



PUBLIC ART THINK TANK

PUBLIC ART, THE COMMUNITY INFRASTRUCTURE LEVY AND PLANNING OBLIGATIONS

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Introduction

This Note summarises ixia's current thinking on the relationship between public art, the Community Infrastructure Levy (CIL) and planning obligations. It responds to regulations and guidance regarding CIL and planning obligations as they are currently written. Specifically, this Note includes:

- information about CIL;
- advice regarding the development and implementation of public art projects as part of community infrastructure projects funded via CIL;
- advice regarding the development and implementation of public art projects as part of specific development projects funded via planning obligations.

Over the coming months, ixia will issue further Notes on the subject. For example, ixia is currently considering the funding of public art projects as standalone items under CIL and the use of planning conditions to secure public art projects within the context of CIL.

Background on the Community Infrastructure Levy

The Labour Government's regulations for CIL came into force during April 2010.

During November 2010, Greg Clark, Decentralisation Minister for the Coalition Government, confirmed that CIL would continue to be developed and implemented.

The Coalition Government's amendments to the regulations for CIL came into force during April 2011.

The Coalition Government sees the combination of CIL and the changes to the status and role of planning obligations as fairer, faster, more certain and more transparent than the system of only planning obligations. The Coalition Government believes that this system generated lengthy negotiations between local authorities and developers which delayed the progress of development projects. It also believes that the system was not applied to enough development projects.

The use of CIL is at the discretion of individual local authorities. However, the changes to the status and use of planning obligations mean that local authorities which choose not to adopt CIL will limit themselves in the amount of funding they can generate for community infrastructure projects via the planning system.

About the Community Infrastructure Levy

CIL is a tariff-based approach to enabling local authorities in England and Wales to raise and pool funds from developers undertaking new building projects in their areas. The funds can be used to support community infrastructure projects which are needed as a result of development projects taking place. The community infrastructure projects can be located anywhere within the boundary of a local authority and can be sub-regional, involving a number of local authorities. In addition, it is important to note here that the Coalition Government wants local authorities to give neighbourhood organisations a percentage of CIL generated by development projects in their neighbourhoods. This aspect of CIL forms part of the Localism Bill which is currently being progressed by the Coalition Government.

As part of their Local Development Frameworks an increasing number of local authorities are developing and implementing Charging Schedules for CIL.

Local Development Frameworks contain all the policies, strategies and plans that local authorities use to promote and assess development projects. These include Infrastructure Delivery Plans which describe the community infrastructure projects which are needed to support any social, economic and environmental changes caused by development projects. Infrastructure Delivery Plans provide details about why the community infrastructure projects are needed, who will deliver them, and how much CIL and other funding they require.

The community infrastructure projects which require CIL inform the preparation of Charging Schedules by local authorities. Charging Schedules state what a CIL rate is. A rate is charged in pounds per square metre on the net additional floorspace of any given development. Charging Schedules can include either a single CIL rate or a number of different CIL rates for different areas and different types of development projects within a local authority's boundary. For example:

- the London Borough of Redbridge is intending to apply a CIL rate of £70 per square metre to all development projects in all areas within its boundary;
- Shropshire Council's CIL rates are £40 per square metre for new residential developments in Shrewsbury, specific market towns and specific key centres; £80 per square metre for new residential development elsewhere; nil CIL rate for affordable housing; and nil CIL rate for employment-related and other non-residential types of development.

When setting a CIL rate local authorities must keep in mind the balance between the amount of CIL required for community infrastructure projects and the economic viability of development projects across their areas.

What is community infrastructure?

The Planning Act 2008 defines community infrastructure as including:

- roads and other transport facilities;
- flood defences;
- schools and other educational facilities;
- medical facilities;
- sporting and recreational facilities;
- open spaces;
- some affordable housing.

During November 2010 and May 2011 the Department of Communities and Local Government (DCLG) published *The Community Infrastructure Levy: An overview*. This guidance document stated that the Act 'allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, district heating schemes and police stations and other community safety facilities. This gives local communities flexibility to choose what infrastructure they need to deliver their development plan.'

The key characteristics of these definitions are that they do not provide exhaustive lists of types of community infrastructure and they defer the choice of types of community infrastructure to local authorities and local communities.

What about the development and implementation of public art projects as part of community infrastructure projects funded via the Community Infrastructure Levy?

ixia believes that public art projects can be funded by CIL if they are an integral part of community infrastructure projects, for example, transport schemes, parks, schools, health centres, cultural facilities, etc. To achieve this, a local authority needs:

- a public art policy and strategy within the Core Strategy of its Local Development Framework. The Planning Inspectors who are responsible for approving Core Strategies on behalf of DCLG look for evidence-bases for all the policies contained within Local Development Frameworks, including public art policies and strategies. For public art policies and strategies within approved Core Strategies the evidence-bases have included built environment and cultural studies which identify the social, economic and environmental impact of public art projects; and existing public art policies, strategies and supplementary planning guidance and documents and the public art projects that these have generated;
- public art plans linked to the public art policy and strategy and included within the studies and costs of community infrastructure projects which form the Infrastructure Delivery Plan within the Local Development Framework. The public art plans should describe the development, implementation and cost of public art projects.

In addition to the above, ixia believes that public art projects could be developed and implemented as part of neighbourhood planning and regeneration initiatives funded by CIL in accordance with the Localism Bill. A local authority's public art policy and strategy could be used to inform the provision of the public art projects.

About planning obligations

CIL is intended to provide community infrastructure projects to support the development of an area rather than to make specific development projects acceptable within the context of a Local Development Framework. Therefore, the regulations for CIL confirmed that planning obligations will continue to be used to manage the impacts of specific development projects. However, in order to ensure that the different purposes of CIL and planning obligations are clear and complementary the regulations for CIL changed the status and use of planning obligations in the following ways:

- the tests contained within *Circular 5/05 Planning Obligations* and used to assess the appropriateness of planning obligations were amended and given a statutory, rather than policy, status. The statutory tests state that planning obligations must be: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The key impact of the statutory tests is that greater rigour is required when local authorities are establishing planning obligations;
- when a local authority sets out that it intends to fund a community infrastructure project via CIL then the local authority cannot use a planning obligation to secure funding towards the same community infrastructure project;
- a local authority can only 'pool' funding from up to five planning obligations for a community infrastructure project that does not require funding via CIL.

What about the development and implementation of public art projects as part of specific development projects via planning obligations?

The implications of the changes to the status and use of planning obligations on the provision and funding of public art projects are:

- the need for local authorities to choose between either securing public art projects which are part of community infrastructure projects and funded via CIL or securing public art projects which are part of specific development projects and funded via planning obligations;
- the need for evidence to demonstrate that a planning obligation for public art projects is necessary, and directly and reasonably related to the specific development project which has been proposed.

ixia believes that local authorities can use planning obligations to secure public art projects, which are supported by evidence and are necessary, and directly and reasonably related to a specific development project. To do this requires:

- a public art policy and strategy within the Core Strategy of a Local Development Framework and a supplementary planning document for, or which includes, public art. These should describe the overall need for public art projects and how they will be developed and implemented within the context of specific development projects. As previously mentioned, for public art policies and strategies within approved Core Strategies the evidence-bases have included built environment and cultural studies which identify the social, economic and environmental impact of public art projects; and existing public art policies, strategies and supplementary planning guidance and documents and the public art projects that these have generated;
- the development and implementation of public art plans for specific development projects prior to the submission of any planning applications. Public art plans should describe why and how artists have and will contribute to specific development projects and the cost of the public art projects.

This advice reflects the guidance promoted by ixia in other documents relating to public art and the planning system. The documents are:

- Ian Dove QC, *Public Art and the Planning System, Further Advice* (No5 Chambers, 2010);
- Ian Dove QC, *Public Art and the Planning System, Advice* (No5 Chambers, 2009);
- ixia, *Public Art and the planning system and process in England. Guidance on a Supplementary Planning Document for Public Art* (ixia, 2007).

The documents can be downloaded for free at: <http://ixia-info.com/research/the-planning-system-and-process/>