City Council's Conservative Group
Forsters LLP	Leicestershire County Council
Gedling Borough Council	Lincolnshire County Council
Gloucestershire County Council	Linden Homes
Gateshead Council	Local Government Association
Greater Manchester Combined Authority	Local Planning Authority (National Park Authority)
Greater Norwich Growth Board	Locality
Havant Borough Council	London Borough of Barking and Dagenham
Hackney, London Borough of	London Borough of Harrow
Hampshire County Council	London Borough of Hillingdon
Greenwich, Royal Borough of	London Borough of Hounslow
Harlington Parish Council	London Borough of Newham
London Borough Viability Group	Newark and Sherwood District Council
London Chamber of Commerce and Industry	Oadby and Wigston Borough Council
London CIL Collection Group	Old Oak and Park Royal Development Corporation
London First	Oxford Council
London Forum of Amenity and Civic Societies	Oxfordshire County Council
Maldon District Council	Peabody
Malvern Hills District Council	Peel Land & Property
Manchester Airports Group	Pembrokeshire County Council
Mayor of London	Pendle Borough Council
McCarthy and Stone Retirement Lifestyles Ltd	Pennicott Chartered Surveyors
Meadow Well Estate of North Tyneside	Persimmon plc
Merton, London Borough of	Pinsent Masons
Mid Suffolk District Council	Planning Officers Society
Mid Sussex District Council	Plymouth City Council
Middlesbrough County Council	Pocket



Mill Hill Neighbourhood Forum	Preston City Council
Milton Keynes Council	Purbeck District Council
Misterton Division in Nottinghamshire	Putney Society
Mole Valley District Council	Reigate & Banstead Borough Council
Member of Parliament	Rhondda Cynon Taf
National Custom & Self Build Association	Rother District Council
National Farmers Union	Royal Borough of Windsor & Maidenhead
National Association of Local Councils	Royal Institutions of Chartered Surveyors
National Housing Federation	Royal Town Planning Institute (RTPI)
National Police Chiefs' Council	Rugby Borough Council
Natural England	Rushmoor Borough Council
Neighbourhood forums	Rutland County District Council
New Forest District Council	Savills
Newcastle City Council	Sedgemoor District Council
Newport Pagnell Town Council	Sevenoaks District Council
NHS London Healthy Urban Development Unit (HUDU)	Sheffield City Council
NHS Property Service	Shropshire Council
Norfolk County Council	SME housebuilder
North Kesteven District Council	Solihull Metropolitan Borough Council
North Yorkshire County Council	Somerset County Council
Northamptonshire County Council	South Bank & Waterloo Neighbours
Northumberland County Council	South Cambridgeshire District Council
Nottinghamshire County Council	South East Midlands Local Enterprise Partnership (SEMLEP).
Nottinghamshire County Council Conservative Group	South Lakeland District Council
South Ribble Borough Council	South Oxfordshire District Council
Southampton City Council	Trustees of the Barker Mill Estates
Southwark, London Borough of	UNITE Group plc
Spelthorne Borough Council	Urban & Regional Policy
South Tyneside Council	Vale of White Horse District Council
Sport England	Waddeton Park Ltd
Stafford Borough Council	Walsall Council
Tonbridge & Malling Borough Council	Ward Councillor
Torbay Council	Warwickshire County Council



## A NEW APPROACH TO DEVELOPER CONTRIBUTIONS

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Tower Hamlets, London Borough of	Watford Borough Council
Town Council in Somerset	Waveney District Council / Suffolk Coastal District Council
Transport for London	Wealden District Council
Transport Planning Society	Welsh Government
Trowbridge Town Council	Welsh Local Government Association
Staffordshire County Council	West Berkshire Council
Stone Town Council	West Lancashire Borough Council,
Surrey County Council	West Sussex County Council
Surrey Heath District Council	Westminster Council
Sustrans	Westminster Property Association
Sutton St Nicholas Parish Council	Weymouth & Portland Borough Council and West Dorset District Council
Swale Borough Council	Wiltshire Council
Swindon Borough Council	Winchester City Council
Taunton Deane Borough Council	Wokingham Borough Council
Taunton Deane Borough Council	Worcester City Council
Teignbridge District Council	Worcestershire County Council
Thame Town Council	Wrexham Council
The Churches' Legislation Advisory Service	Wychavon District Council
Three Rivers District Council	Wycombe District Council.



## APPENDIX 4: EVIDENCE SESSION ATTENDEES

### EVIDENCE SESSION 1

Welsh Local Government Association  
Greater London Authority  
London First  
Nottinghamshire County Council  
District Councils Network / Arun District Council  
District Councils Network  
Old Oak Common & Park Royal Development Corporation

### EVIDENCE SESSION 2

Nottinghamshire County Council  
National Police Chief's Council (x2 representatives)  
Transport for London  
Sport England (x2 representatives)  
Education Funding Agency (x2 representatives)

### EVIDENCE SESSION 3

ASDA  
Peel Land & Property Group (x2 representatives)  
Indigo Planning

### EVIDENCE SESSION 4

Pocket Living  
Linden Homes (x2 representatives)  
Home Builders Federation  
Crest Nicholson  
Federation of Master Builders  
National Custom & Self Build Association (x2 representatives)  
Barratts Homes

### EVIDENCE SESSION 5

Dentons  
City of London Solicitors & The Law Society (x3 representatives)  
Dixon Searle (x2 representatives)  
British Property Federation (x2 representatives)

### EVIDENCE SESSION 6

Peabody Trust  
Cringford Parish Council  
Catalyst Housing





## A NEW APPROACH TO DEVELOPER CONTRIBUTIONS

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Ashford County Council  
Homes and Communities Agency  
Highgate Neighbourhood Forum (x2 representatives)

### EVIDENCE SESSION 7

Exeter authorities  
Greater Norwich Partnership  
Association of Greater Manchester Authorities (x2 representatives)  
Royal Borough of Kensington & Chelsea  
Wokingham Borough Council (x2 representatives)

### EVIDENCE SESSION 8

Newark and Sherwood District Council (x2 representatives)  
Preston City Council  
Kent County Council  
County Councils Network  
Bristol City Council  
Shropshire County Council



## APPENDIX 5: LOCAL INFRASTRUCTURE TARIFF – EXAMPLE RATES

Based on the statistics which are currently available (ONS House Price Statistics for Small Areas<sup>1</sup> and DCLG Live tables on Energy Performance of Buildings Certificates, covering 2015<sup>2</sup>), it is possible to estimate the average sale price per square metre of new build floor space. A per square metre charge based on 1.75% to 2.5% of the average sales price per square metre of new build property would range from:

- » £20 - £90 per m2 for Authorities in the North of England
- » £30 - £90 per m2 for Authorities in the Midlands
- » £30 - £220 per m2 for Authorities in the South and East of England
- » £50 - £440 per m2 for London Boroughs

These ranges are not estimated using the precise formula set out in the main body of the report (at paragraph 5.1.3) for reasons of data availability. However, the datasets we have used represent a broadly similar approach that illustrates the potential magnitude of rates which would be charged under a formula of this kind.

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1 <http://www.ons.gov.uk/peoplepopulationandcommunity/housing/bulletins/housepricestatisticsforsmallareas/yearendingdec1995toyearendingdec2015>

2 Table NB4 of <https://www.gov.uk/government/statistical-data-sets/live-tables-on-energy-performance-of-buildings-certificates>





