

**Shelter's response to the
Department for Communities
and Local Government's –**

**Detailed proposals and draft
regulations for the
introduction of the
Community Infrastructure
Levy**

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Shelter

Shelter is a national campaigning charity that provides practical advice, support and innovative services to over 170,000 homeless or badly housed people a year. This work gives us direct experience of the various problems caused by the shortage of affordable housing across all tenures. Our services include:

- A national network of over 20 advice centres
- Shelter's free advice helpline which runs from 8am-8pm
- Shelter's website which provides advice online
- The Government-funded National Homelessness Advice Service, which provides specialist housing advice, training, consultancy, referral and information to other voluntary agencies, such as Citizens Advice Bureaux and members of Advice UK, which are approached by people seeking housing advice
- A number of specialist projects promoting innovative solutions to particular homelessness and housing problems. These include housing support services, which work with formerly homeless families, and the Shelter Inclusion Project, which works with families, couples and single people who are alleged to have been involved in anti-social behaviour. The aim of these services is to sustain tenancies and ensure people live successfully in the community.
- A number of children's services aimed at preventing child and youth homelessness and mitigating the impacts on children and young people experiencing housing problems. These include pilot support projects, peer education services and specialist training and consultancy aimed at children's service practitioners.
- We also campaign for new laws and policies - as well as more investment - to improve the lives of homeless and badly housed people, now and in the future.

Introduction

As an organisation representing people in housing need a key part of our work is focused on ensuring that government policy and practice is geared towards increasing the delivery of new homes, most critically affordable homes. While Shelter supports the concept of a Community Infrastructure Levy (CIL), and the principle that communities share the benefit of planning gain, we do have serious concerns with aspects of the consultation document and draft regulations that may adversely affect the delivery of affordable housing. Our key areas of concern are:

- That there is no clear proposal for an exemption or significant discount from CIL for affordable housing
- The possible negative impact of CIL on the delivery of affordable housing through planning obligations, and the need for affordable housing delivered through section 106 agreements to have first call, ahead of CIL, on developer contributions
- The lack of a clearly articulated risk management strategy to protect the continued delivery of affordable housing through planning obligations.

Shelter, along with the National Housing Federation (NHF) and the Chartered Institute of Housing (CIH), has consistently highlighted concerns about the possible negative impact of CIL on the delivery of affordable housing and advocated for protections to be built into both the Planning Act and CIL regulations.

We remain concerned that, despite Shelter, the NHF and the CIH actively seeking to resolve numerous issues over the last 18 months, the consultation document does not outline clear proposals on the application of CIL to affordable housing. This is especially disappointing given the intention that the CIL regulations will come into force by 6 April 2010, which will give only a limited period of time between the end of the consultation and finalising the regulations to address these outstanding issues.

Recommendations

Given Shelter's interests we have focused our comments on the consultation document on an exemption/ discount from CIL for affordable housing, planning obligations and the CIL metric. We recommend that:

- There is an exemption from CIL for affordable housing. This exemption should apply to the type of housing that is being developed, rather than the developer
- The exemption for affordable housing should apply nationally, rather than being left to the discretion of the individual local authorities

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- Affordable housing should remain in the definition of infrastructure so that local authorities can use CIL funds for affordable housing should delivery be reduced in their area due to the introduction of CIL
- The Department of Communities and Local Government (CLG) develop a definition of affordable housing that includes low cost homes and affordable homes developed without grant funding
- There should be no clawback on low cost homes where the receipts from sales of these properties are recycled
- CLG give greater consideration to how the proposed CIL metric may affect the type and quality of the housing stock that is built, and how protections could be built into the CIL regime to ensure that the design and size of new homes are not adversely affected by the CIL metric
- The CIL regulations must ensure that developers pay for section 106 contributions prior to paying CIL
- In addition to reviewing quantitative data sources, we want to see qualitative monitoring of the impact of the introduction of CIL in order to understand the impact this policy change has on the delivery of affordable housing through section 106 agreements
- We support moving the circular 5/05 tests into law and we have no objection the proposals to remove tests (a) and (e).

1. Exemptions from CIL for affordable housing

Questions:

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

What do you think the likely consequences of providing such a discount might be?

Shelter believes that there must be an exemption from CIL for affordable housing. This exemption should apply to the type of housing that is being developed, rather than the developer. For example, a private builder developing a mixed tenure site should be exempt from CIL for the affordable homes that are built as part of the scheme but pay CIL on any market homes.

In addition, the exemption should apply nationally, rather than being left to the discretion of individual local authorities. We consider a national exemption to be critical as it will provide predictability and certainty for developers, which is one of the key objectives of introducing CIL. If individual authorities are able to determine whether they apply an

exemption or not there is a real risk that this could result in significant disincentives for developers to build affordable homes in areas that do not provide an exemption even if there is housing need in those areas.

We consider that an exemption, rather than a discount, is necessary for affordable housing. Given the commitment to providing charitable organisations with an exemption from CIL it seems inconsistent to not extend this provision to new affordable housing development, which like the work of charities serves an essential public good. The Government previously stated the intention that the charitable exemption would apply to charitable organisations providing affordable housing. However, despite these assurances the consultation document casts significant doubt over whether housing associations with charitable status would be eligible for such an exemption.

While there were concerns about the fact that a charitable exemption could create an uneven playing field between charitable and non-charitable housing associations, not having any form of exemption for affordable housing is extremely worrying and makes it more critical that an exemption that applies to all affordable housing development is provided elsewhere in the CIL regulations.

The advantages of providing a reduced rate of CIL for affordable housing are clearly presented in the consultation document, such as ensuring development goes ahead or in some cases enabling more affordable homes to be built. However, an exemption would not only confer advantages but would also mitigate the significant risks to affordable housing delivery.

Funding for affordable housing, including some development secured through section 106 agreements, relies not only on private finance but also on subsidy from social housing grant. In the current economic climate, developers need higher levels of grant to fund affordable housing as development finance is more expensive and harder to secure. Within this context placing an additional charge, such as CIL, on affordable housing will push new development to the margins of viability and compromise government efforts to prioritise the provision of new affordable homes. Over the longer term constrained public finances could result in reduced public funding for affordable housing and in such circumstances having to pay CIL, as well as make up funding shortfalls, could see fewer affordable homes being built.

Private developers will also be affected if there is no exemption from CIL for new affordable housing because they deliver a significant amount of affordable housing, primarily through section 106 agreements. Affordable homes delivered as a result of planning obligations are built by private developers and then transferred to a registered social landlord (RSL) and in such cases the CIL charges will have to be met by the developer at the commencement of development. The consultation document does not

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acknowledge this situation explicitly, the fact that private developers will need to meet this extra cost, or that this cost may get passed on when the affordable homes are transferred to RSLs.

Developers may also feel that they are 'paying twice' where they are required to develop affordable homes and then pay CIL on those homes. This is despite the requirement for CIL charging authorities to take account of likely planning obligations such as affordable housing in setting the level of the levy. In such cases, given that the CIL will be a fixed charge but planning obligations will still be negotiated there is an inherent risk that the level of affordable housing to be delivered is negotiated downwards as a way of managing development costs, including the need to pay CIL on affordable homes. An exemption from CIL for affordable housing, regardless of who builds the homes, would mitigate this risk.

Response to 'disadvantages' of providing an exemption/ discount from CIL for affordable housing

It has been argued, including in the consultation document, that affordable housing should not be exempt from paying the CIL because affordable homes also create infrastructure needs. Housing development does impact on the level and type of infrastructure that is needed in a particular area. However, Shelter would argue that affordable housing should be treated differently from other forms of housing as it is in itself community infrastructure. This point is currently supported by the Planning Act, which includes affordable housing in the definition of infrastructure for the purpose of the CIL.

Given this, we are concerned to see that the draft regulations amend the definition of infrastructure to ensure that CIL cannot be used to fund affordable housing. Affordable housing had been added to the definition of infrastructure for CIL purposes as a fallback should the introduction of CIL have a negative impact on the delivery of new affordable homes through section 106 agreements. As the consultation document and draft regulations provide no concrete proposals to address the identified risks to affordable housing delivery as a result of the introduction of CIL, we believe that affordable housing should remain in the definition of infrastructure so that local authorities can use CIL funds for affordable housing should delivery be reduced in their area due to CIL.

Another criticism of exempting affordable housing from the CIL (particularly an exemption for housing associations with charitable status) is that it would confer a competitive advantage onto the exempt parties. Any such risk could be mitigated by connecting the exemption to the type of development rather than the developer, which could also provide an incentive for a greater range of private and social developers to build new affordable homes.

It has also been suggested that an exemption from CIL would not reduce delivery costs for developers of affordable housing, or result in reductions in public subsidy, because the value of the exemption is likely to disappear into the price paid for the land for the affordable homes. Our primary intention in calling for an exemption from CIL for affordable homes is not to reduce the cost of development, but to avoid additional costs that could compromise the viability of building new affordable homes and affect the ability to meet housing targets. As noted above, we consider this to be critical given the risk of restrictions in future government spending, including on the National Affordable Housing Programme, and to enable funding that would otherwise be used to pay CIL to be invested in affordable homes.

We are not convinced that an exemption for affordable housing would automatically be absorbed by the cost of purchasing land. There are a range of factors that will determine the price that developers will have to pay for land, of which CIL or an exemption from CIL, will only be one. Factors such as the prevailing economic climate, condition of the land, and whether the land has planning permission (which are not affected by the CIL charge) are likely to have a greater influence on the price that is negotiated for land.

The consultation document highlights that a CIL exemption could potentially be exploited. We do not agree that providing an exemption from CIL for affordable housing would create a significant risk of CIL avoidance by enabling developers to build affordable homes that are CIL exempt and then quickly converting these to market housing. We understand that this concern is focused on low cost homes rather than social rented homes. Government administered low cost home ownership schemes have strict assessment criteria and affordability assessments to ensure that households that access these schemes are not capable of buying on the open market and can afford the costs of entering into shared home ownership.

While there is no official record of the number of households in shared ownership/ equity properties who have staircased up there is data that demonstrates that progressing up the property ladder through shared ownership schemes is unlikely to be a swift process. For example, in 2007/08 around fifty per cent of New Build HomeBuy sales were for an equity stake of between forty five and fifty four per cent. A majority of the remaining sales were for equity stakes between twenty five and forty four percent.¹ Given that an owner's equity stake is determined by their ability to meet their combined mortgage/ rent costs, this data does not suggest that those entering into the New Build HomeBuy scheme are in the financial position to staircase swiftly to full ownership.

¹ CORE Annual Digest 2007/08.

Definition of affordable housing for CIL purposes

Question:

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

We acknowledge the Government's concerns that the mechanism for an exemption/ discount from CIL should not be used as a CIL avoidance mechanism and that to ensure that this does not happen there is a need to establish a clearly applicable definition for affordable housing.

The proposed definition of affordable housing which requires an affordable home to have the benefit of public funding in order to qualify for an exemption from CIL will not work where a home has been built without grant funding. As noted in the consultation document, this may affect areas of innovation in affordable housing delivery.

Such a restriction would also mean that affordable homes delivered through section 106 agreements without social housing grant would not qualify for an exemption. In 2007/08, 8,220 additional new build homes in England were provided through section 106 agreements without grant funding.² This is a significant number of homes that would be excluded from the proposed definition of affordable housing, and any such exclusion is likely to negatively impact on the number of affordable homes that developers agree to build through section 106 agreements.

Due to the economic downturn's impact on the ability to access development finance new models and sources of funding are being sought to support affordable housing development over the long term. Innovative practice, such as attracting greater private investment into housebuilding across all tenures, is being actively promoted by the Government through the work of the Homes and Communities Agency. It would be a concern if this necessary innovation was stifled because the funding arrangements, rather than the actual use of the property, meant that affordable housing development was not exempt from CIL. As such we would encourage CLG to identify whether there is any way in which affordable homes developed without grant funding could fall within the definition of affordable housing.

² Department for Communities and Local Government, Table 1000, Live tables on Affordable Housing Supply, <http://www.communities.gov.uk/housing/housingresearch/housingstatistics/housingstatisticsby/affordablehousingsupply/livetables/>.

Question:

If the proposed definition provides a workable basis for any reduced rate of CIL for affordable housing, should CIL relief for charities building affordable housing be applied according to this definition or according to whether it fulfils the charity's charitable purpose?

Yes, the same definition of affordable housing should apply to any organisation receiving an exemption or discount from CIL regardless of the organisation's status.

Treatment of LCHO properties exempt from CIL

Question:

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

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

In principle, we are not against a CIL clawback provision for LCHO properties that are staircased where receipts are not recycled, particularly as this could be used to protect against the risk of CIL avoidance. However, this provision would be quite difficult to administer and any timeframe is likely to be arbitrary given that there is no data available on households that have staircased to full ownership on which to base any time limit.

There should be no clawback on LCHO properties where receipts from affordable housing are recycled.

'Discretionary relief' from CIL and 'exceptional circumstances'

We do not consider that a discount or exemption for affordable housing delivery should be delivered through an 'exceptional circumstance' or 'discretionary relief' mechanism. The primary reason for this is that we believe that there should be a clear and consistently applied exemption from CIL for all affordable housing (as outlined above) at a national level rather than one that is administered by individual charging authorities. As affordable housing is a common component of housing developments it would be anomalous to use this mechanism for a discount/ exemption for affordable housing as it would be used frequently rather than in exceptional circumstances.

The CIL Metric

Do you agree that CIL charges should be based on a metric of pounds per square metre?

We appreciate that there will be advantages and disadvantages of any metric used to charge CIL. While the proposed metric of a charge per square metre of development has clear advantages in that it will be efficient for charging authorities to administer, the potential disadvantages of this approach are not clearly outlined in the consultation document.

Shelter considers that there is a risk that the proposed per square metre metric will provide an incentive to build smaller homes. We are already in a situation where housing need has been exacerbated because of the failure to build enough of the right type of homes. Of the new homes completed in 2008/09, twenty four per cent had three bedrooms and seventeen per cent had four or more bedrooms, compared to thirty six per cent and thirty per cent in 1998/99 respectively.³ With 565,000 households in overcrowded accommodation in England, there is a desperate need for more family sized homes to be built⁴.

The proposed metric could also result in a reduction of space standards in new homes. The average size of a newly built home in the UK is only 76 m² compared with the 109 m² and 88 m² in Ireland.⁵ It is vital that newly-built dwellings meet the living needs of the households for which they are designed. For example, all new dwellings should have enough space for the occupants to sit at a table together to eat meals; entertain friends and family; store their belongings; and accommodate equipment now seen as essential to modern life – television, computer, washing-machine etc.

Homes intended for growing families must provide enough inside and outside space for children to play and study; for the storage of pushchairs, bicycles, toys, books and other essential childhood equipment; and for all members of the household to feel they have some opportunity of peace and privacy.

The consultation document ruled out the possibility of using a per dwelling metric for CIL (although this is the metric used to determine a developer's affordable housing contributions under section 106 agreements) because this would incentivise developers to build larger dwellings. Shelter recognises that there is no perfect metric but we would like

³ Department of Communities and Local Government housing live tables, Table 254

⁴ Department for Communities and Government, Survey of English Housing Preliminary Report 2007/08.

⁵ GLA, *Housing Space Standards*, HATC Limited, 2006.

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to see greater consideration of how the proposed metric may affect the type and quality of the housing stock that is built, and how protections could be built into the CIL regime to ensure that the design and size of new homes are not adversely affected by the CIL metric.

Planning obligations

The impact of the introduction of CIL on affordable housing delivered through planning obligations

As noted earlier in this response we remain seriously concerned about the possible negative impact of the introduction of the CIL on the level of affordable housing that is provided through planning obligations. We do not want to see a situation arise where affordable housing delivery through planning obligations is squeezed because this is the only negotiable contribution from developers.

We are not reassured by the fact that the consultation document stipulates that a CIL charging authority should take account of likely planning obligations such as affordable housing in setting the level of CIL. It is logical that the CIL charge should be set at a level that is sensitive to both the affordable housing targets in a local authority area and expectations of how many affordable homes developers will provide through planning obligations. However, the assumptions underpinning the calculation of a CIL charge may change over time and affect both viability of development and the amount of affordable housing that a developer is willing to negotiate. One such assumption which is likely to change is the level of public subsidy that is put into affordable housing (either delivered through a section 106 agreement or otherwise). If levels of public subsidy for affordable housing do reduce, but CIL charges remain the same or increase, there are two possible outcomes: either the scheme as a whole becomes unviable, or the number of affordable homes delivered through planning obligations is renegotiated downwards.

Shelter believes that to ensure that the risks to the delivery of affordable housing do not become reality the CIL regulations must provide an exemption from CIL for affordable housing as well as ensuring that developers pay for section 106 contributions prior to paying for CIL. We have promoted the latter proposal for some time, but note that it has not been discussed in the consultation document.

Monitoring the impact of CIL on affordable housing

In October 2008, Baroness Andrews committed officials to preparing a comprehensive risk management strategy to ensure that the implementation of the CIL does not negatively impact on planning obligations for affordable housing. We have seen no

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evidence that this strategy has been developed, and there is no discussion of it in the consultation document.

We are disappointed that more effort has not gone into trying to model the possible impact of CIL on affordable housing planning obligations. Shelter has consistently called on CLG to model different levels of CIL, grant funding and affordable housing targets on real developments to test the impact of CIL on development, particularly affordable housing delivery. If this work had been undertaken it would have provided a more thorough information base for the regulations' impact assessment, informed discussion of a CIL exemption for affordable housing, and made it easier to develop and implement a risk management strategy.

The consultation document suggests using the Housing Strategy Statistical Appendix to monitor the provision of affordable housing funded by developer contributions. While this data source will provide critical information, on its own it will not be sufficient to monitor and explain how affordable housing planning obligations are being affected by the introduction of the CIL. Relying on this one source to gauge the impact of CIL on section 106 agreements could result in lag times (possibly of years) between identifying a critical issue with delivery and amending the necessary regulations (including the definition of infrastructure) to remedy these issues. Any such delays could have significant effects on the number of new affordable homes that are delivered.

In addition to reviewing quantitative data sources, we would also expect to see qualitative monitoring of the impact of the introduction of CIL in order to understand how these significant policy changes may be changing practice among all stakeholders, including local authorities and developers, particularly in regard to the negotiation of section 106 agreements.

Questions

What do you think about the Government's proposal as set out in draft regulation 94 to scale back the use of planning obligations?

If local authorities wish to secure contributions from developers to fund infrastructure development the proposed scale back of planning obligations will effectively make the introduction of CIL compulsory. As such it is critical any changes to CIL and planning obligations are clarified as soon as possible and are brought forward together so that there is no uncertainty for planning authorities regarding how planning obligations will operate.

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

We support moving the circular 5/05 tests into law, especially given the reassurance in the consultation document that this change will not affect the provision of affordable housing through planning obligations. In principle, we also have no objection the proposals to remove tests (a) and (e).

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

The circular will need to explicitly state how affordable housing delivered through planning obligations will be managed once CIL is introduced.

Conclusion

Shelter remains seriously concerned about the risks that the introduction of CIL presents to the delivery of affordable housing. Given existing and predicted future levels of housing need, and the Government's commitment to delivering new affordable homes, we do not believe that the 'wait and see' approach to assessing the impact of CIL on affordable housing development proposed by this consultation is tenable.

We consider it critical that, at the very least, affordable housing should be exempt from CIL and that affordable housing delivered through planning obligations has first call on developer contributions. Without building these protections into the regulations from the outset and a robust risk management and monitoring strategy, we fear that it may be years before any effective remedy could be put in place to safeguard the delivery of affordable housing. Given these concerns we believe that the onus is on CLG to include concrete proposals for the protection of affordable housing, in line with the recommendations in this response, in the final CIL regulations.

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