PLANNING BULLETIN - THE ABOLITION OF POOLING RESTRICTIONS (AND OTHER CHANGES TO CIL)

Date: 18 September 2019

UK Real Estate Alert

The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 came into force on 1 September 2019. This 8th round of amendments change the Community Infrastructure Levy Regulations 2010 by:

- repealing Reg 123, meaning the end of "pooling restrictions" as well as the restriction on "double dipping" in s106 and CIL receipts
- replacing Reg 123 infrastructure lists with the requirement to prepare annual infrastructure funding statements setting out the charging authority's funding streams and spending priorities
- clarifying the calculation of indexation in respect of s73 permissions which increase the floorspace of the original development
- allowing certain CIL reliefs to be carried over to s73 permissions
- permitting the charging of fees for monitoring and reporting on s106 planning obligations
- simplifying the consultation requirements for adopting and modifying a CIL charging schedule
- introducing a requirement to consult before ceasing to charge CIL
- reducing the penalties for service of a late commencement notice

The National Planning Practice Guidance (NPPG) has also been updated to reflect these changes. Of the above, the deletion of Reg 123 is likely to have the most immediate, practical consequences to development on the ground. Until 1 September, local planning authorities were not permitted to:

- "pool" more than five s106 contributions towards the same item of infrastructure or infrastructure project; or
- fund, under s106, infrastructure being provided by CIL.

Now authorities are permitted to pick and mix between s106 and CIL receipts. Whilst CIL remains mandatory (subject to exemptions and reliefs) in areas with an adopted charging schedule, s106 obligations are subject to viability considerations (notwithstanding the NPPG's emphasis on assessing viability at the plan-making rather than decision-taking stage), as well as the CIL Reg 122 requirements to be:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and

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- fairly and reasonably related in scale and kind to the development.

We anticipate that the deletion of Reg 123 will:

- make it easier to deliver infrastructure serving strategic development sites, without requirement for complicated funding structures to circumvent pooling restrictions;
- even though the NPPG advises against a formulaic approach to s106 obligations, an increase in the uptake of tariff-style s106 contributions;
- lead to innovation in contractual mechanisms designed to ensure that payments made in connection with any one development are actually spent for the benefit of that development; and
- necessitate revisions to CIL rates adopted when double dipping was impermissible.

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