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| <b>Meeting:</b>     | NuLeAF Steering Group, 15 October 2009  |
| <b>Agenda Item:</b> | 6   |
| <b>Subject:</b>     | Implications of the Community Infrastructure Levy   |
| <b>Author:</b>      | Fred Barker   |
| <b>Purpose:</b>     | To report on the implications of detailed proposals for the Community Infrastructure Levy for Community Funds associated with radioactive waste management developments |

## Introduction

The Government has published its detailed proposals for the Community Infrastructure Levy (CIL), with a deadline for comments of 23 October 2009 ([CIL consultation document](#)). The proposals explain that:

- The CIL will apply to most types of new development and will be based on simple formulae which relate the size of the charge to the size and character of the development. The proceeds can be spent on local and sub-regional infrastructure.
- The facility to enter into a planning obligation will remain when the CIL is introduced to ensure that the specific impacts of a development can be mitigated, but Government proposes to introduce restrictions on its use.

This report addresses two questions for radioactive waste management development:

- Can the CIL be applied?
- Will the restrictions on planning obligations affect the scope for establishing and using Community Funds (see NuLeAF Briefing Paper 16 for current practices [BP16](#))?

## Recommendation

That the Steering Group agree to delegate authority to the Chair and Executive Director to respond to the consultation, taking into account discussion at the SG, and the views of the LGA and Planning Officer Society on the wider issues associated with the CIL proposals.

## Contribution to Achieving Strategic Objectives

The recommendation is relevant to the following NuLeAF objective: to seek to ensure that a consistent, proportionate and transparent approach can be taken to the establishment of Community Funds associated with key radioactive waste management facilities.

## 1 Can the CIL be applied to Radioactive Waste Management Developments?

The key features of the proposals are:

- The CIL will be levied on buildings, rather than development more generally
- Charges will be in terms of pounds per square metre of gross internal floor space (reflecting the liveable and usable space available)
- Charges will not be levied on buildings of less than 100 square metres internal floor space
- There must be an up-to-date development plan for an area before a CIL may be charged
- Charging authorities are district councils in two-tier areas
- The charging authority must prepare a charging schedule for consultation and public examination
- The charging schedule should identify a total target amount of funding intended to be raised from the CIL, and allocate proposed amounts to be raised to each of the main classes of development envisaged in a development plan
- The charging schedule must be informed by the development plan, infrastructure planning (consistent with PPS12) and a broad assessment of potential impact on the economic viability of development
- Differential CIL rates can be charged by (a) geographic zones or (b) class of development
- Exemptions from the CIL (eg for charities) will be minimised

With regard to applicability, the proposals explain that:

- If the development is not a building it cannot be charged (eg roads, railways, pipelines, cables and wind turbines) (para 4.3)
- CIL will be charged on most types of residential, commercial and industrial buildings, but buildings into which people do not normally go are likely to be exempt eg an electricity sub-station (para 4.5)
- Although, for example, a quarry would not be liable to the CIL, associated buildings would be (para 4.8)
- The government will use its regulatory powers to provide a more detailed definition of development for CIL purposes (para 4.4)

Whether, *in principle*, a charge can be levied on a radioactive waste management development therefore appears to hinge on three key questions:

- Is a building part of the development?
- Does the building provide more than 100 square metres of internal floor space?
- Will the building be used sufficiently by people to have a bearing on infrastructure planning?

These questions would have to be asked on a case-by-case basis for treatment plant, storage buildings and disposal facilities. It appears likely that positive answers to these questions could apply to some radioactive waste management developments.

One example is a Geological Disposal Facility, where the surface buildings are likely to meet the criteria above. In this case, however, the major part of the development (the underground works) would be excluded from the scope of the CIL, so that the charge would not be in proportion to the likely infrastructure impacts.

Whether, *in practice*, a charge could be levied on a radioactive waste management development is also likely to depend on the following questions:

- Are radioactive waste management facilities included within a class of development in the local development plan?
- Is the relevant class of development included in the charging schedule?
- Does the proposed charge for the relevant class of development significantly impact on its economic viability?

Note also that the consultation document poses the following question:

*Q22 Do you agree with the chosen definitions of building, planning permission and first permit? If not, what changes would you wish to see that strike the right balance between simplicity, fairness and minimising distortions?*

The CIL proposals are currently being discussed within local government. Issues under discussion include:

- Whether some developments that are not defined as buildings (eg a disposal facility), but that could have a significant bearing on infrastructure planning, should be included within the scope of the CIL proposals.
- Whether the definition of building is too restrictive.
- Whether a better basis for a CIL can be identified eg the fee structure for planning applications.

If available, a verbal update on these discussions will be provided at the SG meeting.

## **2 Will the restrictions on planning obligations affect the scope for establishing and using Community Funds?**

The Government plans to retain the facility for a local authority to negotiate a planning obligation because an obligation can ensure that the specific impacts of a development are mitigated, thereby allowing planning permission where it would otherwise be refused.

However, the Government wishes to clearly distinguish between the provisions for CIL and planning obligations. It is also concerned that case law has made it possible for local authorities to seek benefits or contributions through planning obligations which have little connection to a development (para 1.26). Government therefore proposes to restrict the use of planning obligations to those matters necessary to facilitate the granting of planning permission ie “direct impact mitigation”.

Referring to case law that indicates that the policy tests for planning obligations are simply guidance and not binding, Government proposes to move these tests into law (“to remove any latitude recognised by present case law”). The tests are that the obligation should be:

- Relevant to planning
- Necessary to make the proposed development acceptable in planning terms
- Directly related to the proposed development
- Fairly and reasonably related in scale and kind to the proposed development and
- Reasonable in all other respects.

Government also suggests a further test to ensure that any use of planning obligations addresses planning impacts “solely” caused by a development (p137).

It is not necessarily the case that these restrictions will impact substantially on the potential for using planning obligations to establish a Community Fund associated with a radioactive waste management development. Clearly, it will be important to ensure that a Fund can be justified in terms of the impacts of the development, which could include aesthetic, environmental and socio-economic impacts, in addition to infrastructure impacts. The Fund would also have to be used to address these impacts, rather than be spent on broader socio-economic and infrastructure projects. Such uses may be more restrictive than current practices.

It should be noted that the consultation document poses the following questions:

*Q43 What do you think about the Government’s proposals ... to scale back the use of planning obligations?*

*Q44 Do you think the wording of the 5 tests ... is appropriate? Is each of the 5 tests meaningful and workable in practice or could any be expressed in a better way?*

*Q48 Do you think the Government’s proposals to provide an additional legal criterion to restrict the use of planning obligations to address planning impacts ‘solely’ caused by a CIL chargeable development is workable in practice? If not, please state why not. Can you think of an alternative wording that would have the same or similar effect?*

### **3 Preliminary Conclusions and Next Steps**

The preliminary conclusions in this report are:

- it is likely that the CIL could in principle be applied to some radioactive waste management developments, but the size of the charge would not always be in proportion to the implications of the development for infrastructure planning; and
- it is likely that the restrictions to be placed on planning obligations could affect the breadth of projects that can be funded using Community Funds established through such obligations.

The Government’s proposals are currently being discussed within local government circles. It is recommended that the SG agree to delegate authority to the Chair and Executive Director to respond to the consultation, taking into account discussion at the SG, and the views of the LGA and Planning Officer Society on the wider issues associated with the CIL proposals.

Once Government decisions have been made on the final form of the CIL and on the scaling back of planning obligations it will also be necessary to revise NuLeAF Briefing Paper 16.