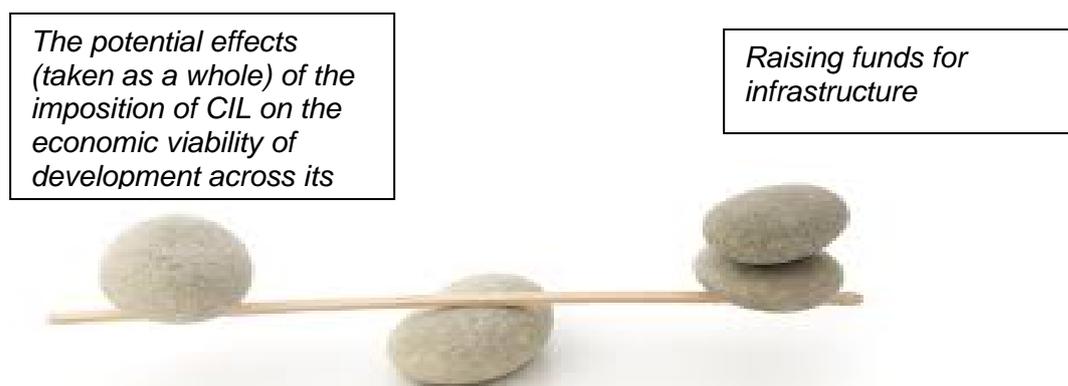


## CIL Viability- Importance of Viability: Evidence for CIL

The importance of viability in relation to CIL is focused on the need for charging authorities to 'strike an appropriate balance'.

Charging authorities '~~must aim to strike what appears to the charging authority to be an appropriate balance between~~



### Viability Evidence- What is required?

The viability evidence required to set a CIL should be 'appropriate available evidence', it should be 'appropriate' which means that not every site needs to be tested, but the key sites/types of sites, and it should be the types of development that actually get built that are tested. Do not test an ice rink if you haven't any prospect of having one or it is not key to the delivery of your development strategy. Emphasise key sites and uses that are critical to the Plan. The evidence should also be capable of being put into the public domain.

It is the same approach to viability appraisals as for individual schemes – just more appraisals!

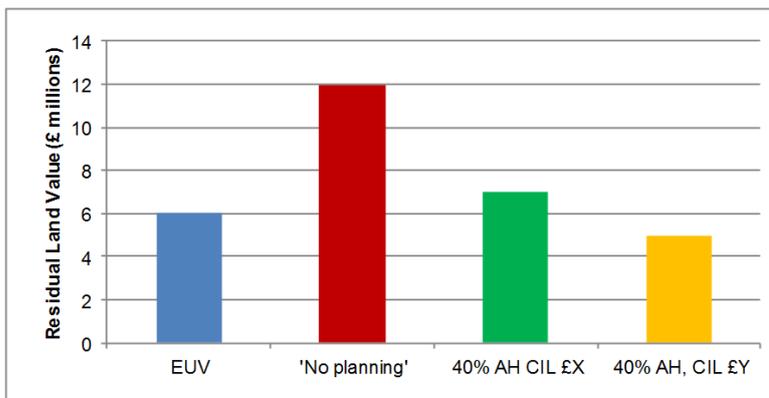
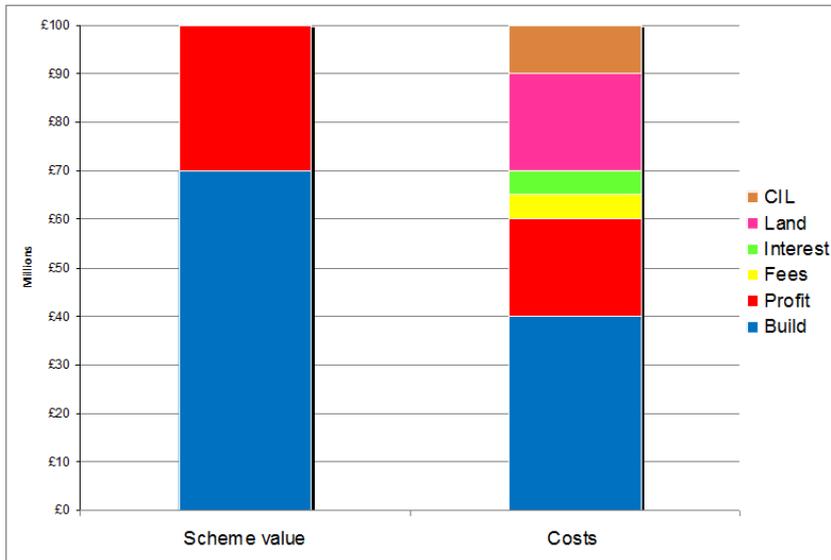
In terms of residential uses create a range of typologies that represent entire anticipated housing supply. You must taking account of other policy requirements (standards; affordable housing etc) and on strategic sites make sure you also take into account - on-site S106; infrastructure burden; and cashflow profile.

When appraising commercial development – make sure that you test the main types of development expected to come forward (retail, offices etc.). If you are going to set a nil rate a development type you need to test developments to justify the nil rates. Considering other uses for example D1/D2 are predominantly reliant on public subsidy etc. and with sui generis uses there

are generally too many to test and most development strategies are not reliant on them.

### What evidence is required - Approach to viability evidence

The recommended approach to viability evidence is the residual appraisal approach – based on existing use value (EUV) plus a premium:





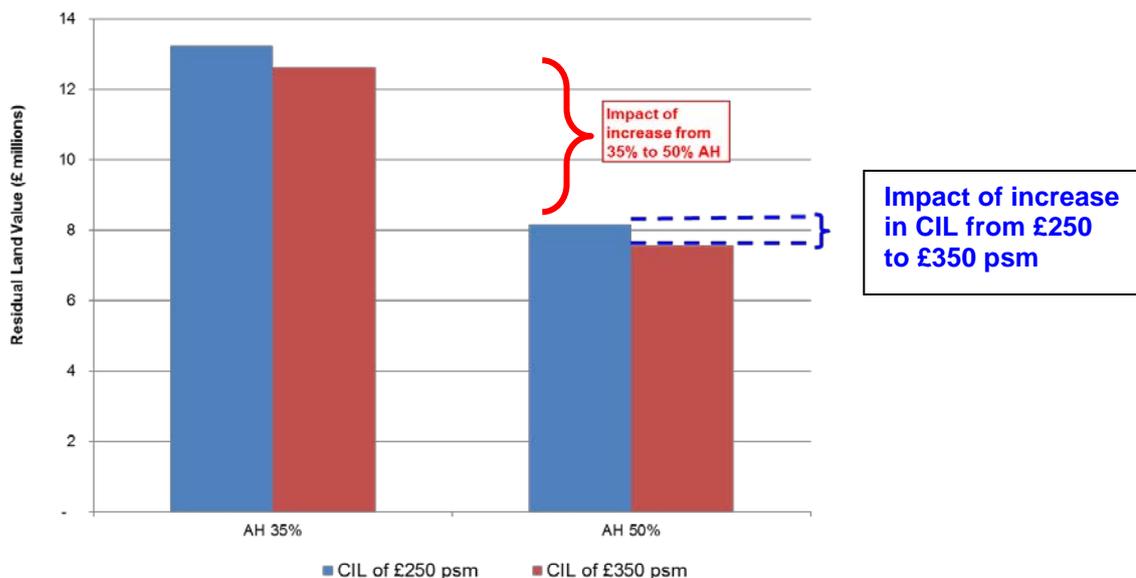
### Evidence and the PDCS – how to determine boundaries

It is difficult in urban areas to determine boundaries and markets are not black and white but postcodes are often of relevance to market boundaries. It is also the case that natural barriers – railways, major roads – can determine the boundaries between areas (and values). You are likely to have a reasonable feel for the values and boundaries within your local area and this can be developed by a combined approach of Individual site testing and Land Registry/other source data by sub-postcodes. However, there is unlikely to be a perfect match but it will usually be considered to be appropriate available evidence.

### CIL and other policy objectives

Urban areas are complex as you need to consider a range of viability outcomes including affordable housing policies seeking the 'maximum reasonable'. There is only so much value from any scheme so CIL and affordable housing (AH) are effectively competing for scheme value. The same is true for s 106, for each £ taken for S106 there is a £ less for affordable housing. BUT remember the cost of delivering affordable housing is far greater than CIL.

### CIL and Affordable Housing



### Broad test of reasonableness

When looking at your viability evidence and potential CIL rates look at whether they are reasonable, look at the proportion of value and of cost. Would your rates be enough to 'threaten the ability to develop viably the sites and scale of development identified in the relevant Plan.' This will be very useful information to have for your examinations.

Site type	CIL as % of scheme value	CIL as % of development cost
Strategic brownfield	3.7%	4.2%
Large greenfield	3.5%	4.0%
Medium greenfield	3.4%	3.8%
Small greenfield	3.4%	3.8%
Below AH threshold	2.7%	3.2%
Specialist housing	3.4%	3.8%

### Consultation with stakeholders – what to expect

The Local Housing Delivery Group (Harman)-

[http://www.pas.gov.uk/c/document\\_library/get\\_file?uuid=90fc2589-685a-441f-be9c-1874de4f20b9&groupId=332612](http://www.pas.gov.uk/c/document_library/get_file?uuid=90fc2589-685a-441f-be9c-1874de4f20b9&groupId=332612)

And the PPG recommends engagement between developers/landowners and planning authorities at an early stage.

### Consultation with stakeholders:

This consultation or engagement should be an evidence gathering exercise. Developers better placed than anyone to provide evidence on most if not all of the key components of a viability appraisal -

- sales values on new build schemes
- build costs
- fees,
- finance etc.

However, consultation is not working in the manner envisaged, there seems to be a one way flow of information (charging authorities (CAs) to stakeholders) and the representation received by authorities are typically un-evidenced assertions, in many cases developers hide behind 'confidentiality' of data and consultants act as a barrier between the CA and developers.

Make it clear that the expectation is that they will participate in the CIL setting process referring them to the Harman guidance and Planning Policy Guidance (PPG).

Ultimately consultation with stakeholders is just a messy exercise in negotiation as each £ in CIL is £ less for land and developers fearful of impact on land supply. In practice, uplift in land is still significant

## The Examination and post-Examination follow up

### Viability at examination

Examiners often base topics covered on respondents' issues. PINs have often said at PAS events that they will examine the issues that are raised. The likely issues and those that have been raised in relation to viability are:

- Land value assumptions
- Market value vs current use value approach (more later)
- Benchmarks reflective of sites that are likely to come forward
- Extent of buffer and its adequacy
- Assumptions re on-going S106 after CIL adoption
- Realism of sales values and build costs
- Phasing of CIL
- Effect of CIL on strategic sites/opportunity areas
- Zones – are boundaries in the right place
- Adequacy of evidence – sufficient number of appraisals.

The examination not closed until the examiner's report is issued so there are opportunities post-hearing for additional evidence to be requested and submitted.

Charging Authorities (CAs) cannot pre-empt discussions at hearing.

Examination examples -

- Islington: new issues raised on hotel appraisals requiring re-model
- Lambeth: new evidence on yields became available
- Tandridge: critique of small sites – developers invited to submit evidence.

It should be noted that examiner can hold further hearings if necessary.

### Issues at Examination – affordable housing:

A key issue at examination is the level of affordable housing that has been included in the viability evidence that has informed the rate setting. There have been conflicting approaches adopted by examiners to 'compliance' with policy.

### 'Mid-Devon' approach vs London approach

The Mid Devon approach made it very clear that councils should include their full policy level of affordable housing in their viability assessment. However, this conflicts with several London cases. In the London Borough of Newham (LBN) [<http://www.newham.gov.uk/Pages/ServiceChild/Community-Infrastructure-Levy-Examination.aspx>] examination the examiner accepted LBN not achieving 35% and that it was acceptable to base viability on a lower than plan proportion of affordable housing.

In the Waltham Forest examination, 20% of Affordable housing was not viable at the current time with the cost of 20% to 50% - £7m and the cost of proposed CIL - £0.5m. Setting a nil CIL would not enable schemes to deliver 50% affordable housing . [CIL pages:

<https://www.walthamforest.gov.uk/Pages/Services/community-infrastructure-levy.aspx>].

### Why is 'market value' inappropriate for CIL rate setting

Market value – rather than existing use value plus a premium is promoted in the RICS guidance

[http://www.pas.gov.uk/c/document\\_library/get\\_file?uuid=2c5c4f63-5010-4839-83f9-4955cf09e0a9&groupId=332612](http://www.pas.gov.uk/c/document_library/get_file?uuid=2c5c4f63-5010-4839-83f9-4955cf09e0a9&groupId=332612).

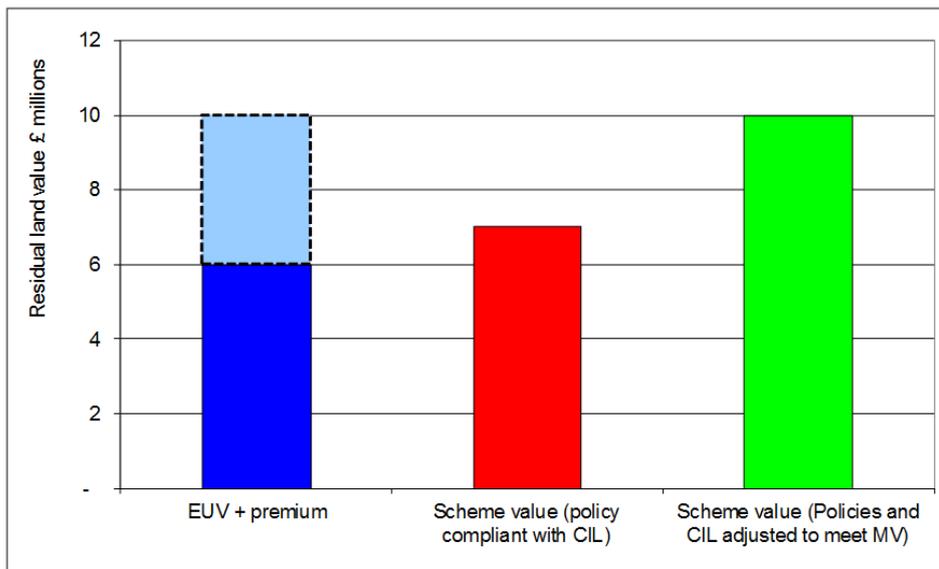
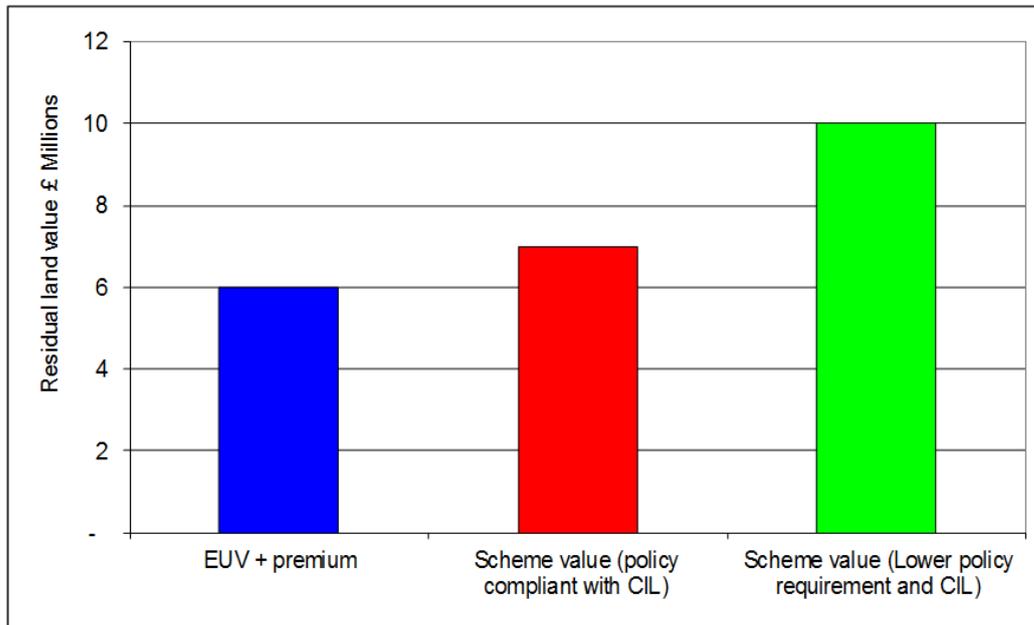
This approach is not recommended by the Local Housing and delivery group (Harman) as being appropriate for CIL setting or plan making.

It implies that you know what the CIL already is/should be (market value (MV) needs to be adjusted to reflect 'emerging' CIL).

You need to know how much you can adjust MV downwards before delivery is prejudiced. How do you know? What are the processes or principles for establishing this? The 'adjustment' for policy making including CIL relies on arbitrary judgements by a valuer. How can the Examiner check whether (s)he is right? They can't as there is no objective test!

There are a number of important issues with market value in practice - MV is primarily based on what people pay for land. So why is this problematic? – there are a number of reasons including: developers building in growth when bidding for land, they 'take a view' on squeezing planning obligations & affordable housing requirements, differing densities mean land values vary, and of course developer may not have made a profit!

Market value is a historic approach as it is based on current planning policy and tells us nothing about what policies could be viable.



### Keep it in proportion

CIL does not account for significant % of total costs, it is typically less than 3% of total costs and even lower when existing floorspace is deducted.

Also in most places CIL will largely replace the existing S106 'ask'. The use of S106 is now limited by Regulation 122 of the CIL regulation. S106 according to these legal tests must be:

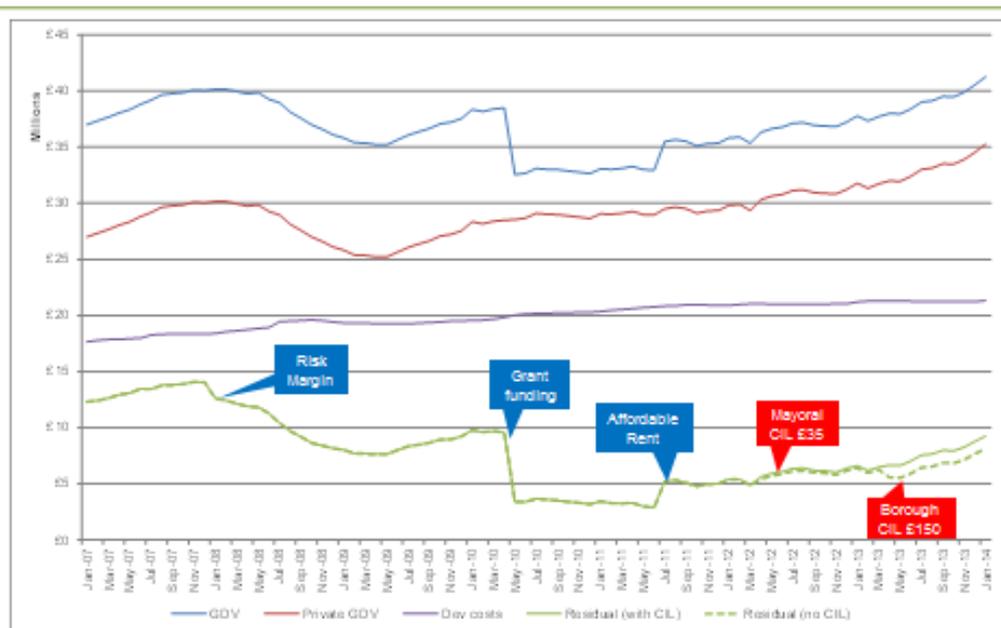
- Necessary to make development acceptable in planning terms
- Directly related to the development
- Fairly and reasonably related in scale and kind to the development.

You need to ask yourself 'Can schemes be so 'on a knife-edge' for CIL to tip the balance?' - In vast majority of cases, no. CIL can be absorbed through modest reduction in land value and alternatively CIL can be offset by small reduction in affordable housing.

You could also potentially vary other policy requirements, although this is not recommended as a basis for your case at examination. However, for the practical implementation of the CIL it is worth considering how instalments policies can help mitigate the impact and ultimately, exceptional relief can be made available if a particular site is likely to have difficulties.

Despite the fuss, other appraisal factors (build costs, sales values etc.) are far more important.

### CIL in the wider context of development economics



### Viability – Key Issues

- Focus on what matters to the delivery of the Plan
- Remember there is room for pragmatism
- CIL's inability to flex in response to market cycles is an issue
- The process of establishing and adopting rates can be a minefield
- The test under the regulations is now more onerous BUT
  - CIL accounts for only a small proportion of costs
  - CIL is relatively insignificant in major projects
  - Other policy objectives have more influence (and can flex).