PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT COMMUNITY INFRASTRUCTURE LEVY (AMENDMENT) REGULATIONS 2018

Wednesday 24 January 2018

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not later than

Sunday 28 January 2018

The Committee consisted of the following Members:

Chair: Siobhain McDonagh

† Baron, Mr John *(Basildon and Billericay)* (Con)
† Blackman-Woods, Dr Roberta *(City of Durham)* (Lab)
† Bradley, Ben *(Mansfield)* (Con)
† Elmore, Chris *(Ogmore)* (Lab)
Godsiff, Mr Roger *(Birmingham, Hall Green)* (Lab)
† Hart, Simon *(Carmarthen West and South Pembrokeshire)* (Con)
† Huq, Dr Rupa *(Ealing Central and Acton)* (Lab)
† Mackinlay, Craig *(South Thanet)* (Con)
† Mann, John *(Bassetlaw)* (Lab)
† Morgan, Stephen *(Portsmouth South)* (Lab)
† Nandy, Lisa *(Wigan)* (Lab)
† Philp, Chris *(Croydon South)* (Con)
† Raab, Dominic *(Minister for Housing)*
† Ross, Douglas *(Moray)* (Con)
† Thomas, Gareth *(Harrow West)* (Lab/Co-op)
† Tolhurst, Kelly *(Rochester and Strood)* (Con)
† Tredinnick, David *(Bosworth)* (Con)

Rob Cope, *Committee Clerk*

† attended the Committee

The following also attended, pursuant to Standing Order No. 118(2):

Jenkyns, Andrea *(Morley and Outwood)* (Con)

Fourth Delegated Legislation Committee

Wednesday 24 January 2018

[Siobhain McDonagh *in the Chair*]

Draft Community Infrastructure Levy (Amendment) Regulations 2018

2.30 pm

The Minister for Housing (Dominic Raab): I beg to move,

That the Committee has considered the draft Community Infrastructure Levy (Amendment) Regulations 2018.

It is a pleasure to serve under your chairmanship, Ms McDonagh. The draft regulations were laid before the House on Wednesday 13 December 2017. If approved, they will help to ensure that contributions to the community infrastructure levy are calculated in line with the original policy intent.

The Community Infrastructure Levy Regulations 2010, which came into force in April 2010, enable local planning authorities and the Mayor of London to raise a levy on new development in their areas. The CIL can be used to fund a wide range of infrastructure to support the development of the area where it is collected. Local authorities raised at least £240 million through the CIL in 2016-17 to help fund local infrastructure, and the Mayor of London's CIL raised £381 million towards Crossrail by 2016-17. As I said, that money can be used to fund a wide range of infrastructure that is needed as a result of development, including safer roads schemes, flood defences, preservation of green spaces and even leisure centres.

The draft regulations will strengthen the Government's original intention regarding the relationship between the obligation to pay CIL and amendments to planning permissions. As hon. Members will know from their constituencies, amendments to developments are often made using what is known as a section 73 permission under the Town and Country Planning Act 1990. Those permissions are used to make minor but material adjustments to large-scale, long-term developments. For example, a developer might seek permission to build a different type of flat from the one that was originally permitted, perhaps because of shifts in demand, in the needs of the community or, indeed, in viability.

The draft regulations make clear that any new CIL should be charged only on the change to the development made through the section 73 permission, not on the whole project. In addition, indexation should be applied only to that particular change, not to the entire development. To be clear, the draft regulations relate only to developments that were permitted prior to the CIL coming into force, and they apply only when such developments are amended after the CIL was introduced. That means that a developer will not be double-charged on work that was permitted before the levy was introduced in the area. However, they will be liable to pay the levy on any changes to their planning permission that have the effect of increasing the development's impact on infrastructure.

We think that is the right balance. Without this amendment, developers could end up facing CIL charges that are not just double but multiples of—possibly six times—what the Government intended. If approved, the draft regulations will strengthen the Government's policy intent and ensure that the CIL works fairly and does not hold back vital developments. They have been widely welcomed by organisations including Wandsworth Borough Council and Peabody housing association, and by affected planning consultants and developers.

The draft regulations will provide additional clarity to ensure that the 2010 regulations operate as originally intended. If approved, they will ensure that the CIL continues to help fund vital infrastructure in local communities without impeding development. I commend the draft regulations to the Committee.

2.34 pm

Dr Roberta Blackman-Woods (City of Durham) (Lab): It is a pleasure to serve under your chairmanship, Ms McDonagh. I welcome the Minister to his new role and thank him for outlining the purpose of the draft regulations. Although they are technical, they have clear implications for the money that communities will receive as a result of allowing development to proceed.

As the Minister outlined, the draft regulations are intended to provide clarification of the level of CIL to be paid after a section 73 amendment to a planning permission. They are specifically intended to clarify the rate of indexation that should be used, so that the same rate of the BCIS, or building cost information service, all-in tender price index—more on that later—is applied to the before-CIL and after-CIL calculation. These draft regulations seek to alter the calculation of CIL to be paid in cases where planning permission was granted before CIL was in place in a given area, but where CIL is in place when a subsequent amendment to a scheme is made under a section 73 permission. I add to what the Minister said that this is about the calculation applied. If that is not correct, it would be helpful to have that clarified.

Regulation 128A of the CIL regulations, which deals with this, is apparently not sufficiently clear. Paragraph 7.5 of the explanatory memorandum explains that it has been brought to the Government's attention that there is a need for a change to that regulation, but it does not give the reasons, or the circumstances in which people had concerns about how the regulation was applied.

The draft regulations seem to state that the CIL to be paid is basically the difference between the original CIL that would have applied, had CIL been in place at the time of the original planning permission, and the new CIL rate to be applied under the section 73 amendment to the original permission. The Government are altering the regulations to ensure that same rate of indexation is used in updating the CIL level as applied to the original planning permission, so that an appropriate comparison is made. Presumably the intention is to reduce the amount of CIL that developers are required to pay. Although I understand the need for clarity, does the Minister accept that the change could have the overall effect of reducing the amount of CIL that can be levied?

Take the hypothetical example of a development given planning permission in 2015, before CIL was in place, and given permission for a section 73 amendment in 2016, after CIL had been introduced locally.

The calculation applied is for CIL for the complete new development, which we will call B, minus the hypothetical CIL for the previously permitted development, which we will call A. If the BCIS all-in tender price index is increased from 2015 to 2016, the previously calculated figure for CIL using the index figure from 2015 for A, and the figure from 2016 for B, would be larger than the calculation as proposed by this instrument, which would use the index figure from 2016 for both the A and B calculations. The difference between them would be smaller, reducing the amount of CIL to be charged. I am really pleased that one of the officials is nodding; it is assuring me that I have this right.

Even if the indexation figure was lower from B than A, it still amounts to a reduction in the amount of money that can be levied under the new formula in this instrument. In fact, the BCIS figures show—I have the graph with me—that this has consistently gone up over the last number of years, but even if it did not, it is still using the same rate for both calculations, and that still reduces the amount that can be applied in CIL.

Has the Minister's office run through any models of possible scenarios to calculate how big an effect this change might have on CIL revenues locally? I am sure that the Minister is aware that CIL is extremely important for local infrastructure, schools and roads, to support development. Endless tweaks to CIL over the last five or six years have often reduced its effectiveness in delivering resources to local authorities and their communities.

Gareth Thomas (Harrow West) (Lab/Co-op): My hon. Friend asks a very pertinent question. In my constituency, Persimmon, which must be one of the worst developers in Britain, is treating my constituents with almost complete contempt. Those constituents are particularly worried about the lack of resources going to the local council from Persimmon to tackle the big problems with local infrastructure that will result from extra people using the roads and needing schools and hospitals.

Dr Blackman-Woods: My hon. Friend makes a really pertinent point. We have to bear in mind, when we think about CIL and changes to it, the impact not only on developers but on local communities, and the overall money available to support necessary infrastructure. We need to make sure that where possible, developers pay what they should under CIL. My question to the Minister is whether the impact of the change is being kept under review.

I also want to ask the Minister whether local authorities have to pay for access to the BCIS data. If so, is that a sensible use of public money? It was not clear to me whether that information was readily available to them in the calculation of CIL and the rates that now have to be applied, or whether they had to pay for it like anyone else.

It is not our intention to divide the Committee on this statutory instrument. However, I would like to hear the Minister's response to my queries, for further reassurance.

2.41 pm

David Tredinnick (Bosworth) (Con): It is a pleasure to serve under your chairmanship again, Ms McDonagh, and to welcome my hon. Friend the Minister to his place. No doubt he was delighted to read his brief on such a technical matter. It is not the easiest statutory instrument that I have seen.

It is perfectly reasonable to come to the House and this Committee to ask for a change to bring legislation into line with the original intention of the Government. It is perfectly reasonable to expect developers to pay extra charges if they have made changes to plans. My hon. Friend explained that very well. However, I take him to task on one point. He gave examples of how the levy worked, saying that £24 million had been raised in 2016-17, but the examples he gave were all to do with London boroughs. I represent Leicestershire in the east midlands, and I am sure that my constituents will want to know that the benefits of the changes are not just for those within the M25.

Most of us are familiar with another, very important piece of legislation: section 106 of the Town and Country Planning Act 1990, which enables, as colleagues will know, planning authorities to enter into a legally binding agreement or planning obligation with the developer. In my constituency, where we have huge urban development at the Barwell sustainable urban extension, and in Burbage and elsewhere, the contribution of builders is extremely important. I am curious to know whether there is any relationship between the matter that we are discussing and section 106 of the Town and Country Planning Act. I look forward to the Minister's explanation of those points.

2.45 pm

John Mann (Bassetlaw) (Lab): Yet again, an SI on CIL—the most incompetent piece of Government legislation in our lifetime. It has required a whole series of amendments, because it was so incompetently brought in. I recall highlighting the £180,000 CIL that every single new housebuilder in Hertfordshire would have had to pay on the original proposals, which, thankfully, were changed by pressure and amendment, with a little bit of cross-party work to do that.

I want to clarify whether there is anything in the proposals that will prevent my constituent who moved into a property that has been derelict for five years to create a new enterprise to deal with that terrible site, which is a blight on the town centre, from having to pay £15,000 tax for the privilege of regenerating the local economy. Or is there anything in the proposals for my constituent who wishes to knock her house down and build another one, but who has to pay £10,000 in CIL tax upfront, in cash, for the privilege of building a more environmentally sound, more beautiful and more fitting property than the old wreck she is in at the moment? Is there anything in the SI that will address those issues? If not, can we expect more SIs? I volunteer to sit on them, if they address those two problems.

2.46 pm

Gareth Thomas: I want to ask the Minister a simple question. Is he going soft on developers? I ask that in the context—as my intervention on my hon. Friend on the Front Bench indicated—of the deep concern in my constituency about a development on the former Kodak site, where Persimmon has been leading the development of a large number of houses. Having put in a planning application some time ago, which secured the support

[Gareth Thomas]

of the local council, and which local residents had broadly come to terms with, Persimmon has taken the opportunity effectively to bully the council into agreeing to higher density on the site and is not treating local residents, whose property its site borders, with anything like the respect one would have hoped for from a major company. Residents are worried that there are not sufficient tools available to the Government and, crucially, to local councils, to hold big developers such as Persimmon to account.

I use the example of the situation I am having to deal with in my constituency, where Persimmon, backed up by lawyers, is saying to local residents that they are going to have to move their boundary fences to accommodate larger gardens for the new homes that Persimmon wants to build. Persimmon appears also to have exploited the Government's lending guarantee scheme of late to force people to buy a leasehold on some properties, only not to offer a leasehold in other ways.

Will the Minister assure the Committee that this is not him going soft on developers and that he will ensure that bad developers, as Persimmon clearly is in this particular case in my constituency, can be brought to book by local councils? Will he show some sympathy to my constituents who face this terrible situation?

2.49 pm

Dominic Raab: We have had some very insightful and thoughtful contributions. I thank the shadow Minister for her kind words and look forward to working with her in the future on CIL and on many other housing matters.

My first point in relation to her comments is that CIL should be charged only on changes to development and the indexation. That is the only way these regulations will bite. They will not affect the rate, which I think is the technical point that she raised.

Dr Blackman-Woods: I do not think my point was about the overall rate of CIL; it was about the rate of indexation. I thought the purpose of the SI was to ensure that the same rate of indexation is used, rather than to change the overall CIL.

Dominic Raab: I thank the hon. Lady for that clarification. I think we are agreed on that point. There has been no change to the rate. The indexation applies to the specific change; it does not apply to pre-CIL matters or applications.

The lack of clarity relates to an application originally brought by Peabody, a registered provider of affordable housing, and a judicial review involving Wandsworth Borough Council. I make that point because we are trying to ensure that the original intention of the 2010 regulations is enforced. Those regulations almost invariably have been properly applied by local authorities, in accordance with the original intention, and accepted by developers. That case is a fairly isolated incident of the wrong interpretation being applied. None the less, for the sake of developers, local authorities and communities, we want to ensure that there is proper legal certainty.

My hon. Friend the Member for Bosworth raised the issue of CIL's application to the whole country rather than just to London. I hope that I made this point in my opening remarks, but I am happy to reaffirm it: in the wider country, £240 million was raised through CIL last year. CIL is certainly not just a metropolitan or London-centric issue; it applies to the whole country. We are trying to ensure that, where there is much-needed homebuilding, infrastructure is provided, too. CIL is an important contribution to that, certainly not just in London.

My hon. Friend also asked about section 106. That is, in effect, the negotiated contribution that a developer makes, bearing in mind the infrastructure that is required and the viability of the development. The distinction is that that is agreed, whereas CIL is, in effect, levied, but both are critical. We want to ensure that we provide the homes we need in the places we need them, with the necessary infrastructure and funding.

The hon. Member for Bassetlaw, in his usual tub-thumping way, criticised the legislation. He made some perfectly reasonable points. I gently point out to him that the primary legislation for CIL was passed under the last Labour Government, but in the spirit of co-operation, if he has any further ideas or thoughts about the legislation or its application to his constituency, he should feel free to write to me.

John Mann: CIL's introduction, and the regulations that came with it, came in 2012. It was raised first with the Chancellor at the Treasury Sub-Committee, and then in the House by me and the Minister's colleague—I cannot remember where he is from, but his first name is Richard and his surname is rashers of pork that are eaten on a morning. He is a very good man, and he and I campaigned to get the CIL down to something rational. I want to know about my constituent who is putting in his own money to do up a derelict property and is getting taxed for the privilege. That does not seem to be the intended consequence, but it is the fact of the matter. That is not good news for someone who is trying to invest.

Dominic Raab: I thank the hon. Gentleman. I am not familiar with all the facts of the case. If he would like to write to me, I am happy to address them. I was simply making the point about the primary legislation. There ought to be cross-party support for an important mechanism to provide targeted investment where homes are needed.

The hon. Member for Harrow East—

Gareth Thomas: West.

Dominic Raab: I apologise—the hon. Member for Harrow West raised a local case. There are two points. Of course, I sympathise with the kind of situation he described in his constituency. We are absolutely not going soft on developers, although, frankly, I am not really sure I buy into that whole hard-soft idea. We want a smooth, streamlined approach with maximum legal certainty so that we can provide the homes we need, and with respect for local democracy in our local communities, while ensuring that we get the targeted investment to support the infrastructure that goes with housing. That is how we carry constituencies with us, whether it is his, mine or any other across the country, as we go through that vital national mission of building the homes we need.

Dr Blackman-Woods: I am grateful to the Minister for giving way. He is being very generous. I and all of us on the Opposition Benches accept that this is all about legal certainty, but will the Minister also accept that the outcome is likely to be a reduction in the amount of CIL levied?

Dominic Raab: I thank the hon. Lady. I tried to address that earlier. Almost all the cases where the regulations were applied were in accordance and consistent with the original intentions of the regulations. What we are really responding to is that one isolated case. I suspect that if there is any impact on revenue, it will be negligible. That also has to be countervailed against the risk of having uncertain regulations, with all the litigations that would ensue if we did not straighten this out.

As the hon. Member for City of Durham said, the draft regulations are necessary to provide clarity and certainty. They will help to ensure that developers have the certainty required to continue to deliver the homes we need, and that local councils can continue to collect the funding for the vital infrastructure to support them. That is not about going soft on developers; it is about ensuring that we have a constructive relationship that builds the homes that this country needs.

Most development impacts on or benefits from infrastructure. It is right and fair that those who benefit from the uplift in values created by a new development should share some of that gain with the local community. I suspect that that is something we believe on a cross-party basis in this House, and I also believe that it is right for development permitted before CIL came into force to be treated fairly. I commend the draft regulations to the Committee.

Question put and agreed to.

2.56 pm

Committee rose.