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Practice Group:

*Real Estate Land Use,
Planning and Zoning*

Community Infrastructure Levy: Some Good News for Developers

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The Community Infrastructure Levy (Amendment) Regulations 2012 came into force on 29 November, removing the risk of developers being double charged CIL.

These changes are long overdue, as they correct the ridiculous situation where CIL could be payable on the whole of a development, if only very minor changes were made to the scheme. The amendments give developers the flexibility to vary schemes without the risk of double charging. Section 73 permissions can now return to being a cost effective and efficient tool for developers wishing to have multiple variations of a scheme.

The section 73 problem

The 2010 regulations originally provided that the grant of a "section 73 permission" would attract the payment of CIL. A developer applies for a section 73 permission when it already has a permission, but would like to vary one or more of its conditions. Even if CIL was not payable on the original permission, and no additional floorspace was permitted by the variation - CIL was payable on the section 73 permission. Understandably, the development industry was extremely concerned at the prospect of CIL being payable each time a scheme was varied.

The Government's solution

Following much lobbying, the Government has addressed this issue in the amendment regulations:

- Where the original permission was granted prior to CIL being introduced, and a section 73 permission is granted following the introduction of CIL, CIL will only be payable on the increase in floorspace (if any).
- Where both the original permission and the section 73 permission are granted after CIL has been introduced, the CIL payments made in relation to a previous consent can be offset against further CIL liability which arises pursuant to the section 73 permission.

The regulations only apply to section 73 permissions granted after 29 November 2012.

Our View

These changes are long overdue, as they correct the ridiculous situation where CIL could be payable on the whole of a development, if only very minor changes were made to the scheme. The amendments give developers the flexibility to vary schemes without the risk of double charging. Section 73 permissions can now return to being a cost effective and efficient tool for developers wishing to have multiple variations of a scheme.

There remain other aspects of CIL that are still of concern, and we understand that DCLG continue to keep these under review.

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