Levelling Up and Regeneration Bill - The New Infrastructure Levy

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Perhaps the most technically ambitious of the Government's planning reforms announced last week is the new Infrastructure Levy (IL) to replace the current under-performing Community Infrastructure Levy (CIL). In this piece, we take a closer look at the Government's IL proposal as a *'simple, mandatory and locally determined levy'* and any possible implications for the retained role of s.106 agreements.

1. **Meaning of 'Infrastructure'**

Although not clearly defined within the Bill, the current understanding of 'infrastructure' (that includes, for example, roads, schools and medical facilities) will presumably continue to be relevant. As it stands, the IL has substantial similarities with the CIL and is equally intended to ensure that costs incurred by local authorities in supporting the development of an area are covered, partly or wholly, by the relevant developers. Until more guidance is given on this point, the current position places more onus on the local authorities to calculate the charge in a locally sensitive way.

2. **How is it different from the CIL?**

- A key difference is that the IL rates will be set as a percentage of the *final gross development value,* as opposed to the current system which is based on floor space. This means the IL will act more like a traditional tax and allow for greater use of land value capture. Local authorities will also be able to set different rates within their area which will apply above set minimum thresholds.
- While the CIL was intended to be discretionary, the IL is a mandatory scheme. The Secretary of State has the power to set a deadline for the introduction of IL within a charging authority's area.
- The IL will apply nationally except for Wales where the CIL will continue to apply. Mayoral CIL will also remain for Greater London.

3. **Implications for 'infrastructure' delivery**

CIL is riddled with complexities and inconsistency in its application. To correct the errors of the past the IL will require close collaboration with the industry and we welcome the suggestion of a pilot programme as the Government determines a workable system of developer contributions. We therefore applaud the Government's 'Test and learn' approach, which will see the IL rolled out nationally over several years while practical lessons are garnered to create the most effective system possible. The Bill also creates room for including infrastructure providers in the preparation of strategies for delivering local infrastructure.

Furthermore, although the Bill grants powers to curtail the use of s.106, the Government has also made clear that s.106 will have a retained role in the planning process (to be detailed further in the regulations). This will be seen in the delivery of infrastructure integral to the operation and physical design of a site such as flood risk mitigation. S.106 agreements will also be particularly relevant for larger sites where infrastructure may be negotiated and provided in kind - as long as the value of the infrastructure is not less than that of the IL. This seems to imply a flexible, top-up system where, for example, the difference in value between built infrastructure and the IL will be paid if that of the former is less than that of the latter. Our hope is that, by learning from mistakes of its predecessor, the IL will create greater certainty and successfully deliver timely infrastructure without limiting the pace and scale of development.

We also eagerly await further details around how the IL is to potentially replace planning obligations for the delivery of affordable housing.

If you would like to discuss how these proposals may affect your business please contact Andrew Morgan.

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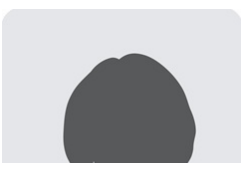

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