



Department for  
Communities and  
Local Government

# Community Infrastructure Levy

Guidance

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*This guidance note is issued by the Secretary of State under section 221 of the Planning Act 2008 and replaces the guidance note titled "Community Infrastructure Levy Guidance" dated December 2012 ("the 2012 Guidance"), from the day of publication. The 2012 Guidance replaced the guidance note titled "Community Infrastructure Levy Guidance: Charge setting and charging schedule procedures" dated March 2010 ("the 2010 Guidance"). This guidance note is an extended version of the 2012 Guidance that includes a section explaining the changes made by the Community Infrastructure Levy (Amendment) Regulations 2013. This guidance note does not apply in relation to any draft charging schedule which was submitted to the examiner in accordance with regulation 19 of the Community Infrastructure Levy Regulations prior to the day the 2012 guidance was published. The 2010 Guidance continues to apply in relation to those draft charging schedules up to and including their approval under section 213 of the Planning Act 2008. This guidance note applies to anything done in relation to those charging schedules following their approval.*

## The charging authority

1. Section 206 of the Planning Act 2008 (The Act) confers the power to charge the Community Infrastructure Levy on certain bodies known as charging authorities. The charging authority's responsibilities, if they decide to levy the Community Infrastructure Levy, will be to:
  - prepare and publish a document known as the "charging schedule" which will set out the rates of Community Infrastructure Levy which will apply in the authority's area. This will involve consultation and independent examination
  - apply the levy revenue it receives to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area, and;
  - report to the local community on the amount of levy revenue collected, spent and retained each year.
2. In most cases charging authorities will also collect the levy. However, these collection functions (along with the associated enforcement responsibilities) might be undertaken by other public authorities as set out in the Community Infrastructure Levy Regulations 2010 ("the Community Infrastructure Levy Regulations"). Under regulation 10 the London Boroughs will be required to collect the levy charged by the Mayor of London and in some cases an Urban Development Corporation or other body may be able to collect the levy on behalf of a charging authority.

## The charging authority is the local planning authority

3. The Act sets out which bodies are charging authorities. **A local planning authority is the charging authority for its area** (within the meaning of 'local

planning authority' defined by section 37 of the Planning and Compulsory Purchase Act 2004 for England and section 78 for Wales), except that the Broads Authority and the Council of the Isles of Scilly are the only charging authorities in their areas. In Greater London the Mayor of London is also a charging authority.

## The charging schedule

4. A charging authority must set out its proposed levy rate(s) in a charging schedule (see section 211(1) of the Act). Charging schedules should be consistent with and support implementation of up-to-date Local Plans<sup>1</sup> in England, Local Development Plans (LDPs)<sup>2</sup> in Wales, and the London Plan<sup>3</sup> in London. Collectively, these are referred to as "relevant Plans" in this guidance. Charging authorities should consider relevant national planning policy (including the National Planning Framework in England) when drafting their charging schedules.
5. Charging authorities must express levy rates as pounds per square metre, as the Community Infrastructure Levy will be levied on the gross internal floorspace of the net additional liable development. The published rate(s) within an authority's charging schedule will enable liable parties to anticipate their expected levy liability.

## Deciding the rate of the Community Infrastructure Levy

6. The initial stage of preparing a charging schedule focuses on determining the levy rate(s). When a charging authority submits its draft charging schedule to the Community Infrastructure Levy examination, it must provide evidence on economic viability and infrastructure planning (as background documentation for the Community Infrastructure Levy examination).
7. Regulation 14 requires that a charging authority, in setting levy rates, '*must aim to strike what appears to the charging authority to be an appropriate balance between*' the desirability of funding infrastructure from the levy and '*the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area*'.

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<sup>1</sup> As defined in Annex 2 of the National Planning Policy Framework in England

<sup>2</sup> As defined in Local Development Plans Wales 2005

<sup>3</sup> Under the legislation establishing the Greater London Authority (GLA), the Mayor has to produce a spatial development strategy (SDS) – which has become known as 'the London Plan'. The general objectives for the London Plan, and the process for drawing it up, altering and replacing it, are currently set out in the Greater London Authority Act 1999 (as amended), detailed regulations and guidance in Government Office for London Circular 1/2008Plan

## What is meant by the appropriate balance?

8. By providing additional infrastructure to support development of an area, the levy is expected to have a positive economic effect on development across an area. In deciding the rate(s) of the levy for inclusion in its draft charging schedule, a key consideration is the balance between securing additional investment for infrastructure to support development and the potential economic effect of imposing the levy upon development across their area. The Community Infrastructure Levy regulations place this balance of considerations at the centre of the charge-setting process. In meeting the requirements of regulation 14(1), charging authorities should show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant Plan and support the development of their area. As set out in the National Planning Policy Framework in England, the ability to develop viably the sites and the scale of development identified in the Local Plan should not be threatened.<sup>4</sup>

## The Community Infrastructure Levy examination

9. The independent examiner should establish that:
  - the charging authority has complied with the requirements set out in Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations
  - the charging authority's draft charging schedule is supported by background documents containing appropriate available evidence
  - the proposed rate or rates are informed by and consistent with, the evidence on economic viability across the charging authority's area; and
  - evidence has been provided that shows the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole.<sup>5</sup>
10. The examiner should be ready to recommend modification or rejection of the draft charging schedule if it threatens delivery of the relevant Plan as a whole.

## The need for an up-to-date plan

11. The Government expects that charging authorities will implement the levy where their 'appropriate evidence' includes an up-to-date relevant Plan for the area in which they propose to charge. As set out in the National Planning Policy

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<sup>4</sup> See paragraphs 173 – 177 of the National Planning Policy Framework

<sup>5</sup> See paragraph 173 of the National Planning Policy Framework in England

Framework in England, where practical levy charges should be worked up and tested alongside the Local Plan.<sup>6</sup>

## Infrastructure planning

12. A charging authority needs to identify the total cost of infrastructure that it desires to fund in whole or in part from the levy. In order to do this, the charging authority must consider what additional infrastructure is needed in its area to support development and what other funding sources are available (for example, core Government funding for infrastructure, which will continue following the introduction of a levy, anticipated section 106 agreements and anticipated necessary highway improvement schemes funded by anyone other than the charging authority) based on appropriate available evidence.
13. Information on the charging authority area's infrastructure needs should be directly related to the infrastructure assessment that underpins their relevant Plan, as that planning identifies the quantum and type of infrastructure required to realise their local development and growth needs.<sup>7</sup>
14. In determining the size of its total or aggregate infrastructure funding gap, the charging authority should consider known and expected infrastructure costs and the other sources of possible funding available to meet those costs. This process will identify a Community Infrastructure Levy infrastructure funding target. This target should be informed by a selection of infrastructure projects or types (drawn from infrastructure planning for the area) which are identified as candidates to be funded by the levy in whole or in part in that area. The Government recognises that there will be uncertainty in pinpointing other infrastructure funding sources, particularly beyond the short-term. The focus should be on providing evidence of an aggregate funding gap that demonstrates the need to levy the Community Infrastructure Levy.
15. The charging authority should set out at examination a draft list of the projects or types of infrastructure that are to be funded in whole or in part by the levy. The charging authorities should also set out those known site-specific matters where section 106 contributions may continue to be sought. The principal purpose is to provide transparency on what the charging authority intends to fund in whole or part through the levy and those known matters where section 106 contributions may continue to be sought.
16. If an authority considers that the infrastructure planning underpinning its relevant Plan is weak or does not reflect its latest priorities, it may undertake additional bespoke infrastructure planning to identify its infrastructure funding gap. This

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<sup>6</sup> See paragraph 175 of the National Planning Policy Framework in England

<sup>7</sup> See paragraphs 162 and 177 of the National Planning Policy Framework in England



work may be limited to those projects requiring funding from the levy, rather than covering all the potential infrastructure projects for the area.

17. Where infrastructure planning has been undertaken specifically for the Community Infrastructure Levy and was not tested as part of another examination, the Community Infrastructure Levy examiner will need to test that the evidence is sufficient in order to confirm the aggregate infrastructure funding gap and total target amount that the authority proposes to raise through the levy.
18. The Community Infrastructure Levy examination should not re-open infrastructure planning that has already been submitted in support of a sound relevant Plan. It is not the role of the Community Infrastructure Levy examination to challenge the soundness of an adopted development plan.
19. Guidance on the interaction between the Community Infrastructure Levy and section 106 agreements is set out at paragraphs 84 – 91.

## Applicability of Sustainability Appraisal to charging schedules and the evidence base

20. Charging schedules will be short financial documents so will not require a Sustainability Appraisal.

## Preparing the evidence base on economic viability

21. Charging authorities should be able to show and explain how their proposed Community Infrastructure Levy rate (or rates) will contribute towards the implementation of their relevant Plan<sup>8</sup> and support development across their area. It is likely, for example, that charging authorities will need to summarise evidence as to economic viability in a document (separate from the charging schedule) as part of their background evidence that shows the potential effects of their proposed levy rate (or rates) on the economic viability of development across their area.
22. As background evidence, the charging authority should also prepare and provide information about the amounts raised in recent years through section 106 agreements. This should include the extent to which affordable housing and other targets have been met.

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<sup>8</sup> see paragraph 4

## Area based approach

23. Charging authorities should use an area-based approach, which involves a broad test of viability across their area as the evidence base to underpin their charge. Charging authorities will need to be able to show why they consider that the proposed levy rate(s) sets an appropriate balance between the need to fund infrastructure, and the potential implications for the economic viability of development across their area.

## Economic valuation

24. There are a number of valuation models and methodologies available to charging authorities to help them in preparing evidence on the potential effects of the levy on the economic viability of development across their area. There is no requirement to use one of these models, but charging authorities may find it helpful in defending their levy rates to use one of them.

## Appropriate available evidence

25. The legislation (section 211 (7A)) requires a charging authority to use '*appropriate available evidence*' to inform their draft charging schedule. It is recognised that the available data is unlikely to be fully comprehensive or exhaustive. Charging authorities need to demonstrate that their proposed CIL rate or rates are informed by 'appropriate available' evidence and consistent with that evidence across their area as a whole.

26. A charging authority should draw on existing data wherever it is available. Charging authorities may consider a range of data, including:

- values of land in both existing and planned uses; and
- property prices (e.g. house price indices and rateable values for commercial property).

27. In addition, a charging authority should sample directly an appropriate range of types of sites across its area in order to supplement existing data, subject to receiving the necessary support from local developers. The focus should be in particular on strategic sites on which the relevant Plan relies and those sites (such as brownfield sites) where the impact of the levy on economic viability is likely to be most significant. In most instances where a charging authority is proposing to set differential rates, they will want to undertake more fine-grained sampling (of a higher percentage of total sites), to identify a few data points to use in estimating the boundaries of particular zones, or different categories of intended use. The sampling should reflect a selection of the different types of

sites included in the relevant Plan, and should be consistent with viability assessment undertaken as part of plan-making.

## Evidence should inform the draft charging schedule

28. The legislation (section 212 (4) (b)) requires a charging authority to use appropriate available evidence to 'inform the draft charging schedule'. A charging authority's proposed levy rate (or rates) should be reasonable given the available evidence, but there is no requirement for a proposed rate to exactly mirror the evidence, for example, if the evidence pointed to setting a charge right at the margins of viability. There is room for some pragmatism.

## Factors to consider

29. In proposing a levy rate(s) charging authorities should show that the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole.<sup>9</sup> They should also take into account other development costs arising from existing regulatory requirements, including taking account of any policies on planning obligations in the relevant Plan (in particular those for affordable housing and major strategic sites). In proposing the rate(s) of the Community Infrastructure Levy to charge, a charging authority should consider the potential impact of exemptions or reductions relating to social housing and many developments by charities (including charities such as Academy Trusts), as these will reduce the amount of Community Infrastructure Levy revenue that they can collect.

30. Charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area. Charging authorities should show, using appropriate available evidence, including existing published data, that their proposed charging rates will contribute positively towards and not threaten delivery of the relevant Plan as a whole at the time of charge setting and throughout the economic cycle.

## Discretionary relief

31. Regulations 55 to 58 allow charging authorities to set discretionary relief for exceptional circumstances. Use of an exceptions policy enables the charging authority to avoid rendering sites with specific and exceptional cost burdens unviable should exceptional circumstances arise. Before granting relief, the charging authority will need to be satisfied that the costs relating to the section 106 agreement are greater than those related to the Community Infrastructure Levy, and that the relief would not constitute notifiable State aid.

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<sup>9</sup> See paragraph 173 of the National Planning Policy Framework in England

## Charge setting in London

32. London is currently the only place where a strategic tier authority may also set a Community Infrastructure Levy. The two-tier charging system is intended to ensure that strategic infrastructure, that is important for economic growth, is delivered in London as well as local infrastructure. The Government expects the Mayor and the Boroughs to work closely in setting and running the Community Infrastructure Levy in London, including through mutual co-operation and the sharing of relevant information.
33. In having regard to the potential effects of the imposition of the levy on the economic viability of development across their areas, the London Boroughs are required (by regulation 14(3) and (4)) to take into account any Community Infrastructure Levy rates set by the Mayor (in the most recent charging schedule already approved by the Mayor). The purpose of this requirement is to ensure that rates are set in a manner that retains viability across London for both local and strategic infrastructure, permitting both the boroughs and the Mayor to realise their development strategies. The Mayor's levy will be mandatory once set, so as a matter of good practice, the Boroughs in proposing a draft levy rate for consultation, should also take into account any draft Mayoral levy rate (or rates) that has been published in a draft or preliminary draft charging schedule.

## Setting differential rates of the Community Infrastructure Levy

34. Charging authorities may want to consider setting differential rates as a way of dealing with different levels of economic viability within the same charging area (see regulation 13). This is a powerful facility that makes the levy more flexible to local conditions. Differences in rates need to be justified by reference to the economic viability of development. Charging authorities can set differential levy rates for different geographical zones provided that those zones are defined by reference to the economic viability of development within them. In some cases, charging authorities could treat a major strategic site as a separate geographical zone where it is supported by robust evidence on economic viability.
35. Regulation 13 also allows charging authorities to articulate differential rates by reference to different intended uses of development provided that the different rates can be justified by a comparative assessment of the economic viability of those categories of development. The definition of "use" for this purpose is not tied to the classes of development in the Town and Country Planning Act (Use Classes) Order 1987, although that Order does provide a useful reference point.
36. An authority could set differential rates by reference to both zones and the categories of development within its area. For instance, an authority might choose to divide its area into a higher and lower value zone and set differential

rates by reference to those zones. It could go further and set differential rates for residential and commercial development within both the higher and lower value zones. However, charging authorities should be mindful that it is likely to be harder to ensure that more complex patterns of differential rates are State aid compliant, so for example, charging authorities need to be consistent in the way that appropriate available evidence on economic viability informs the treatment of a category of development in different zones.

37. Charging authorities that plan to set differential levy rates should seek to avoid undue complexity, and limit the permutations of different charges that they set within their area. However, resulting charging schedules should not impact disproportionately on particular sectors or specialist forms of development and charging authorities should consider views of developers at an early stage.
38. There is no obligation to impose a Community Infrastructure Levy for its own sake. Charging authorities can set a zero rate if they wish subject to the points below.
39. If the evidence shows that their area includes a zone or use of development of low, very low or zero viability, charging authorities should consider setting a low or zero levy rate in that area or for that use (consistent with the evidence).
40. In all cases, differential rates must be set in such a way so as not to give rise to notifiable State aid – one element of which is selective advantage. Authorities who choose to differentiate rates by class of development or by reference to different areas, should do so only where there is consistent evidence relating to economic viability that constitutes the basis for any such differences in treatment. It is the responsibility of charging authorities to ensure that their charging schedules are State aids compliant.
41. Many of those who have adopted the Community Infrastructure Levy have set differential rates. Charging authorities may want to look at examples of how differential rates have been set by other authorities when deciding their levy rate (or rates).

## Administrative costs

42. The Community Infrastructure Levy regulations permit authorities to use levy receipts to finance administrative expenses in connection with the Community Infrastructure Levy. Administrative expenses in connection with the Community Infrastructure Levy include the costs of the functions required to establish and run a levy charging scheme. These functions include Community Infrastructure Levy set-up costs, such as consultation on the levy charging schedule, preparing evidence on viability or the costs of the Community Infrastructure Levy examination. They also include ongoing functions like establishing and running billing and payment systems, enforcing the levy, the legal costs associated with

payments in-kind and monitoring and reporting on Community Infrastructure Levy activity.

43. The amount of Community Infrastructure Levy proceeds that a charging authority can use to finance its levy administrative expenses is restricted in the Community Infrastructure Levy regulations to a maximum of 5 per cent of total receipts. To help charging authorities with initial set up costs, the regulations allow for a rolling cap over the period comprising the first part year that an authority sets a levy and the following three financial years taken as a whole. From year four onwards of an authority's levy operation, the restriction works as a fixed in-year cap, meaning that an authority may spend up to 5 per cent of receipts received in-year by the end of that year on its administrative expenses. Where an authority spends less than its permitted allowance on administrative expenses, it must transfer the remaining allowance for use on capital infrastructure projects.
44. Where a collecting authority has been appointed to collect the levy on behalf of a charging authority, as will be the case in London, the borough collecting authority may keep up to 4 per cent of receipts to fund their administrative costs, with the remainder available to the Mayor as charging authority up to the 5 per cent cap.
45. Regulation 14(2) allows a charging authority to have regard to administrative expenses connected with the Community Infrastructure Levy when setting their levy rates. So, for example, an authority might set levy rates slightly higher than the levels required to meet their infrastructure funding needs in order to cover administration costs. Charging authorities should seek to strike an appropriate balance between securing additional investment for infrastructure (including their administrative expenses) and the potential effect of imposing the levy upon development across their area.

## Public consultation on the preliminary draft charging schedule

46. Charging authorities must consult on their proposed levy rates in a **preliminary draft charging schedule**. This should go beyond broad proposals for the Community Infrastructure Levy and the Government encourages authorities to prepare a draft charging schedule that is evidence based and that will reduce the need for subsequent modifications, so speeding up the process of introducing the levy.
47. Regulation 15 makes certain requirements about who the charging authority should consult. This includes a need to consult bodies such as the Homes and Communities Agency or an Urban Development Corporation, where relevant. The regulations also require consultation with the County Council, Parish Councils, and Welsh Ministers in Wales.

48. Collaboration with County Councils is important, not only in setting the levy rate (or rates), but also in agreeing priorities for how the levy will be spent in two-tier areas, where they are responsible for delivery of key strategic infrastructure. Where possible, priorities for spending the levy should take account of County Councils' infrastructure spending priorities in the light of the aggregate funding gap and other infrastructure funding sources.
49. Early engagement with local developers and others in the property industry is clearly good practice and should help the charging schedule consultation and examination process run more smoothly. The extent to which charging authorities can do this will depend on the level of engagement from local developers.
50. The regulations do not specify how charging authorities should consult, as they are best placed to decide how to engage most effectively with their local communities and delivery partners. Equally, no length of consultation is stipulated in the regulations, although charging authorities are encouraged to consult for at least six weeks in order to ensure that local communities and delivery partners have sufficient opportunity to make their views known.

## Public consultation and the right to be heard on a draft charging schedule

51. When a charging authority considers that a draft charging schedule is ready for examination, it must publish the draft schedule and the appropriate available evidence on infrastructure costs, other funding sources and economic viability. It is good practice to allow at least a six week period for consultation, and longer if the issues under consideration are particularly complex. Any person may make representations about a draft charging schedule and that person **must be heard before the examiner at the Community Infrastructure Levy examination**, if they have requested to be heard and the request has been made as set out in regulation 21.

## Modifications to the draft charging schedule after publication

52. The intention in publishing the draft charging schedule is to allow delivery partners and the local community to make representations on what the charging authority considers to be its firm proposals for the Community Infrastructure Levy. Consultation will already have taken place during the preparation of the draft schedule and charging authorities should avoid making substantive modifications between the publication of the draft and submission to the examiner. Substantive changes should always be avoided, unless they have been sufficiently consulted on.

53. Where any modifications are made, the regulations require the authority to produce a 'statement of modifications' (as set out in regulations 11 and 19) and to allow requests to be heard on the modifications to be made within a period of four weeks beginning with the day on which the draft charging schedule is submitted to the examiner (regulation 21(5)).
54. Regulation 19 requires a statement of modifications to be published and distributed and in complying with these requirements, authorities should take the steps considered necessary to inform those persons invited to make representations under regulation 15 that the statement has been published.
55. Regulation 21(5) provides that any persons making a request to be heard in relation to modifications must provide details of the particular modification(s) on which they wish to be heard. Authorities may also ask those requesting to be heard to include any additional details considered appropriate, for example, whether they support or oppose the modification(s) and why. Such details may be submitted to the examiner, along with the requests to be heard, where the authority considers it will help the examiner or if the examiner has requested such details.

## Appointing the examiner and the examiner's assistants

56. The charging authority must appoint a person ('the examiner') to examine a draft charging schedule and this examiner must, in the opinion of the charging authority, **be independent and have appropriate qualifications and experience**. The Government considers that a Planning Inspector is likely to fulfil these criteria.
57. Where both the charging authority and the examiner agree it is necessary, an assistant could be appointed by the charging authority – for instance, this might be an expert assessor from the Valuation Office Agency (VOA) or another appropriately qualified and experienced independent person. Where a charging authority appoints an assistant, an exchange of letters should be sufficient to satisfy this procedural requirement

## The costs of the examiner and assistants

58. The cost of the independent examination will be borne by the charging authority, following the practice in relation to other documents tested in this way. The regulations do not specify what the examiner's fees should be. Since the charging authority has the ability to choose any suitably qualified, independent person, it will be for the market to determine what rates are appropriate.
59. Where the appointed examiner or assistant is an employee of the Crown or is under contract to an executive agency of Government, such as the Planning



Inspectorate, regulation 30 provides for the Secretary of State to recover his or her costs for the Community Infrastructure Levy examination. In practice, the examiner should be able to provide a reasonable estimate of the likely costs prior to the Community Infrastructure Levy examination based on their assessment of its anticipated length and complexity. In all other cases, the independent person should simply agree their fees and expenses with the charging authority prior to the examination, as set out in regulation 29.

60. Where there is a 'joint examination' of one or more charging schedules and a Development Plan Document (DPD)<sup>10</sup> (in England), Local Development Plan (LDP) (in Wales) or the London Plan, the Secretary of State is only able to recover costs for the Community Infrastructure Levy examination to the extent that these costs will not be recovered under other statutory powers. For example, where the same Inspector examines a relevant Plan and a Community Infrastructure Levy charging schedule at a 'joint examination', the Secretary of State would first recover costs of the core strategy examination using the statutory daily rate.<sup>11</sup> Subsequently, any additional costs would be recovered under the Community Infrastructure Levy regulation 30. The effect of this apportionment will be to ensure that **any cost savings achieved by carrying out a joint examination are passed to the charging authority** or split between the authorities where more than one charging schedule is being examined.

## Preparation for the examination

61. In preparing for the Community Infrastructure Levy examination charging authorities are encouraged to carry out the notifications required by regulation 21 as early as possible and **at least four weeks before an examination hearing session(s) takes place**. However, in order to avoid delays to the Community Infrastructure Levy examination, **this period may be reduced to two weeks where a statement of modifications has been published and one or more requests to be heard were made** during the four-week period allowed for such requests.
62. Unless there are only a small number of representations and requests to be heard, examiners may, where they consider it is appropriate and likely to expedite the examination, hold a **pre-hearing meeting**. The examiner is likely to use the pre-hearing meeting to perform an initial check that, in preparing its charging schedule, the authority has complied with the legislation and that the appropriate available evidence is sufficient. This can help to identify potential problems prior to the examination and save time and effort. The examiner is also likely to use a pre-hearing meeting to discuss how the examination will be

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<sup>10</sup> Defined in section 38 of the Planning and Compulsory Purchase Act 2004

<sup>11</sup> Set out in the Town and Country Planning (Costs of Independent Examinations) (Standard Daily Amount) (England) Regulations 2006 and the Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2011.

managed and to identify the main issues to be considered and also to outline the structure and draft programme. Whether or not a pre-hearing meeting is held, examiners are encouraged to share the draft programme for the hearings at an early stage to ensure that those who wish to attend are clear when to do so.

## Format of the Community Infrastructure Levy examination

63. Experience with examining relevant Plans suggests that **an informal hearing format** will usually be the most appropriate form of examination for the Community Infrastructure Levy. If no person has requested the right to be heard, the examiner would also have the option of conducting the examination by written representations.
64. In order to reduce the risk of delays at the Community Infrastructure Levy examination and to ensure that the hearings are conducted in an efficient and effective manner, regulation 21 allows the examiner to **decide how the hearing is to be conducted and to set time limits** for such representations. An examiner may also refuse to allow representations at any given hearing if they consider that these may be repetitious, irrelevant, vexatious or frivolous. However, the legislation does not allow an examiner to deny a participant's right to be heard altogether. In deciding how the hearing is to be conducted the examiner may, for example, decide whether cross-examination of participants will be allowed and determine any necessary arrangements to accommodate those who are unable to attend the examination during normal working hours.

## Joint examinations

65. Charging authorities may decide to work collaboratively on introducing the levy and regulation 22 provides the option of a **joint examination** to consider two or more charging schedules. This option is also available where a charging authority wants to prepare a draft Community Infrastructure Levy charging schedule at the same time as a relevant Plan.
66. Joint examinations of a charging schedule and a Development Plan Document, Local Development Plan or the London Plan provide an opportunity for issues of mutual concern to the charging schedule and development plan examinations to be considered in a holistic way. This could involve submitting joint evidence documents or holding a joint pre-hearing meeting. Joint hearing sessions could also be held covering issues such as infrastructure planning and the economic viability evidence. Finally, the Community Infrastructure Levy examiner (and the planning inspector, where this is a different person) may decide to write the final examination reports in a collaborative process.
67. An important consideration in joint examinations is the need for transparency so that all the participants are aware of exchanges of information between the two

examinations and have the opportunity to comment where this is appropriate. A joint pre-hearing meeting and hearing sessions will help to ensure that this can be achieved. However, where other exchanges of information occur, for instance after the hearings have ended, steps should be taken to ensure that relevant information is placed on the authority's website and that examination participants are made aware of the exchange.

68. Joint examinations are optional and so under regulation 22 each of the charging authorities and the Secretary of State (in England) or Welsh Ministers (in Wales) must agree to a joint examination. An exchange of letters should normally suffice for this requirement, so regulations do not make further provision.

## The examiner's report

69. The examiner's recommendations will fall into one of four categories. The examiner must recommend approval of the draft charging schedule if a charging authority has complied with the requirements in the Act, the regulations and have had regard to this guidance.
70. If these requirements (known as the "drafting requirements") have not been complied with, the examiner must either recommend modification or rejection of the draft charging schedule. If the charging schedule can be modified so as to comply with the drafting requirements, the examiner must recommend appropriate modifications. This could be the case where the proposed rate(s) would be inconsistent with the evidence, or would put at risk the delivery of the relevant Plan. As long as the charging authority addresses the non-compliance, they do not have to make the specific modifications recommended by the examiner.
71. The examiner must recommend that the draft charging schedule be rejected where the charging authority has not complied with the drafting requirements in a way that could not be remedied by modifying the schedule. This could be because the charging authority has not complied with a procedural requirement in preparing it.
72. If the examiner does not recommend rejection of the draft charging schedule, they can also make non-binding recommendations.

## Correction of errors in the examiner's report

73. In order to ensure that the independent examiner's recommendations are accurate, the Government strongly encourages examiners to provide charging authorities with a **period of 'fact check'** before the final report is published. After the fact check, but before approval of the charging schedule, any 'correctable errors' within the examiner's recommendations, may be corrected by the

examiner, as set out in regulation 24. However, after correcting an error the authority will need to republish the recommendations and notify those persons required by the regulation.

74. A **'correctable error'**, for the purposes of regulation 24, includes two types of errors. First, any error which would not affect the substance of the examiner's recommendations or reasons, for example, by giving rise to a change in the recommended rate of the levy or any recommended differential rates. For instance, this could include a minor typographical or factual error, but not one that would affect Community Infrastructure Levy liability. Second, more significant errors which would give rise to a different levy rate or affect levy liability may be corrected, but only if the error in the recommendations is clearly traceable from the examiner's reasons within the same report and the correction is needed to make the recommendations consistent with the reasons.

## Approval and coming into effect of the charging schedule

75. Once any modifications recommended by the examiner have been considered, and any necessary amendments have been made, the charging schedule should be formally **approved by a resolution of the full council of the charging authority**. In London, section 213(3) of the Act requires the Mayor to make a formal decision to approve his or her Community Infrastructure Levy charging schedule in accordance with the Greater London Authority's decision making framework.

76. The charging authority must insert an appropriate commencement date into the charging schedule before it is formally approved. The schedule will come into effect and the levy will become chargeable on development from that date and so regulation 28 requires this date to be no earlier than the day after the approved charging schedule is published as set out in regulation 25.

## Correction of errors in the approved charging schedule

77. For a period of six months after approving a charging schedule, any 'correctable errors' that are made known to the charging authority must be corrected as set out in regulation 26. Again, a **'correctable error'** under this regulation includes two types of errors. First, any error which, when corrected, would have no effect on the levy rate or any differential rates. Second, any error which would have an impact on the levy rate, but which must be corrected in order to make the charging schedule consistent with the published examiner's recommendations.

78. Where any error is corrected by a charging authority, regulation 26 requires a number of actions to be taken, including republishing the charging schedule and issuing a **'correction notice'**. If an error correction causes the levy liability for any particular chargeable development to decrease, regulation 27 requires the

charging authority to **recalculate the chargeable amount payable** as well as any relief given and to **notify the affected person of the recalculation and decrease in levy liability**. If the result of the error correction is an overpayment of the levy by any liable party, regulation 75 sets out how repayments should be made. It should be noted that the recalculation of the chargeable amount required by regulation 27 does not apply where the effect of an error correction is to increase the levy liability for any particular chargeable development. In such cases a collecting authority will not be entitled to pursue the increase in levy liability.

## Reviewing and revising the charging schedule

79. Charging authorities are strongly encouraged to keep their charging schedules under review. This is important to ensure that that levy charges remain appropriate over time – for instance, as market conditions change, and also so that they remain relevant to the gap in the funding for the infrastructure needed to support the development of their area.
80. The Act allows charging authorities to revise a part of their charging schedule. However, any revisions, in whole or in part, must follow the same process as that applied to the preparation, examination, approval and publication of the initial schedule, as specified under sections 211 to 214 of the Act and Part 3 of the Community Infrastructure Levy regulations.

## Effect of the adoption of a revised charging schedule or a draft charging schedule: transitional arrangements

81. Charging schedules apply to planning permissions which first permit development between the point that a charging schedule takes effect and the time it is superseded by a revised schedule, or the point at which an authority decides to stop charging the Community Infrastructure Levy and its charging schedule ceases to have effect. Regulation 8 defines the time at which a planning permission is treated as first permitting development. In most cases it will be when planning permission is granted but in the case of permitted development, for example, it is the time at which the 'Notification of Chargeable Development' notice is received or served by the charging authority.

## Ceasing to charge

82. Charging authorities have the discretion to decide when and why they cease to charge the levy. Thus, Community Infrastructure Levy regulations do not specify any criteria or process to follow before an authority is able to terminate the levy beyond that specified by the Act – namely, that the authority must formally resolve to cease charging.

83. In the event of a charging authority ceasing to charge, any outstanding levy liability relating to a development that is yet to commence will be dissolved and no levy will be payable, in accordance with regulation 129 (2). In London, where there may be more than one charging authority for any area, each levy charge will be recognised individually. Therefore, if one charge were to cease, the remaining charge would still be payable.

## The interaction between the Community Infrastructure Levy and Section 106 agreements

84. The Community Infrastructure Levy delivers additional funding for charging authorities to carry out a wide range of infrastructure projects that support growth and benefit the local community. The levy cannot be expected to pay for all of the infrastructure required, but it is expected to make a significant contribution.

85. The Government expects charging authorities will work proactively with developers to ensure they are clear about charging authorities' infrastructure needs and what developers will be expected to pay for through which route. This is so that there is no actual or perceived 'double dipping', with developers paying twice for the same item of infrastructure.

86. Regulation 123 of the Community Infrastructure Levy Regulations provides for charging authorities to set out a list of those projects or types of infrastructure that it intends to fund through the levy. This list should be based on the draft list that the charging authority prepared for the examination of their draft charging schedule.

87. When a charging authority introduces the Community Infrastructure Levy, section 106 requirements should be scaled back to those matters that are directly related to a specific site, and are not set out in a regulation 123 list. For transparency, charging authorities should have set out at examination how their section 106 policies will be varied, and the extent to which they have met their section 106 targets. Relevant local policy changes should be implemented at the same time that the charging schedule is introduced, and integrated as soon as practical into the relevant Plan.

88. Where the regulation 123 list includes a generic item (such as education or transport), section 106 contributions should not normally be sought on any specific projects in that category. Such site-specific contributions should only be sought where this can be justified with reference to the underpinning evidence on infrastructure planning made publicly available at examination.

89. The charging authority's proposed approach to the future use of any pooled section 106 contributions should be set out at examination and should be based on evidence. Where a regulation 123 list includes project-specific infrastructure,

the charging authority should seek to minimise its reliance on planning obligations in relation to that infrastructure. When the levy is introduced (and nationally from April 2014), regulation 123 limits the use of planning obligations where there have been five or more obligations in respect of a specific infrastructure project or a type of infrastructure entered into on or after 6 April 2010.

90. When charging authorities wish to revise their regulation 123 list, which sets out what they plan to spend levy receipts on, they should ensure that these changes are clearly explained and subject to appropriate local consultation. Charging authorities should not remove an item from the regulation 123 list just so that they can fund this item through a new section 106 agreement. Where a change to the regulation 123 list would have a significant impact on the viability evidence that supported examination of the charging schedule, this should only be made as part of a review of the charging schedule.

91. When a charging authority adopts the levy there are limitations on the use of planning obligations (set out in regulation 122 and 123). The definition of “planning obligation” in the regulations is a planning obligation made under section 106 of the Town and Country Planning Act 1990 and includes a proposed planning obligation. An agreement entered into for the purposes of section 106 may contain more than one planning obligation to which regulation 123 relates.

## The relationship between the Community Infrastructure Levy and planning conditions

92. The National Planning Policy Framework sets out that planning conditions (including Grampian conditions) should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.<sup>12</sup> When setting conditions, local planning authorities should consider the combined impact of those conditions and any Community Infrastructure Levy charges that the development will be liable to.

## The Community Infrastructure Levy 2012 amendment regulations

93. On 29 November 2012 amendment regulations came into force. This note explains the changes.

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<sup>12</sup> See paragraphs 206 of the National Planning Policy Framework for England

## **Amending the relationship between the Community Infrastructure Levy and section 73 applications**

94. The regulations contain a number of changes to amend the relationship between the Community Infrastructure Levy and section 73 applications. Section 73 consents are used to change a condition attached to a planning consent. They are frequently used to make changes to a scheme. In legal terms they are a new planning consent and therefore triggered Community Infrastructure Levy liability under the regulations as they were drafted.
95. We have amended the Community Infrastructure Levy regulations to make it clear that when a change to an application made under section 73 does not change the liability to the levy then only the original consent will be liable. Where the section 73 changes the levy liability the most recently commenced scheme is the liable scheme.
96. The regulations also provide for payments made in relation to a previous planning permission to be offset against the liability on the section 73 permission.
97. In transitional cases, where the original planning permission was granted prior to a levy charge being brought in but the section 73 is granted following introduction of the levy, the section 73 consent will only trigger levy liability for any additional liability it introduces to the development.
98. We have also introduced regulations so that developers can make applications under article 18 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 to extend planning permissions granted before October 2010. These regulations make similar transitional provision for such applications as they make for applications made under section 73 of the Town and Country Planning Act 1990. That is no liability to the levy will arise in respect of the application under article 18. This brings the position in England on time extensions in line with the position in Wales which is already covered in the Community Infrastructure Levy Regulations. Without this proposed change “extensions to consents” would trigger a full levy liability, a significant disincentive to take advantage of this pro-growth provision.

## **Other changes in the regulations**

99. We have corrected the operation of the main Community Infrastructure Levy liability formula for sites where some existing buildings will be demolished and others will be used for a different purpose. Under the previous formula there was a possibility that the liability to the Community Infrastructure Levy would be greater than it should be in some cases.
100. These regulations also ensure operation of the formula to determine the amount of social housing relief a development qualifies for works correctly. Under



the previous formula there was a possibility that in some cases greater relief may be granted than should be the case.

101. These regulations ensure that instalment policies set by the Mayor and London Boroughs will operate in a complementary way. This corrects an oversight in the previous drafting which did not make provision for the Mayor to issue an instalment policy in areas where a London Borough does not charge the levy.
102. We have also clarified how payments between collecting and charging authorities should operate to ensure that a collecting authority will not have to repay any overpayment they receive to the levy payer, while also having to pass that amount on to the charging authority.
103. The regulations allow the levy to be chargeable on development granted consent by Neighbourhood Development Orders, including Community Right to Build Orders.
104. We also ensured that other technical changes introduced by the Localism Act are reflected in the Community Infrastructure Levy regulations including:
  - reflecting the new relationship between the examiner and the charging authority by removing the reference to submission of a declaration to the examiner alongside a draft charging schedule and requiring the charging authority to publish their response to the examiner's recommendations alongside their charging schedule; and
  - clarifying the ways charging authorities can apply the Community Infrastructure Levy to funding local infrastructure priorities.

## Community Infrastructure Levy 2013 amendment regulations

105. On 25 April 2013 amendment regulations came into force. The following text explains the changes.

### **Neighbourhood funding**

106. To help communities to accommodate the impact of new development and to strengthen the role and financial autonomy of neighbourhoods fifteen per cent of Community Infrastructure Levy revenue received by the charging authority will now be passed directly to those Parish and Town Councils in England and Community Councils in Wales where development has taken place. This should encourage local people to support development by providing direct financial incentives to be spent on local priorities.

107. This neighbourhood funding element can be spent on wider range of things than general Levy funds, as set out in paragraph (b) below. It can be spent on supporting the development of the area by funding:

(a) the provision, improvement, replacement, operation or maintenance of infrastructure; or

(b) anything else that is concerned with addressing the demands that development places on an area.

108. The neighbourhood funding pot will mean that up to £100 per existing council tax dwelling can be passed to a Parish or Community Council per year to be spent on local priorities. This amount will be indexed for the year in which the Levy is passed to the Parish or Community Council using the national All-in Tender Index published by the Building Cost Information Service of the Royal Institute of Chartered Surveyors. Where this ceases to be published, the Retail Prices Index will be used.

#### An illustrative example

Anywhere Parish has 500 existing households with an annual limit of £100 per household. The Levy maximum therefore would be £50k (500x100). The district council's Levy rate for residential development is £50 per square metre (sqm). Development A is providing 40 homes (each at 80 sqms). This raises £160k of Community Infrastructure Levy receipts (40x80x50) in the Parish area. The 15% neighbourhood pot the Charging Authority will pass to the Parish Council is £24k. As this is less than £50k all of this money would go to the Parish.

If the development was providing 125 homes (each at 80 sqms) this raises £500k of Community Infrastructure Levy receipts (125x80x50). This would make the total 15% neighbourhood pot for this development £75k. The Parish would receive the majority of the neighbourhood pot, £50k, to spend on local priorities, whilst the remaining £25k would be retained by the charging authority as general Levy funds to spend on infrastructure.

109. Of course, charging authorities can choose to pass on a higher proportion of the Levy and the existing regulations already enable them to do this. The wider spending powers that apply to the neighbourhood funding element of the Community Infrastructure Levy will not apply to any additional funds passed to a Parish or Community council. Those additional funds can only be spent on infrastructure as they would be general Levy funds.

110. In England, in areas which have embraced positive planning for future development in their local area by putting in place a neighbourhood development plan (in line with the powers inserted by the Localism Act 2011 into the Town and Country Planning Act 1990) the neighbourhood funding element is increased to twenty five per cent of Levy receipts for development in their area. For this to

apply, the neighbourhood plan must be in place prior to when the planning permission first permits development.<sup>13</sup> This amount will not be subject to the annual limit. This higher amount will also be available when the Levy is paid in relation to developments which have been granted permission by a neighbourhood development order (including a community right to build order). Areas could use some of the neighbourhood pot to develop a neighbourhood plan where it would support development by addressing the demands that development places on the area. Neighbourhood planning does not apply in Wales, so neither does the enhanced neighbourhood funding element linked to it.

111. The Community Infrastructure Levy payment to the charging authority can be made by land as well as by cash. It is for the charging authority to choose whether to accept payment (in whole or in part) by land but the relevant percentage of the cash value of the Levy receipts must still be provided for neighbourhood funding.
112. The Mayor of London's London-wide Levy is exempt from the requirement to allocate any Levy receipts to neighbourhoods because the Mayor can only spend Community Infrastructure Levy on strategic transport infrastructure. However, other bodies able to charge the Levy (generally defined by reference to section 37 of the Planning and Compulsory Purchase Act 2004 for England and section 78 for Wales – and including London Boroughs and Mayoral Development Corporations) will be subject to the neighbourhood funding requirement.
113. Where development crosses Parish or Community Council area boundaries each council will receive a proportionate amount of the Levy payment based on the proportion of the gross internal area of the development located within their area. For example, if the development crosses two Parish Council areas with fifty per cent in one Parish and fifty per cent in the other, each of these Parish Councils will receive fifty per cent of the fifteen per cent up to the level of the annual limit for their area. The total Levy liability across the development is used to calculate the neighbourhood funding figure, to take account of sites with variable rates.
114. There could be occasions when development crosses more than one Parish Council area and where one or more of those areas has a neighbourhood development plan in place (so receive twenty five per cent) and one or more Parish Council areas does not. There could also be occasions where part of a development is granted planning permission by a neighbourhood development order, and part is not. In these cases the Parish Council will receive a proportionate amount of the Levy payment based on how much of the gross

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<sup>13</sup> The date that planning permission first permits development is set out in regulation 8 of the Community Infrastructure Levy Regulations 2010

internal area of the development is in an area for which there is a neighbourhood plan, or was granted permission by a neighbourhood development order.

115. We expect Parish and Community Councils to work closely with charging authorities and neighbouring Parish and Community Councils to agree infrastructure priorities. If the Parish or Community Council agrees with the charging authority's infrastructure priorities, they can agree that the charging authority should retain the neighbourhood funding to spend on that infrastructure. This prevents money passing between bodies when it is not necessary because priorities are aligned and helps to ensure that all available funding for infrastructure can be used to the greatest effect and to deliver sustainable development. It may be that this infrastructure is not in the Parish or Community Council's area, but will support the development of their area, such as a bypass or school somewhere else in the local area. Parish and Community Councils, and charging authorities, will want to work together to discuss priorities during the process of setting the Levy rate(s), which is covered in earlier sections of the guidance.
116. Parish and Community Councils must spend the neighbourhood funding they receive to support the development of their areas by funding those items set out in paragraph 107. The wider definition means that the neighbourhood funding pot can be spent on things other than infrastructure (as defined in the Community Infrastructure Levy regulations). For example, the pot could be used to fund affordable housing where it would support the development of the area by addressing the demands that development places on the area.
117. Where money is not used to support development of the area within five years of receipt, or is used for other purposes, the regulations give charging authorities the power to recover those funds. This is to ensure that money is spent, and spent effectively to benefit the local community.

### **Where there are not Parish or Community Councils**

118. Communities without a Parish or Community Council will still benefit from this incentive. In these cases the charging authority will retain the Levy receipts but should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding. We would expect charging authorities to clearly and transparently set out their approach to engaging with neighbourhoods using their regular communication tools e.g. website, newsletters, etc.
119. It is for the charging authority to undertake effective consultation and we are not requiring a specific process in regulations – rather we expect charging authorities to use existing community consultation and engagement processes in deciding how the neighbourhood funding element will be spent. This should include working with any designated neighbourhood forums preparing

neighbourhood plans that exist in the area, theme specific neighbourhood groups, local businesses (particularly those working on business led neighbourhood plans), and using networks that ward councillors use. Crucially this consultation should be at the neighbourhood level and be proportionate to the level of Levy receipts and the scale of the proposed development to which the neighbourhood funding relates.

120. It is important to note that where the charging authority retains the neighbourhood funding they can use those funds on the wider range of spending (as set out in paragraphs 107 and 116).

121. The charging authority and communities should consider such issues as the phasing of development, the costs of different projects (e.g. a new road, a new school), prioritisation, delivery and phasing of projects, the amount of the Levy that is expected to be retained in this way and the importance of certain projects for delivering development that the area needs. It should also have regard to the infrastructure needs of the wider area.

### **Payments and reporting**

122. Charging authorities and Parish and Community Councils are free to decide the timing of neighbourhood funding payments themselves. However, as part of clearly establishing the statutory requirement to pass over funds, the default position (to apply in the absence of such an agreement) is that the charging authority will be required to pass on payments within 28 days of the end of each six month period in the financial year. Section 151 of the Local Government Act 1972 requires Parish and Community Councils to make arrangements for the proper administration of their financial affairs and the Accounts and Audit (England) Regulations 2011 and Accounts and Audit (Wales) Regulations 2005 require systems for effective financial control. These requirements also apply when dealing with Community Infrastructure Levy neighbourhood funding payments.

123. To ensure transparency Parish and Community Councils must publish each year their total Community Infrastructure Levy receipts; total Levy expenditure; a summary of Levy expenditure including those things to which the Levy has been applied and the Levy expenditure on each; and the total amount of Levy receipts retained at the end of the reported year. There is not a prescribed format and Parish and Community Councils may choose to combine reporting on the Community Infrastructure Levy with other reports they already produce. Parish and Community Councils should publish this information on their website or the charging authority's website.

124. Parish and Community Councils are only required to produce a report when they have received Community Infrastructure Levy revenues. If they haven't received any money they do not have to publish a report, but may want

to publish some information in the interests of transparency. The Community Infrastructure Levy neighbourhood funding income and spending will also be included in the overall published accounts but are not required to be identified separately in those accounts.

125. Regulation 123(2) of the Community Infrastructure Regulations prevents section 106 planning obligations being used in relation to those things that are intended to be funded through the Levy. This does not apply in relation to the neighbourhood funding element. While Parish and Community Councils are not required to spend their neighbourhood funding in accordance with the charging authority's priorities, we expect Parish and Community Councils to work closely with the charging authority to agree priorities for spending the neighbourhood funding element. Parish and Community Councils should consider publishing their priorities, and highlighting those that align with the charging authority's priorities. This would improve transparency in allowing the community to see the potential benefits of development more clearly.
126. As the Levy is already being charged in some areas these Regulations ensure that the neighbourhood funding provisions do not apply in relation to a development if a liability notice was issued in relation to it before these regulations came into force.

### **Mayoral Development Corporations**

127. These Regulations provide for when Mayoral Development Corporations charge the Levy. Mayoral Development Corporations can be given the local planning functions of local planning authorities. Where they take on all the plan making functions in Part 2 of the Planning and Compulsory Purchase Act 2004 for the whole of their area they will be the charging authority for their area.
128. Mayoral Development Corporations may become, and cease being, charging authorities. The regulations make provision for when this happens. As well as making sure that Mayoral Development Corporations can get a charging schedule up and running as soon as possible, it is important to ensure that communities and local authorities do not lose out when a Mayoral Development Corporation becomes or ceases to be the charging authority for an area, or is dissolved.
129. We have allowed for the Mayor of London, in advance of a Mayoral Development Corporation being formally established, to carry out the preparatory work for it to be able to approve a charging schedule (such as preparation of the preliminary draft, and draft, charging schedule; and submission of the draft charging schedule for examination). This will enable the Mayoral Development Corporation to start charging the Levy as soon as possible after it becomes the charging authority for its area.

130. The regulations ensure that London Borough Councils that have granted planning permission for a development are still able to collect any Levy due in relation to that development after a Mayoral Development Corporation becomes the charging authority for that area (and vice versa, where a Mayoral Development Corporation granted the planning permission).
131. They also provide for a Mayoral Development Corporation, when it is winding down, to make arrangements for the collection of outstanding Levy liabilities.