

CIL The Countdown to April 2015

July 2014



Community Infrastructure Levy Spotlight Is time running out for Section 106?

■ Our forecasts indicate that 68% of Local Planning Authorities (LPAs) in England and Wales will not have a CIL in place by April 2015, when the rules change. LPAs are taking up to two years to implement a CIL Charging Schedule. With less than 10 months to go, only those LPAs that have submitted a Charging Schedule for Examination are likely to make the deadline, with our forecasts showing an average timescale of nine and a half months from submission to implementation.

■ Pooled Section 106 contributions will be heavily restricted post-April

2015 adding a further level of risk to delivery for LPAs to consider.

■ The majority of LPAs will subsequently be reliant on Section 106 contributions to fund infrastructure, with 65% of the national housing supply in England and Wales falling in these areas.

■ Further guidance is needed on the operation of Section 106 contributions post-April 2015. Regardless of this, LPAs will also need to consider how CIL and Section 106 will work alongside one another.

■ Our research shows the highest reductions in CIL rates through the rate-setting process are being seen in lower value areas, where the ability of sites to fund infrastructure via CIL and Section 106 is most restricted. However, continual engagement is needed in all markets to ensure the proposed CIL rates are viable and reflective of local market factors.



APRIL 2015 DEADLINE

Less than 10 months away

The CIL Regulations imposed a restriction on the pooling of Section 106 contributions by LPAs for use towards an infrastructure type or project after 6 April 2014, or following implementation of a Charging Schedule (whichever the earlier). The CIL (Amendment) Regulations 2014 ('the 2014 Regulations') extended this deadline to 6 April 2015, allowing a brief reprieve for LPAs to allow time for Charging Schedules to be put in place.

These restrictions will severely curtail LPAs' ability to utilise Section 106 as a mechanism for funding strategic, or non-site specific, infrastructure post-April 2015. The 2014 Regulations are difficult to interpret in respect of this point, although the 2014 CIL Guidance appears to support the principle of so-called "salami-slicing" by specific infrastructure projects up to a maximum of four contributions.

FOCUSING THE MINDS OF LPAs

The April 2015 deadline is focusing the minds of LPAs towards getting a CIL in place. But what many may not anticipate is the time it will take to get a Charging Schedule implemented.

It is now under 10 months to April 2015 and there are still 309 LPAs in England and Wales without a CIL in place, including 172 that are yet to publish a Preliminary Draft Charging Schedule (PDCS).

Our research shows that the median timescale for the production of a CIL Charging Schedule, based on those currently in progress or already implemented, is 23 months from the publication of the PDCS to the implementation of the CIL.

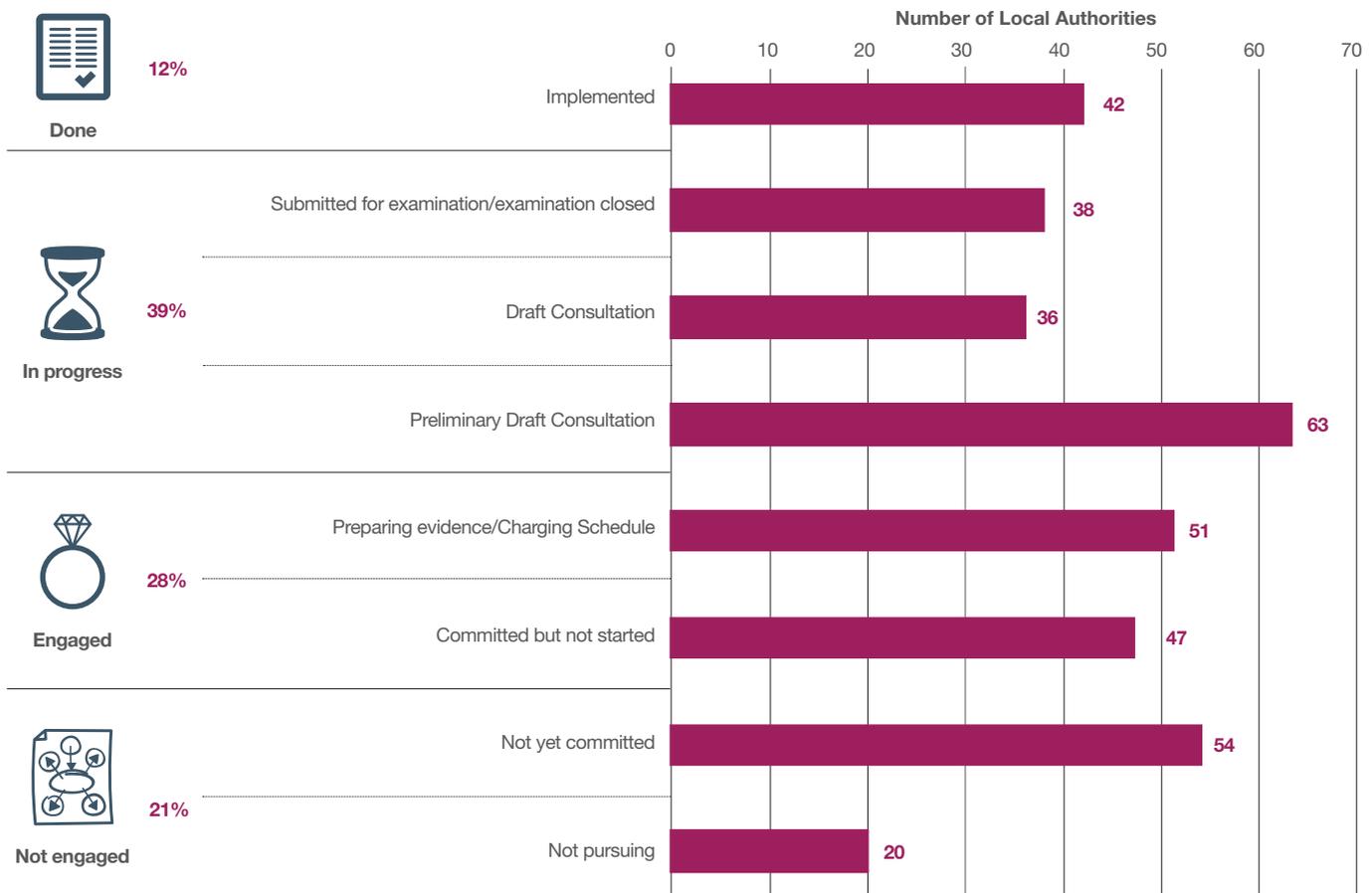
This timescale does not include the time taken to produce the supporting evidence, which can add an additional six months to the process, especially where stakeholders are engaged informally.

While nearly 40% of LPAs are in the active stages of consulting on or examining a Draft Charging Schedule (DCS), 28% of LPAs have committed to adopting a CIL but are yet to publish a Charging Schedule.

There are subsequently still plenty of opportunities to influence emerging CIL rates.

24 MONTHS
Median timescale for a CIL Charging Schedule

GRAPH 1 Progress on CIL Implementation (England & Wales)

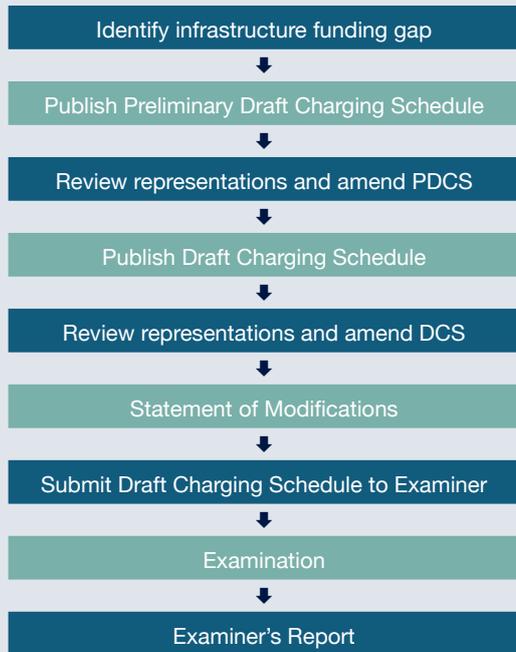


Source: Savills Research (as at 26 June 2014)

CIL PROCESS

The key stages

Green indicates the stages during the CIL process where stakeholders can engage with the LPA



ENGAGEMENT

Since the introduction of CIL, 58 LPAs have been through the CIL examination process and had an Examiner’s report published. 50% of these have seen a reduction in either their maximum residential or retail rates during the CIL process (see CIL Process).

Of these, 13% had both their residential and retail rates reduced with analysis showing that on average residential and retail rates reduce by 29% and 39% respectively.

However, there are exceptions such as Poole Borough Council where the retail rate increased between the PDCS and DCS. The question is therefore whether or not this is the result of active engagement with LPAs?

Is engagement working?

We have looked at those LPAs where residential rates have reduced in greater detail to assess the effectiveness of engagement with the CIL process. 40% had their residential CIL rates reduced at Examination, although the average

reduction in residential rates is still highest between PDCS and DCS at 20%, compared to just 12% between DCS and Examination.

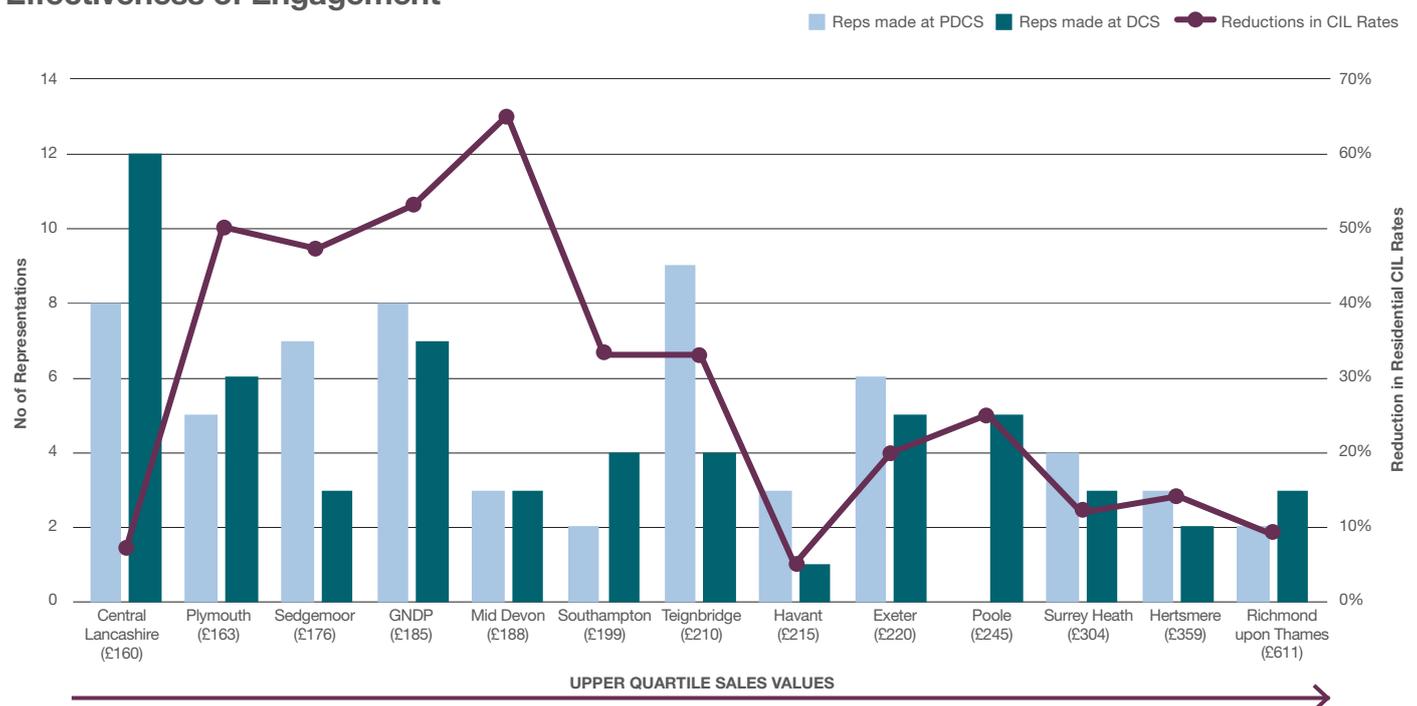
This shows that Examiners play an important role in the CIL process and that engagement with the LPAs alone is not the only factor influencing the CIL rates being adopted.

Graph 2 uses Hometrack data as a starting point to assess the relative market strength of each LPA, and sets this against the number of representations made and the reduction in the residential CIL rates.

The resulting graph illustrates that there is an inverse relationship between stronger markets and the reduction in CIL rates, with the highest reductions seen in the areas with the lowest sales values.

This is a point identified in the *CIL: Getting it Right* report, which highlighted the existence of a “viability squeeze” in mid-priced markets with limited capacity to fund infrastructure in areas with sales values under £250 per sq.ft. The key question is therefore how LPAs will fund infrastructure in the absence of CIL post-April 2015?

GRAPH 2 Effectiveness of Engagement



Source: Savills Research (using Hometrack sales value data)

➔ IS TIME RUNNING OUT FOR LPAs?

Post-April 2015 (or implementation of a Charging Schedule) the 2014 Regulations impose a restriction on the number of Section 106 contributions that can be pooled towards infrastructure that may be funded by CIL.

This is explained further in the 2014 CIL Guidance which states that “At that point, no more may be collected in respect of a specific infrastructure project or a type of infrastructure through a Section 106 agreement, if five or more obligations for that project or type of infrastructure have already been entered into since 6 April 2010, and it is a type of infrastructure that is capable of being funded by the levy.”

should only be sought through planning obligations where this can be justified with reference to the underpinning evidence on infrastructure planning that was presented at the Charging Schedule examination.”

This is a clear message for LPAs with a CIL in place or post-examination by April 2015, but causes confusion for LPAs at earlier stages, so clarity through amended guidance would be helpful.

MEETING DEADLINES

Who will make the April 2015 deadline?

Graph 3 below shows the forecast pipeline of CILs to be implemented using the long-run median timescales discussed above and clearly highlights the significant number of LPAs that will miss the April 2015 deadline. This research indicates that only 32% of LPAs could meet the deadline, leaving 68% that will miss the cut-off date.

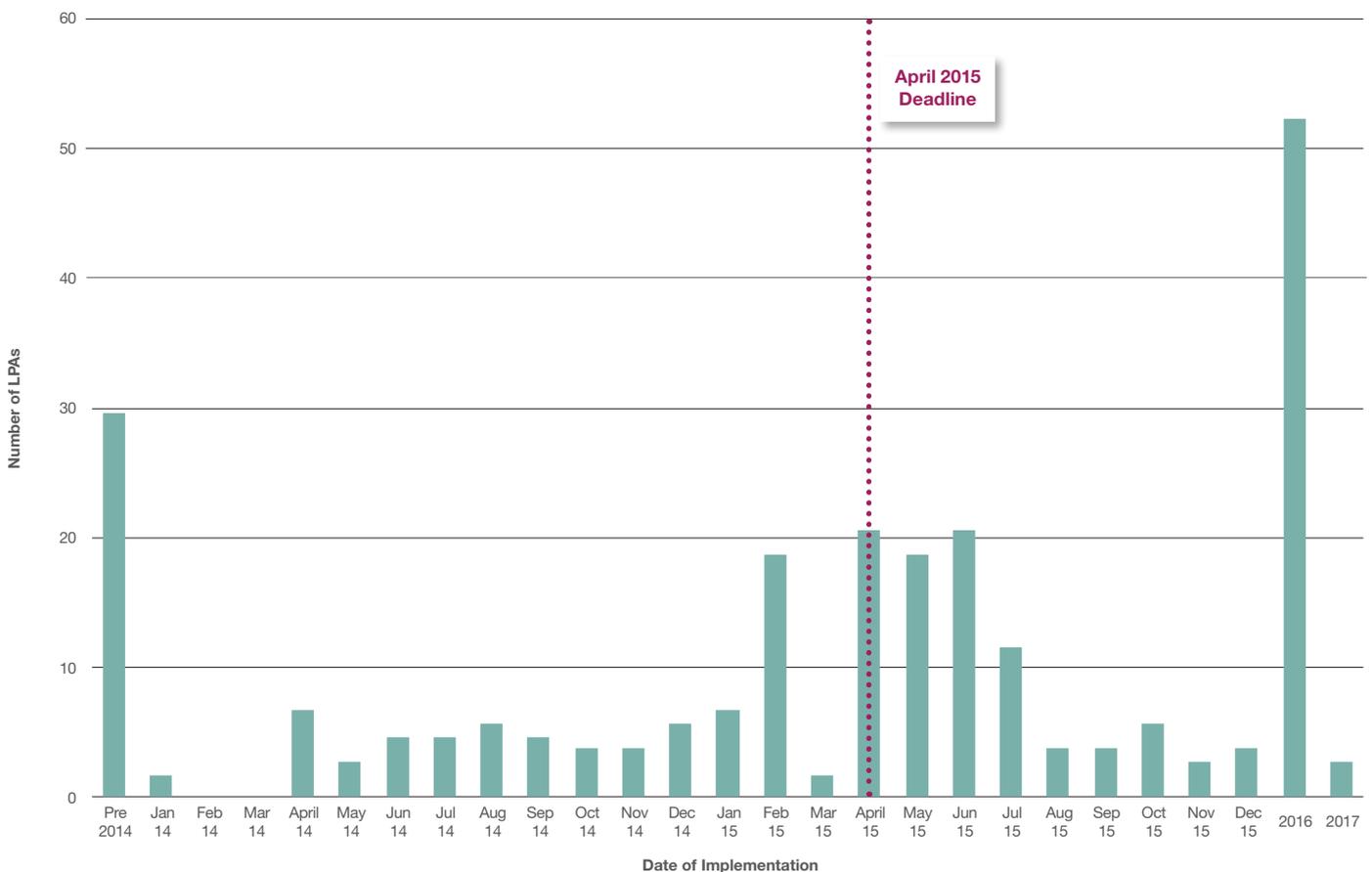
It is therefore likely that many LPAs will already have hit this threshold for types of infrastructure (e.g. education) leaving them reliant on collecting planning obligations for a site-specific item of infrastructure or project (e.g. a local school).

However, the 2014 CIL Guidance suggests that the pooling of Section 106 for site-specific infrastructure could be restricted further - “Site-specific contributions like this



68% of LPAs are likely to miss the April 2015 cut off date

GRAPH 3 **Projected Implementation Dates** (for LPAs that have committed to CIL)



Source: Savills Research (as at 26 June 2014)



GRAMPIAN CONDITIONS

A Key Concern for Developers

Grampian conditions are planning conditions attached to a decision notice by a LPA preventing a development from commencing until certain items of infrastructure have been completed on land both within and outside the control of the developer.

These conditions, whilst fairly common, carry significant risk for developers and could become increasingly onerous post-CIL where the items of infrastructure are included on the Regulation 123 list but fall within the boundary of the site.

In these instances the developer cannot put the infrastructure in themselves. They are subsequently reliant on the LPA funding and delivering the necessary infrastructure.

It is therefore essential that LPAs review their Regulation 123 lists and where possible limit these items to those that will not prevent large sites from coming forward for development. In addition, LPAs should ensure that Section 106 agreements refer to specific items of infrastructure (e.g. a specific school) to enable 'salami-slicing' of infrastructure types.

WHAT NEEDS TO BE DONE?

No further amendments to the CIL Regulations are planned before the General Election. It is therefore unlikely that the April 2015 deadline will be extended. The key concern for landowners and developers post-April 2015 is therefore how infrastructure will be delivered in LPAs where a CIL is not in place.

Developers and LPAs should therefore ensure that any Section 106 agreements post April-2015, or in areas where CIL is already in place, refer to contributions for specific projects. This will ensure that the contributions are lawful and that the impact of developments can continue to be mitigated. Further guidance on this point from Ministers is also essential to ensure that LPAs have a sufficient Section 106 mechanism in place post-April 2015, as failure to do so will have a significant impact on the delivery of both infrastructure and housing.



Section 106 will be heavily restricted after April 2015



Where there is no CIL in place, reliance on Section 106 funding will be restricted



Section 106 agreements should refer to specific named projects



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