

Reforming developer contributions: Technical consultation on draft regulations – response to consultation from Horsham District Council

Thank you for the opportunity to comment on the '*Reforming developer contributions: technical consultation on draft regulations*'. This response sets out the views of Horsham District Council in response to the questions posed in the consultation document.

(Further details of the proposals are contained within Appendix A at the end of this document and a copy of the draft regulations is provided at Appendix B).

REDUCING COMPLEXITY AND INCREASING CERTAINTY:

Ensuring consultation is proportionate:

Q1: Are there any elements in regulation 3 which will prevent the Government achieving the policy intent?

Answer:

Horsham District Council supports the proposed changes to the consultation process which will reduce the time taken to introduce or revise a charging schedule and there are no elements in regulation 3 which will prevent the Government achieving the policy intent.

General comments:

Potential error in proposed paragraph (1B) of Regulation 16 ("drafting" should read "draft").

Removing the restriction which prevents local authorities using more than five section 106 obligations to fund a single infrastructure project ("the pooling restriction"):

Q2. Are there any elements in regulation 4 and 12 which will prevent the Government achieving the policy intent?

Answer:

There are no elements in regulations 4 and 12 which will prevent the Government achieving the policy intent.

Horsham District Council supports the Government's proposal to lift pooling restrictions altogether and to allow local authorities to use both the Levy and S106 planning obligations to fund the same item of infrastructure, both of which will help deliver infrastructure more effectively and quickly. This will also prevent otherwise acceptable development being refused as a result of the restriction.

In terms of incentivising continued use of the CIL, and specifically the requirement for charging authorities to consult on ceasing to charge, it is our view that guidance should be provided that sets out the circumstances in which it would be inappropriate to cease charging the Levy. Guidance on the weight to be attached to any representations received in response to a consultation on ceasing to charge would also be welcomed.

A more proportionate approach to administering exemptions:

Q3. Are there any elements in regulation 7 which will prevent the Government achieving the policy intent?

Answer:

There are no elements in regulation 7 which will prevent the Government achieving the policy intent.

Horsham District Council supports the Government's proposal to introduce a smaller, more proportionate penalty for failing to submit a Commencement Notice and welcomes the proposed amendment to the regulations to accurately reflect the Government's intention regarding the submission of a Commencement Notice in circumstances where self-build extension exemption has been granted.

General comments:

It is our view that residential extensions should be exempt from the Levy altogether to further simplify the approach to administering exemptions and to reduce the administrative burden they create for charging authorities with no, or little, financial return.

Extending abatement provisions to phased planning permissions secured before the introduction of the CIL ('balancing'):

Q4. Are there any elements in regulation 13 which will prevent the Government achieving the policy intent?

Answer:

There are no elements in regulation 13 which will prevent the Government achieving the policy intent.

Horsham District Council welcomes the clarification provided by the proposed amendments to the regulations, which will remove the limitation on the way in which abatement can be used for developments first permitted before a charging authority implemented the Levy, meaning negative CIL liabilities in one phase of transitional cases can act as a potential future credit against a liability created in another phase of the development, rather than reverting to zero.

Applying indexation where a planning permission is amended:

Q5. Are there any elements in regulation 6 which will prevent the Government achieving the policy intent?

Answer:

There are no elements in regulation 6 which will prevent the Government achieving the policy intent. Horsham District Council welcomes the clarification provided by the proposed amendments to the regulations which will provide clarity as to the point at which the levy is indexed in cases where a section 73 application is permitted.

INCREASING MARKET RESPONSIVENESS:

Indexation of Community Infrastructure Levy rates:

Q6: Are there any elements in regulation 5 which will prevent the Government achieving the policy intent?

Q7: Do you have any further comments in relation to the Government's proposed approach to CIL indexation including, for residential development, the approach of using a smoothed index using local house prices?

Answers:

Q6. The draft regulations define the "local HPI index" as "*the index for the local authority area in which the development is located in the UK house price index published from time to time by the Office for National Statistics.*"

However, locating the indices is not as straightforward as this definition suggests, as the Office for National Statistics (ONS) website advises that data at the local authority level is found in the "main publication of the UK House Price Index published by HM Land Registry".

The need to navigate between multiple websites to obtain the relevant figures could lead to confusion and uncertainty for charging authorities and applicants/agents making use of the proposed approach.

It is therefore our view that guidance should be provided on the exact location of the indices to be used, to be read in conjunction with the definition of "local HPI index" within the regulations.

Whilst regulation 5 does not prevent the Government achieving the policy intent of increasing market responsiveness, the method for carrying out the proposed approach should be set out clearly so as to avoid its misapplication, or the resultant figures being challenged as a consequence of uncertainty surrounding the source of the data.

Q7. We would comment that using a smoothed index seems a sensible approach that will help address instability in the House Price Index, however we are of the view that further clarity is required as to at what time a charging authority should apply indexation to its rates.

In this regard, the draft regulations are worded in a similar manner to the current regulation 40, which requires the calculation of the chargeable amount to use "the index figure for the year in which planning permission was granted", (the "index figure" being the figure for 1st November for the preceding year"). In the case of the local HPI and CPI, the index figures would be the figure for the relevant preceding July(s) and September respectively.

However, the word 'year' is not defined in the regulations and it is therefore unclear whether this refers to a calendar year or financial year.

It is therefore also not clear on which date the indexation should be updated. For example, some charging authorities update their index on 1st January each year, some at the start of the financial year, some on the anniversary of the charging schedule and others on the issue of each liability notice, taking the figure for the preceding November in each case.

The proposed amendments to regulation 40 present an opportunity to further clarify this element of the legislation either through regulations, or additional guidance.

General comments:

Having multiple indices will potentially cause difficulties for charging authorities in terms of the various software systems that are in place to manage CIL.

IMPROVING TRANSPARENCY AND INCREASING ACCOUNTABILITY:

Removing regulation 123 restrictions and introducing Infrastructure Funding Statements:

Q8: Are there any elements in regulation 10 which will prevent the Government achieving the policy intent?

Answer:

There are no elements in regulation 10 which will prevent the Government achieving the policy intent.

Horsham District Council welcomes the removal of the restrictions on section 106 planning obligations set out in regulation 123 and supports the replacement of the list of infrastructure required by regulation 123 with the requirement to publish an annual Infrastructure Funding Statement.

General comments:

1. The Government is proposing to produce a data specification and tools to help local authorities collect data for their Infrastructure Funding Statements.

It is recognised that the data provided in Infrastructure Funding Statements needs to be consistently reported, clearly understood and easily interrogated, therefore guidance would be helpful in this regard, particularly for authorities without existing Section 106 and CIL monitoring software systems. However, this guidance should not be prescriptive. Many authorities have the ability to provide the information required by an Infrastructure Funding Statement using existing systems and to require charging authorities to produce reports in a particular format may have resource implications.

2. Possible typographical error in draft regulations 121A(1)(d) and (e) – omission of the word “year” after “three” in both.

Monitoring Fees:

Q9. Are there any elements in regulation 11 which will prevent the Government achieving the policy intent?

Answer:

There are no elements in regulation 11 which will prevent the Government achieving the policy intent.

DELIVERING STARTER HOMES:

Making Starter Homes exempt from the Levy:

Q10. Are there any elements in regulation 8 which will prevent the Government achieving the policy intent?

Answer:

There are no elements in regulation 8 which will prevent the Government achieving the policy intent. Horsham District Council agrees that Starter Homes should be exempt from the Levy.

General comments:

It is our view that any other affordable housing products set out in the NPPF and provided by Registered Providers should be exempt from the Levy.

OTHER TECHNICAL CLARIFICATIONS:

Q11. Are there any elements in regulations 13 to 15 which will prevent the Government achieving the policy intent?

Regulation 40 (Calculation of chargeable amount) – clarifying the meaning of ‘retained parts of in-use buildings’ (KR): (regulation 15)

Answer:

There are no elements in regulation 15 which will prevent the Government achieving the policy intent. Horsham District Council welcomes the clarification that will be provided by the amended definition of “new build” in regulation 40(11).

Regulation 65(12)(c) (Liability Notice) – “relevant person” in relation to liability notices: (regulation 15)

Answer:

There are no elements in regulation 15 which will prevent the Government achieving the policy intent. Horsham District Council supports correction of the error in the existing regulations.

Regulation 128A (Transitional provisions: section 73 applications (multiple section 73 permissions and clarifying how transitional provisions relate to reliefs and exemptions: (regulation 13)

Answer:

There are no elements in regulation 15 which will prevent the Government achieving the policy intent. Horsham District Council welcomes the clarification provided by this amendment.

General comment:

Typographical error in regulation 128AB (paragraph (3) has been omitted).

Application of regulation 128 in areas where the Mayor of London or a Combined Authority has introduced CIL (regulation 13 and 14)

Answer:

There are no elements in regulations 13 and 14 which will prevent the Government achieving the policy intent. This amendment provides clarification as to how the Levy applies where a development is permitted where both a local level Levy and a Mayoral Levy are in place.

Overall answer to Q11:

There are no elements in regulations 13 to 15 which will prevent the Government achieving the policy intent.

Signed:

Councillor Claire Vickers
Cabinet Member for Planning