



LAND PROMOTERS & DEVELOPERS FEDERATION

Planning and Infrastructure Division  
Ministry of Housing, Communities and Local Government  
2nd floor, South East  
Fry Building  
2 Marsham Street  
London  
SW1P 4DF

31 January 2019

Dear Sir / Madam

**Consultation: Developer contributions reform: technical consultation**

The Land Promoters and Developers Federation (**LPDF**) is pleased to respond to the Government's consultation on reform of the Community Infrastructure Regulations 2010.

**Who We Are**

The LPDF was formed by a number of the country's leading land promoters and developers. The LPDF represents 17 organisations across the land promotion and development industry who have come together to speak with one voice on common issues relating to housing delivery.

LPDF members specialise in the promotion and development of land across the UK for residential-led development. Projects range in size from 100 new homes at the smaller end to 5,000-10,000 new homes, with supporting community facilities, employment and infrastructure, at the strategic end of the scale.

LPDF members work closely with public authorities; landowners (including private individuals; institutions; charities; public sector bodies and agencies); key stakeholders; local communities; and housebuilders to boost the supply of housing land and therefore new private and affordable homes across the UK.

The LPDF represents the views of the following organisations: Axis Land Partnerships, Ainscough Strategic Land Barwood Land, Catesby Estates, Gallagher Estates, Gladman Developments, IM Land, Landform Estates, Lands Improvement Holdings, Lone Star Land, Manor Oak Homes, Pigeon Investment Management, Ptarmigan Land, Richborough Estates, Rosconn Group, St Congar Land and Wates Developments.

**What We Do**

LPDF members work alongside the housebuilder sector providing "oven ready" land with planning consent that can easily be picked up and constructed by national and regional housebuilders to bring homes to the

market in a timely manner to meet local need. LPDF members have one common goal – to achieve planning consent and dispose of consented land in a timely manner.

Members invest in the promotion of this land through the planning system to achieve allocations and planning consents for new homes, with supporting infrastructure. The significant investment made by LPDF members during the planning promotion stage is at risk, and it is this willingness to take risk that sets LPDF members apart from many in the housebuilder sector.

### **Consultation Response**

The LPDF strongly supports the Government's objectives set out in the Housing White Paper of planning for the right homes in the right places, building homes faster, diversifying the market and helping people now.

As noted in our March 2018 response to the Developer Contributions consultation, LPDF members believe that the current methods of securing obligations and contributions from land promoters and developers through CIL, S106 Agreements and S278 Agreements work reasonably well, but there is scope for improvement through reform of these regimes.

We set out our responses to the consultation questions below and note wider reforms, which are needed to increase the efficiency and transparency of infrastructure funding.

#### **QUESTION 1: ARE THERE ANY ELEMENTS IN REGULATION 3 WHICH WILL PREVENT THE GOVERNMENT ACHIEVING THE POLICY INTENT?**

The LPDF welcomes efforts to simplify the CIL regime and ensure that the approach to adopting and adjusting CIL is proportionate. The decision to retain a single statutory consultation stage is supported.

The LPDF is concerned, however, that there should be a **minimum period**. Retaining, rather than deleting, the existing 4-week requirement under regulation 17(3) would better serve the overall policy objective. The Government is proposing a mandatory 4-week period for consultation on the revocation of a Charging Schedule (under the introduction of the new regulation 28A(d)(iii)(aa) under draft regulation (4).

Similarly, the range of representative **stakeholder bodies** currently required to be consulted under regulation 15(5) should be included for the new single stage consultation to ensure that participation is fair and effective.

In the longer term, the LPDF continues to believe that CIL-setting and Local Plan examination processes should be more fully and consistently aligned, to ensure that policies are known to be viable when set in line with the NPPF and PPG. It also believes that the range of measures noted in our response on Q34 of the March 2018 consultation remain important to achieve a more efficient CIL system, in particular the adoption of partial charging schedule reviews proposed in the November 2017 Budget.

#### **QUESTION 2: ARE THERE ANY ELEMENTS IN REGULATIONS 4 AND 12 WHICH WILL PREVENT THE GOVERNMENT ACHIEVING THE POLICY INTENT?**

The LPDF supports the abolition of pooling restrictions, which have caused difficulties in implementing locally-acceptable infrastructure funding and S106-led delivery routes. The changes will therefore help funding, speed up delivery and avoid the complexity and uncertainty caused by the restrictions.

As raised in the March 2018 consultation round, the LPDF supports the changes subject to the Government providing clear guidance (in the NPPG) that pooled contributions (other than major strategic allocation requirements) should only be sought outside CIL where there is an evidenced planning need for them which has been robustly tested at examination in public.

To avoid the changes in regulation 12 resulting in a proliferation of tariff-style S106 charges adopted without scrutiny through an EiP process, or imposition of burdens that will impact on delivery, **Government should be clear that development charges should not be adopted other than through an examined process** (i.e. CIL or Local Plans) unless authorities are prepared to accept that those charges will be adjusted for viability.

**QUESTION 3: ARE THERE ANY ELEMENTS IN REGULATION 7 WHICH WILL PREVENT THE GOVERNMENT ACHIEVING THE POLICY INTENT?**

The LDPF continues to strongly support the changes, in the form now proposed, in particular to assist small and medium housebuilders who may not have the expertise / experience to avoid CIL pitfalls.

**QUESTION 6: ARE THERE ANY ELEMENTS IN REGULATION 5 WHICH WILL PREVENT THE GOVERNMENT ACHIEVING THE POLICY INTENT?**

The definition of residential development for indexation purposes is left to charging authorities to set. This will create uncertainty and inevitably lead to the adoption of a patchwork of definitions nationally. There is also uncertainty about the treatment of mixed-use floorspace, which will further complicate CIL charging and collections.

**QUESTION 7: DO YOU HAVE ANY FURTHER COMMENTS IN RELATION TO THE GOVERNMENT'S PROPOSED APPROACH TO COMMUNITY INFRASTRUCTURE LEVY INDEXATION INCLUDING, FOR RESIDENTIAL DEVELOPMENT, THE APPROACH OF USING A SMOOTHED INDEX USING LOCAL HOUSE PRICES?**

The changes will significantly increase the complexity of the CIL calculation process, which already has the ability to absorb significant amounts of limited public sector administrative resource and create pauses in development programmes.

The changes fail the fundamental – and necessary – objective of reducing the complexity of CIL. The draft regulations would impose significant additional complexity by having three indices instead of one (BCIS, HPI and CPI), with each having a different reference dates and for HPI and a rolling three-year average index for each individual authority.

The LPDF is committed to delivering significant infrastructure investment to support the communities it is helping to grow. It believes that using indexation changes as a way to obtain greater revenue efficiency from CIL will be offset by the administrative complexity it will impose. It would be more efficient to (a) index CIL to a single, simple measure (such as CPI) but (b) allow partial reviews and (c) emphasise the importance of regular reviews of CIL in light of impacts on viability. Greater value capture can be achieved from CIL both on this basis and by changing the indexation point from the year in which permission was granted under regulation 40(5), to the date of a Demand Notice. To the extent that this requires primary legislation, Government should commit to this change rather than a short-term solution that will cut across the wider policy objectives of transparency and simplicity.

We also note that by linking CIL rates for residential development to house price indices, there is a possible perverse incentive for local authorities to accept restricted supply since this will result in higher prices.

**QUESTION 8: ARE THERE ANY ELEMENTS IN REGULATION 10 WHICH WILL PREVENT THE GOVERNMENT ACHIEVING THE POLICY INTENT?**

The LPDF strongly supports the regulation 10 changes, which could help communities to understand what the priorities are in terms of delivery, as well as the wider benefits of a development to a local area more broadly.

However, we would also argue that although these proposals attempt to bridge the gap in terms of communicating the infrastructure priorities for a local area more effectively, there is still nothing in these proposals, which helps more to link infrastructure development plans and lists with the commitment to build infrastructure, and with any more certainty of delivery.

**QUESTION 9: ARE THERE ANY ELEMENTS IN REGULATION 11 WHICH WILL PREVENT THE GOVERNMENT ACHIEVING THE POLICY INTENT**

Draft regulation 11 should refer to monitoring obligations rather than development. As drafted, the regulations suggest that the scale of a development (rather than the complexity of monitoring) is the driver for monitoring fee charges. This should be amended to ensure that local authority monitoring contributions remain an accurate reflection of the necessary level of monitoring required by individual schemes in line with *Oxfordshire County Council v Secretary of State for Communities and Local Government and others* [2015] EWHC 186 (Admin).

The draft regulations should reflect this.

**QUESTION 10: ARE THERE ANY ELEMENTS IN REGULATION 8 WHICH WILL PREVENT THE GOVERNMENT ACHIEVING THE POLICY INTENT**

The regulations are not the best place to identify income thresholds, which will change over time and will become out of date where secondary legislation is needed to amend them. The Government should consider publishing an annual update to the figures and noting that the Secretary of State will have a power to do so in regulation 8.

**WIDER REFORMS**

As noted in our March 2018 response to the Developer Contributions consultation, LPDF members believe that the following are urgently required to improve the CIL regime:

- (a) further simplification of the CIL Regulations;
- (b) a power (promised in the November 2017 Autumn Budget) to conduct partial reviews of charging schedules, to allow market responsiveness to changing patterns of infrastructure investment and market changes;
- (c) mandatory review of CIL charges where monitoring shows that contributions and affordable housing yield are falling below planning policy requirements / Local Plan assumptions;

- (d) reform of CIL for strategic sites, allowing CIL Agreements to be used to:
  - (i) maintain the overall CIL burden for a site (and preserve the procedural basis for CIL notifications and enforcement under the Regulations)  
  
but
  - (ii) contractualise phasing, indexation and offsetting of liability without relying on the CIL Regulations (which can work well for simple schemes, but are not fit for purpose for complex multi-phase development)
  - (iii) allow for works in kind by agreement.

We look forward to any opportunity to discuss these wider reforms with Government.

Yours sincerely

Aoife Conacur

**Land Promoters and Developers Federation**

Cc: Mr Roy Pinnock - Dentons