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STATUTORY INSTRUMENTS

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**2010 No. 948**

**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) [<sup>F1</sup>Subject to paragraph (2A),] 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.

[<sup>F2</sup>(2A) Paragraph (2) does not apply in relation to a planning obligation which requires a sum to be paid to a local planning authority in respect of the cost of monitoring (including reporting under these Regulations) in relation to the delivery of planning obligations in the authority's area, provided—

- (a) the sum to be paid fairly and reasonably relates in scale and kind to the development; and
- (b) the sum to be paid to the authority does not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that 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, [<sup>F3</sup>73,] 76A or 77 of TCPA 1990(1) of an application for planning permission <sup>F4</sup>...; or
- (b) under section 79 of TCPA 1990(2) of an appeal <sup>F5</sup>....

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(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](#).

*Status: Point in time view as at 01/09/2019.*

*Changes to legislation: There are currently no known outstanding effects for the The Community Infrastructure Levy Regulations 2010, PART 11. (See end of Document for details)*

#### Textual Amendments

- F1** Words in [reg. 122\(2\)](#) inserted (E.) (1.9.2019) by [The Community Infrastructure Levy \(Amendment\) \(England\) \(No. 2\) Regulations 2019 \(S.I. 2019/1103\)](#), regs. 1, **10(a)** (with regs. 1(5), 13)
- F2** [Reg. 122\(2A\)](#) inserted (E.) (1.9.2019) by [The Community Infrastructure Levy \(Amendment\) \(England\) \(No. 2\) Regulations 2019 \(S.I. 2019/1103\)](#), regs. 1, **10(b)** (with regs. 1(5), 13)
- F3** Word in [reg. 122\(3\)](#) inserted (6.4.2011) by [The Community Infrastructure Levy \(Amendment\) Regulations 2011 \(S.I. 2011/987\)](#), regs. 1, **12(1)(a)**
- F4** Words in [reg. 122\(3\)](#) omitted (6.4.2011) by virtue of [The Community Infrastructure Levy \(Amendment\) Regulations 2011 \(S.I. 2011/987\)](#), regs. 1, **12(1)(b)(i)**
- F5** Words in [reg. 122\(3\)](#) omitted (6.4.2011) by virtue of [The Community Infrastructure Levy \(Amendment\) Regulations 2011 \(S.I. 2011/987\)](#), regs. 1, **12(1)(b)(ii)**

#### Commencement Information

- I1** [Reg. 122](#) in force at 6.4.2010, see [reg. 1](#)

#### Further limitations on use of planning obligations

<sup>F6</sup>**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 [<sup>F7</sup>(including, subject to paragraph (2B), through requiring a highway agreement to be entered into)].

<sup>F8</sup>(2A) Subject to paragraph (2B) a condition falling within either of the following descriptions may not be imposed on the grant of planning permission—

- (a) a condition that requires a highway agreement for the funding or provision of relevant infrastructure to be entered into;
- (b) a condition that prevents or restricts the carrying out of development until a highway agreement for the funding or provision of relevant infrastructure has been entered into.

(2B) Paragraphs (2) and (2A) do not apply in relation to highway agreements to be entered into with—

- (a) the Minister, for the purposes of section 1(1) of the 1980 Act; <sup>F9</sup>...
- (b) Transport for London [<sup>F10</sup>; or
- (c) a strategic highways company for the time being appointed under Part 1 of the Infrastructure Act 2015].]

(3) [<sup>F11</sup>Other than through requiring a highway agreement to be entered into, 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 [<sup>F12</sup>provides for the funding or provision of a] type of infrastructure; and
- (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 [<sup>F13</sup>or provide for the funding or provision of that] type of infrastructure,

have been entered into [<sup>F14</sup>on or after 6th April 2010].

(4) In this regulation—

[<sup>F15</sup>“the 1980 Act” means the Highways Act 1980;]

“charging authority” means the charging authority for the area in which the development will be situated;

[<sup>F16</sup>“condition”, in relation to a planning permission, has the same meaning as in section 70(1) (a) of TCPA 1990;]

“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, [<sup>F17</sup>73,] 76A or 77 of TCPA 1990 of an application for planning permission <sup>F18</sup>..., or

(b) under section 79 of TCPA 1990 of an appeal <sup>F19</sup>...;

[<sup>F20</sup>“highway agreement” means an agreement under section 278 of the 1980 Act;]

“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 [<sup>F21</sup>6th April 2015] or the date when the charging authority’s first charging schedule takes effect, whichever is earlier; and

“relevant infrastructure” means—

(a) [<sup>F22</sup>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 (other than CIL to which regulation 59E or 59F applies), those infrastructure projects or those types of infrastructure;

(b) except where paragraph (c) applies, where no such list has been published, any infrastructure; or

(c) in relation to any planning obligation requiring a highway agreement to be entered into or condition falling within paragraph (2A), where no such list has been published, no infrastructure.]]

#### Textual Amendments

**F6** Reg. 123 omitted (E.) (1.9.2019) by virtue of [The Community Infrastructure Levy \(Amendment\) \(England\) \(No. 2\) Regulations 2019 \(S.I. 2019/1103\)](#), regs. 1, **11** (with reg. 13)

**F7** Words in reg. 123(2) inserted (24.2.2014) by [The Community Infrastructure Levy \(Amendment\) Regulations 2014 \(S.I. 2014/385\)](#), regs. 1, **12(a)**

**F8** Reg. 123(2A)(2B) inserted (24.2.2014) by [The Community Infrastructure Levy \(Amendment\) Regulations 2014 \(S.I. 2014/385\)](#), regs. 1, **12(b)**

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- F9** Word in reg. 123(2B)(a) omitted (1.4.2015) by virtue of The Infrastructure Act 2015 (Strategic Highways Companies) (Consequential, Transitional and Savings Provisions) Regulations 2015 (S.I. 2015/377), reg. 1(2), **Sch. para. 46(2)**
- F10** Reg. 123(2B)(c) and word inserted (1.4.2015) by The Infrastructure Act 2015 (Strategic Highways Companies) (Consequential, Transitional and Savings Provisions) Regulations 2015 (S.I. 2015/377), reg. 1(2), **Sch. para. 46(3)**
- F11** Words in reg. 123(3) substituted (24.2.2014) by The Community Infrastructure Levy (Amendment) Regulations 2014 (S.I. 2014/385), regs. 1, **12(c)(i)** (with reg. 14(5)(6)(7))
- F12** Words in reg. 123(3)(a) inserted (24.2.2014) by The Community Infrastructure Levy (Amendment) Regulations 2014 (S.I. 2014/385), regs. 1, **12(c)(ii)** (with reg. 14(5)(6)(7))
- F13** Words in reg. 123(3)(b)(ii) substituted (24.2.2014) by The Community Infrastructure Levy (Amendment) Regulations 2014 (S.I. 2014/385), regs. 1, **12(c)(iii)** (with reg. 14(5)(6)(7))
- F14** Words in reg. 123(3) substituted (6.4.2011) by The Community Infrastructure Levy (Amendment) Regulations 2011 (S.I. 2011/987), regs. 1, **12(2)**
- F15** Words in reg. 123(4) inserted (24.2.2014) by The Community Infrastructure Levy (Amendment) Regulations 2014 (S.I. 2014/385), regs. 1, **12(d)(i)**
- F16** Words in reg. 123(4) inserted (24.2.2014) by The Community Infrastructure Levy (Amendment) Regulations 2014 (S.I. 2014/385), regs. 1, **12(d)(ii)**
- F17** Word in reg. 123(4) inserted (6.4.2011) by The Community Infrastructure Levy (Amendment) Regulations 2011 (S.I. 2011/987), regs. 1, **12(3)(a)**
- F18** Words in reg. 123(4) omitted (6.4.2011) by virtue of The Community Infrastructure Levy (Amendment) Regulations 2011 (S.I. 2011/987), regs. 1, **12(3)(b)(i)**
- F19** Words in reg. 123(4) omitted (6.4.2011) by virtue of The Community Infrastructure Levy (Amendment) Regulations 2011 (S.I. 2011/987), regs. 1, **12(3)(b)(ii)**
- F20** Words in reg. 123(4) inserted (24.2.2014) by The Community Infrastructure Levy (Amendment) Regulations 2014 (S.I. 2014/385), regs. 1, **12(d)(iii)**
- F21** Words in reg. 123(4) substituted (24.2.2014) by The Community Infrastructure Levy (Amendment) Regulations 2014 (S.I. 2014/385), regs. 1, **12(d)(iv)**
- F22** Words in reg. 123(4) substituted (24.2.2014) by The Community Infrastructure Levy (Amendment) Regulations 2014 (S.I. 2014/385), regs. 1, **12(d)(v)** (with reg. 14(5)(6)(7))

#### **Commencement Information**

- I2** Reg. 123 in force at 6.4.2010, see **reg. 1**

**Status:**

Point in time view as at 01/09/2019.

**Changes to legislation:**

There are currently no known outstanding effects for the The Community Infrastructure Levy Regulations 2010, PART 11.