

Community Infrastructure Levy: Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy, Department for Communities and Local Government, July 2009

RESPONSE BY: IXIA, SUPPORTED BY ARTS COUNCIL ENGLAND

DATE: 21st OCTOBER 2009

KEY CONTACT:

Jonathan Banks
Chief Executive
ixia, the public art think tank
Unit 114
The Custard Factory
Gibb Street
Birmingham
B9 4AA

T: 0121 753 5301

E: jonathan.banks@ixia-info.com

W: www.ixia-info.com

ABOUT IXIA

ixia is the public art think tank. It initiates new thinking about public art through research and debate for the benefit of artists, commissioners and the public. ixia is a regularly funded organisation of the Arts Council of England (ACE).¹

PURPOSE OF THIS NOTE

This note has been prepared by ixia in response to the Department of Communities and Local Government's consultation document: Community Infrastructure Levy - Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy, July 2009.

This note has also informed, and is referenced in, the response of the Living Places partnership to the consultation document. The Living Places partnership is a joint initiative between the Department of Communities and Local Government (DCLG) and the Department for Culture, Media and Sport (DCMS), along with five key cultural agencies: ACE; the Commission for Architecture and the Built Environment (CABE); English Heritage; the Museums, Libraries and Archives Council (MLA); and Sport England. The initiative aims to ensure that all communities, in particular those experiencing economic growth, benefit from cultural facilities such as museums, libraries, art and sport as well as making better use of cultural heritage.² In addition, ACE has independently endorsed this note.

RESPONSE - PUBLIC ART AND THE COMMUNITY INFRASTRUCTURE LEVY (CIL)

ixia's comments on DCLG's consultation document on CIL are as follows:

1. Public art should be included on the list of infrastructure types funded by CIL

The Living Places partnership has requested that culture, as well as sport and recreation, is included on the list of infrastructure types that can be funded by CIL. The main reasons for this are it: reflects the recent co-operative work of DCLG and DCMS through the Living Places partnership; and provides clarity for the cultural and other sectors regarding the status, role and funding of culture within and via the planning system and in support of the delivery of the sustainable communities agenda at national, regional and local levels.

In general, ixia supports the request by the Living Places partnership. However, ixia requests that public art is included in the definition of culture and is independently listed as an infrastructure type.

¹ See: www.ixia-info.com

² See: www.living-places.org.uk

Public art is defined as three types of visual arts activity:

- art in public places, for example, permanent sculptures like the Angel of the North or temporary interventions as part of a series or festival;
- art as public space, when artists collaborate with design and other professionals and members of the public on the function and design of buildings and spaces;
- socially-engaged practice, when the involvement of individual members of the public or a specific group is at the centre of the artist's work.

ixia defines public art as the process of artists engaging with the public realm.

Since the Government published Circular 05/05: Planning Obligations³ it has become increasingly common for local planning authorities (LPA) to 'pool' financial contributions for public art commissions. The funding is then used to support 'place wide' rather than 'development site specific' public art commissions. The introduction of CIL significantly increases the ability of LPA to fund infrastructure in a strategic way. However, for 'place wide' public art commissions to continue to be developed and implemented it is critical that public art is recognised on its own terms within the context of CIL.

ixia's guidance⁴ on public art and the planning system and Ian Dove QC's Advice⁵ recommend that local authorities and LPA develop plan-led public art policies and strategies. This means that local authorities and LPA should invest in public art expertise and artists to lead on the identification of public art commissions that are then embedded within local development frameworks (core strategies, area action plans, etc) and supplementary planning documents. This process should identify where specific public art commissions will take place in relation to actual and proposed development sites. In relation to CIL, the public art commissions that are 'place wide' rather than 'development site specific' should be costed and this cost should form the basis of the 'levy' for public art.

The Planning Act 2008 makes provision for CIL to be used to: reimburse expenditure already incurred; and cover administrative expenses in connection with infrastructure or in connection with CIL.⁶ These two statements are important because they enable local authorities and LPA to fund the production of the detailed public art policies and strategies that should be embedded within local development frameworks and supplementary planning documents. ixia has not been able to find the statements in the consultation document but recommends that they are included within the guidance on CIL.

³ Office of the Deputy Prime Minister (ODPM) *Circular 05/2005: Planning Obligations* (ODPM, 2005)

⁴ ixia *Public Art and the planning system and process in England. Guidance on a Supplementary Planning Document for Public Art* (ixia, 2007)

⁵ Ian Dove QC Re: Public Art and the Planning System, Advice (No5 Chambers, 2009)

⁶ Office of Public Sector Information (OPSI) *Planning Act 2008* (OPSI, 2008), p.125

In conclusion, given that the use of funding raised via CIL is to be determined by the content of local development frameworks it is appropriate that the development and implementation of detailed public art policies and strategies identified within local development frameworks are funded via CIL.

2. CIL funding for public art should be ring-fenced

ixia requests that guidance should ensure the ring-fencing of funding secured via CIL for the purpose for which it was obtained. Section 106 agreements and the claw back arrangements which usually pertain require the use of the money for the specified purpose or its return. Part of the point of having detailed public art policies and strategies is to ensure accountability and it is consistent with that that there should be complete transparency in relation to the use of funding via CIL in accordance with the basis for which it has been sought.

3. Planning obligations for ‘development site specific’ public art should be retained

In addition to CIL, ixia supports the retention of planning obligations in order to cover development site related matters. ‘Development site specific’ public art commissions should be provided in accordance with detailed public art policies and strategies embedded within local development frameworks and supplementary planning documents. Doing this makes public art a material consideration within the context of the planning system.⁷ Planning obligations are a flexible and robust way of securing the provision of public art and should remain so.⁸

4. The inclusion of culture and public art within a Planning Policy Statement should be progressed

ixia requests the inclusion of culture and public art within a Planning Policy Statement. This would establish a general requirement for support throughout the planning system, adding weight to the provision of funding via CIL.

BACKGROUND INFORMATION - PUBLIC ART AND THE PLANNING SYSTEM

The conflation of the commissioning of public art, the planning system and regeneration can be traced back to Government initiatives during the years immediately following the second world war. These initiatives were concerned with the social and physical reconstruction of Great Britain and included the following: the formation of the Arts Council of Great Britain (ACGB) in 1945; the New Towns Act of 1946; the Town and Country Planning Act of 1947; and the

⁷ Ian Dove QC Re: Public Art and the Planning System, Advice (No5 Chambers, 2009)

⁸ ixia *Public Art and the planning system and process in England. Guidance on a Supplementary Planning Document for Public Art* (ixia, 2007)

Festival of Britain in 1951. It is possible to suggest that the public art commission that best represents the aspirations of this period is the lead role of the artist, Victor Pasmore, in the design and construction of the new town of Peterlee in County Durham during the 1950s.⁹

In 1988 ACGB asked Robert Carnwath QC to provide advice on the 'powers of local authorities to require, or encourage, developers to devote a proportion of their capital expenditure to art'. ACGB sought this advice as part of its promotion of the commissioning of public art by public and private sector organisations and the public art funding mechanism, Percent for Art. The QC's Advice included guidance on the wording of a public art policy within a local plan. This was: 'The local planning authority will in appropriate cases encourage the provision of new works of art as part of schemes of development, and in determining an application for planning permission will have regard to the contribution made by any such works to the appearance of the scheme or to the amenities of the area.'¹⁰

The subsequent circulation and promotion of the QC's Advice by ACGB and its successor in England, Arts Council England (ACE), led to the inclusion of public art and Percent for Art statements, policies and strategies in documents used by LPA to guide and secure regeneration and development projects. In addition, public art as part of place-making began to be promoted by national organisations that advise national, regional and local government, other public sector organisations and the private sector on architecture, urban design and public space. For example, by CABI in *By Design – Urban Design and the Planning System*¹¹ and *Creating Excellent Buildings – A guide for Clients*,¹² and English Partnerships and The Housing Corporation (now the Homes and Communities Agency) in the *Urban Design Compendium*.¹³

During 2006, ixia found that approximately 61% of LPA in England made reference to public art and/or Percent for Art in documents relating to the planning system. Furthermore, Government guidance¹⁴ and research¹⁵ on planning obligations, in addition to ixia's own review,¹⁶ showed that when a developer and an LPA agreed on the provision of public art, then planning conditions and planning obligations were used to secure its development and delivery on and/or off development sites. Indeed, it is worth noting here that the

⁹ See: www.victorpasmore.com

¹⁰ Robert Carnwath QC *In the matter of: Arts Council of Great Britain: Percent for Art. Advice* (Arts Council of Great Britain, 1988)

¹¹ CABI and DETR *By Design – Urban Design and the Planning System* (CABI/DETR, 2000), p.14

¹² CABI *Creating Excellent Buildings – A guide for Clients* (CABI, 2003), p.98

¹³ Llewelyn-Davies *Urban Design Compendium* (English Partnerships and The Housing Corporation, 2000), p.103

¹⁴ The Law Society Model planning obligation (section 106) agreement (DCLG, 2006), p.17

¹⁵ University of Sheffield and the Halcrow Group Limited *Valuing Planning Obligations in England: Final Report* (DCLG, 2006), p.49, 50, 51

¹⁶ ixia *Public Art and the planning system and process in England. Guidance on a Supplementary Planning Document for Public Art* (ixia, 2007)

Government's research identified that public art was the most common planning obligation within major urban centres,¹⁷ and its guidance provides advice to LPA on the wording of planning obligations for public art.¹⁸

The development and implementation of the sustainable communities agenda by the current Government has placed social, economic and environmental aims and objectives at the centre of public policy. This has enabled numerous regeneration and development projects to be progressed with the support of public and/or private sector investment, and has led to a series of ongoing changes to how the planning system plans for, and assesses, these projects. Planning Policy Statement 12 states: 'The planning system has been substantially reformed to embed community responsive policy-making at its heart and to make contributing to the achievement of *sustainable development* a statutory objective. The new *spatial planning* system exists to deliver positive social, economic and environmental outcomes, and requires planners to collaborate actively with the wide range of stakeholders and agencies that help to shape local areas and deliver local services.'¹⁹ In response, ixia asked Ian Dove QC to review the work of Robert Carnwath QC and to provide new Advice regarding the relationship between the provision of public art and the planning system. In summary, Ian Dove QC's Advice, which was published during May 2009, stated that:

- Both permanent and temporary public artworks located on and off development sites are capable of amounting to a material consideration in the planning system;
- Public art can be required by a LPA and, if it is not provided, can be the reason for refusing planning permission for a development;
- For the above to happen a LPA must explicitly embed the details of the provision of public art within their development frameworks, supplementary planning documents and specific design briefs.

Other key issues raised in the Advice were:

- The funding calculation, Percent for Art, and public art tariffs are difficult to justify within the context of the planning system. This is because they are generic formulas that do not fairly and reasonably relate to the impact of a specific development;
- A Design and Access Statement is a suitable vehicle for the assessment of the content and quality of public art;

¹⁷ University of Sheffield and the Halcrow Group Limited *Valuing Planning Obligations in England: Final Report* p.50

¹⁸ The Law Society Model planning obligation, p.17

¹⁹ Department of Communities and Local Government (DCLG) *Planning Policy Statement 12: creating strong safe and prosperous communities through Local Spatial Planning* (DCLG, 2008)

- Public art can be described within the documents required by a LPA when validating a planning application;
- Planning conditions and planning obligations remain appropriate mechanisms for securing the provision of public art;
- Section 2 of the Local Government Act 2000 gives local authorities wide powers that could be deployed for the commissioning of public art – whether by themselves or through influencing the actions of other organisations with whom they work;
- At this stage it is not possible to say that CIL will include in its provisions the opportunity for funds to be generated for public art, but that may yet emerge.²⁰

²⁰ Ian Dove QC Re: Public Art and the Planning System, Advice (No5 Chambers, 2009)