
DRAFT STATUTORY INSTRUMENTS

2010 No.

The Community Infrastructure Levy Regulations 2010

PART 11

PLANNING OBLIGATIONS

Limitation on use of planning obligations

122.—(1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.

(2) A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

(3) In this regulation—

“planning obligation” means a planning obligation under section 106 of TCPA 1990 and includes a proposed planning obligation; and

“relevant determination” means a determination made on or after 6th April 2010—

- (a) under section 70, 76A or 77 of TCPA 1990(1) of an application for planning permission which is not an application to which section 73 of TCPA 1990 applies; or
- (b) under section 79 of TCPA 1990(2) of an appeal where the application which gives rise to the appeal is not one to which section 73 of TCPA 1990 applies.

Further limitations on use of planning obligations

123.—(1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.

(2) A planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure.

(3) A planning obligation (“obligation A”) may not constitute a reason for granting planning permission to the extent that—

- (a) obligation A provides for the funding or provision of an infrastructure project or type of infrastructure; and

(1) Section 70 was amended by paragraph 14 of Schedule 7 to the Planning and Compensation Act 1991 (c. 34). Section 76A was inserted by section 44 of the Planning and Compulsory Purchase Act 2004 (c. 5). Section 77 was amended by section 40(2) (d) of the Planning and Compulsory Purchase Act 2004, paragraph 18 of Schedule 7 to the Planning and Compensation Act 1991 and paragraph 2 of Schedule 10 to the Planning Act 2008 (c. 29).

(2) Section 79 was amended by section 18 of the Planning and Compensation Act 1991 and paragraph 4 of Schedule 10 to the Planning Act 2008.

- (b) five or more separate planning obligations that—
 - (i) relate to planning permissions granted for development within the area of the charging authority; and
 - (ii) which provide for the funding or provision of that project, or type of infrastructure, have been entered into before the date that obligation A was entered into.
- (4) In this regulation—
 - “charging authority” means the charging authority for the area in which the development will be situated;
 - “funding” in relation to the funding of infrastructure, means the provision of that infrastructure by way of funding;
 - “determination” means a determination—
 - (a) under section 70, 76A or 77 of TCPA 1990 of an application for planning permission which is not an application to which section 73 of TCPA 1990 applies, or
 - (b) under section 79 of TCPA 1990 of an appeal where the application which gives rise to the appeal is not one to which section 73 applies;
 - “planning obligation” means a planning obligation under section 106 of TCPA 1990 and includes a proposed planning obligation but does not include a planning obligation that relates to or is connected with the funding or provision of scheduled works within the meaning of Schedule 1 to the Crossrail Act 2008;
 - “relevant determination” means—
 - (a) in relation to paragraph (2), a determination made on or after the date when the charging authority’s first charging schedule takes effect, and
 - (b) in relation to paragraph (3), a determination made on or after 6th April 2014 or the date when the charging authority’s first charging schedule takes effect, whichever is earlier; and
 - “relevant infrastructure” means—
 - (a) where a charging authority has published on its website a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL, those infrastructure projects or types of infrastructure, or
 - (b) where no such list has been published, any infrastructure.